

IT'S ALL DEBT TO ME

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ABSTRACT

Michelle owes \$15,000 to a bank for credit card debt. Reid owes \$15,000 to Memphis Memorial, a private hospital. Shirley owes \$15,000 to the Raleigh Housing Authority. Josh owes \$5,000 to the state of Louisiana and \$10,000 to the Internal Revenue Service. Each debtor owes the same amount. None of them can afford to pay. From their perspective, the debt is the same. But the law does not treat these four debtors the same. The law provides them with widely divergent protections and affords their creditors different collection tools.

Michelle, Reid, Shirley, and Josh experience their debt and its collection differently because the “law of individual debt” is comprised of aspects of various doctrines, including contract, tort, consumer, civil rights, bankruptcy, tax, and constitutional law. This Article reveals and explains how relevant aspects of these doctrines combine to allow for divergent experiences for four similarly-situated debtors.

This Article then argues that the law of individual debt is organized around (1) the identity of the creditor and (2) whether the creditor voluntarily contracted to extend credit to the debtor. With that context, it offers an organizational structure to describe this phenomenon—a “debt ladder” comprised of (1) private voluntary debt, (2) private involuntary debt, (3) public voluntary debt, and (4) public involuntary debt. Mapping debtor protections and creditor powers across the four rungs leads to a shocking conclusion: when descending the debt ladder, legislators have simultaneously decreased debtor protections while increasing creditor powers. This places public involuntary debtors at the bottom of the ladder in an untenable position—suffering under crushing debt and subject to punitive collection tools.

After having excavated the law, developed the scaffolding, and mapped the effects, this Article challenges scholars and policymakers to consider whether the whole is worth the constituent parts.

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INTRODUCTION

Michelle lives in Philadelphia, Pennsylvania. Two years ago, her abusive boyfriend Paul opened a credit card with a local bank, Commonwealth Bank, in Michelle's name. Under threat of violence, Paul made Michelle charge all household expenses to the credit card. While Michelle was able to scrape together the minimum monthly payments, the balance reached \$12,000. Michelle recently left Paul. Since then, she has been overwhelmed by her circumstances, including financial precarity, and has not made payments on the credit card in four months. Even though Michelle recently enlisted in the Marine Corps, she cannot pay the total of \$15,000 she now owes to the bank because of fees and interest.

Reid lives alone in Memphis, Tennessee. Two years ago, he had a heart attack. An ambulance rushed him to Memphis Memorial Hospital, a private hospital, where he underwent emergency heart surgery. Although Reid had medical insurance, he left the hospital with bills totaling \$15,000.¹ Reid did not have \$15,000, so he ignored the bill, and he is now in debt to the hospital.

Until recently, Shirley lived with her three children in a public housing unit in Raleigh, North Carolina.² She signed a lease with the Housing Authority of the City of Raleigh in 2021.³ Shirley's income-based rent was 400 dollars, due on the first of the month.⁴ Shirley paid her rent and otherwise met her lease obligations for eight months. In the ninth month, Shirley had

1. Studies show that individuals with medical insurance still suffer from medical debt. Lunna Lopes et al., *Health Care Debt in The U.S.: The Broad Consequences of Medical and Dental Bills* (June 16, 2022), <https://www.kff.org/report-section/kff-health-care-debt-survey-main-findings/>.

2. As of 2023, there were 886,235 units of public housing available nationally. *Picture of Subsidized Households*, OFF. OF POL'Y DEV. & RSCH., <https://www.huduser.gov/portal/datasets/assths.html> (last visited Jan. 15, 2026). To be eligible for conventional public housing, Shirley's family must have an income less than eighty percent the area median income, meet citizenship status requirements, provide required documents, be in compliance with RHA's Admissions and Occupancy policy, and have a satisfactory history of paying financial obligations. *Eligibility and Applications*, RALEIGH HOUS. AUTH., <https://rhanc.gov/public-housing/eligibility-and-applications/> (last visited Jan. 15, 2026).

3. A public housing contract is a unique form of contractual engagement with the government because it is governed by federal law (The National Housing Act, 42 U.S.C. § 1437 et seq.) and overseen by the United States Department of Housing and Urban Development (24 C.F.R. § 966 et seq.) but implemented by a state or municipal entity. *HUD's Public Housing Program*, U.S. DEP'T OF HOUS. & URB. DEV., https://www.hud.gov/topics/rental_assistance/phprog (last visited Jan. 29, 2025). If there is a dispute over the underlying rental contract, the renter must seek relief from the local housing agency. *See, e.g., Thorpe v. Hous. Auth. of the City of Durham*, 393 U.S. 268 (1969); *Yarbrough v. Decatur Hous. Auth.*, Case No. 17-11500 (11th Cir.) (Order on Oct. 3, 2018), available at <https://law.justia.com/cases/federal/appellate-courts/ca11/17-11500/17-11500-2018-10-03.html>.

4. Residents can choose whether to pay a flat rate rent, which is 80 percent of the fair market rent, or an income-based rent called total tenant payment ("TTP"). TTP is determined by the higher of (1) 30 percent of monthly adjusted income, (2) 10 percent of monthly income, (3) welfare rent, or (4) a \$25 (or \$50, depending on the jurisdiction) minimum rent set by the public housing authority. *Id.* The average family living in public housing pays \$402 per month. *Picture of Subsidized Households*, *supra* note 2.

to lend money to her sister, which caused her to be late on rent, leading to a \$15 charge.⁵ When she ultimately paid on the tenth of the month, Shirley's check bounced, and she incurred a \$25 returned check fee.⁶ Shirley continued this way, paying rent late, incurring late fees, and intermittently missing payment for almost a year. When she finally left the unit to live with her parents, she owed \$15,000 to the Housing Authority.

Josh lives in Baton Rouge, Louisiana with his two teenage children. For the last decade, Josh worked as a construction manager, making approximately \$105,000 annually. Last year, Josh's mother died, and the medical and funeral costs drained his savings, disposable income, and more. In April, when preparing to file taxes, Josh discovered that he owed \$10,000 to the federal government and \$5,000 to the state of Louisiana. Josh did not have the money to pay, and he filed his taxes without the money due.

From the debtor's perspective, all debt is money owed. For Michelle, Reid, Shirley, and Josh, they each owe \$15,000 and none has the capacity to pay. But under the law, these four debtors are treated differently. While there may be compelling reasons underlying the law's design, it is only by excavating the law, revealing its structure, and assessing its costs and benefits that policymakers and scholars can decide whether and what changes need to be made. This Article offers them the analysis necessary to start.

On one axis, Michelle, Reid, Shirley, and Josh are treated differently depending on their creditor's identity: whether the creditor is a private entity (a non-governmental actor or entity) or a public entity (a governmental or quasi-governmental actor or entity). The creditor's identity affects debtor's ability to challenge the debt, to avoid abusive debt collection techniques, and to discharge the debt in bankruptcy. This arises primarily (although not exclusively) for three reasons. First and foremost, private creditors and public creditors have different paths to collection. While the private creditor must collect by seeking voluntary payment or by suing the debtor in a court of law,⁷ the public creditor also has access to administrative collection tools, allowing it to bypass the judicial process.⁸ This makes it nearly impossible for the debtor to challenge the underlying debt or the collection mechanisms. And affirmative suits against public creditors are largely blocked by sovereign immunity. Second, public creditors have additional collection tools unavailable to private creditors, including offsetting the debtor's tax refund or lottery winnings, restricting access to unrelated government benefits, and restricting the debtor's driver's, occupational, professional, or hunting license.⁹ Even where an individual state bars wage garnishment for private creditors,

5. *Id.* See also N.C. GEN. STAT. § 42-46(a)(1).

6. *Picture of Subsidized Households*, *supra* note 2. See also RALEIGH HOUS. AUTH., ADMISSIONS AND CONTINUED OCCUPANCY POLICY 63-64 (2025), <https://rhanc.gov/wp-content/uploads/2025/03/ACOP-For-2025-FINAL.pdf> (explaining that there are fees for late rent and returned checks).

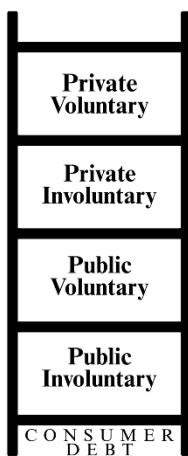
7. See, e.g., CAL. CIV. PROC. CODE § 699.080 (2011) (setting out kinds of property subject to levy to satisfy money judgment); N.Y. C.P.L.R. 5201 (same); OHIO REV. CODE ANN. § 2716.01 (permitting judgment creditors to garnish judgment debtor's wages).

8. See *infra* notes 131-135 and accompanying text.

9. See Keith Fogg, *The Role of Offset in the Collection of Federal Taxes*, 25 FLA. TAX REV. 1, 6 (2021) (defining "offset" as "an equitable right allowing parties who are mutual debtors and creditors to each other to net out their debts, even if those debts arise from separate transactions"); see also 31 U.S.C. § 3711(f)(9).

federal law allows public creditors to garnish wages.¹⁰ Third, unlike the majority of private debts, public debts are categorically non-dischargeable in Bankruptcy’s Chapter 7 and limited in Chapter 13.¹¹

On another axis, the law treats debtors differently based on whether the creditor agreed in advance, through contract, to become a creditor. For purposes of this Article, I call debt



Graphic A

arising from a contract “voluntary debt” and the creditor a “voluntary creditor.”¹² If a debt arises from a voluntary credit agreement, the debtor retains greater rights to challenge debt collection. Those engaged with a voluntary creditor have a fuller panoply of defenses available because they can rely on statutory protections like those in the Truth in Lending Act (“TILA”) and substantive contract protections like unconscionability, fraud, duress, and coercion. Debtors engaged with involuntary creditors, on the other hand, are limited by the fact that they did not have an underlying contract. This is true when the creditor is a private creditor or a public creditor. And although all public creditors may be shielded from liability by sovereign immunity, the shield is stronger when the state is an involuntary creditor.¹³

By canvassing the law that affects debtors and creditors across doctrine, this Article’s first contribution is to reveal that, although debtors Michelle, Reid, Shirley, and Josh may owe the same amount of money, they are treated differently depending on (1) the identity of the creditor, and (2) whether the creditor voluntarily agreed to extend credit. It explains how, once disentangled, the “law of individual debt” can be understood to create a “debt ladder” comprised of private

10. *Id.* See also *Frew v. Van Ru Credit Corp.*, 2006 WL 2261624 (E.D. Pa. Aug. 7, 2006) (DCIA’s authority to garnish wages overrides Pennsylvania’s restrictions on such garnishment).

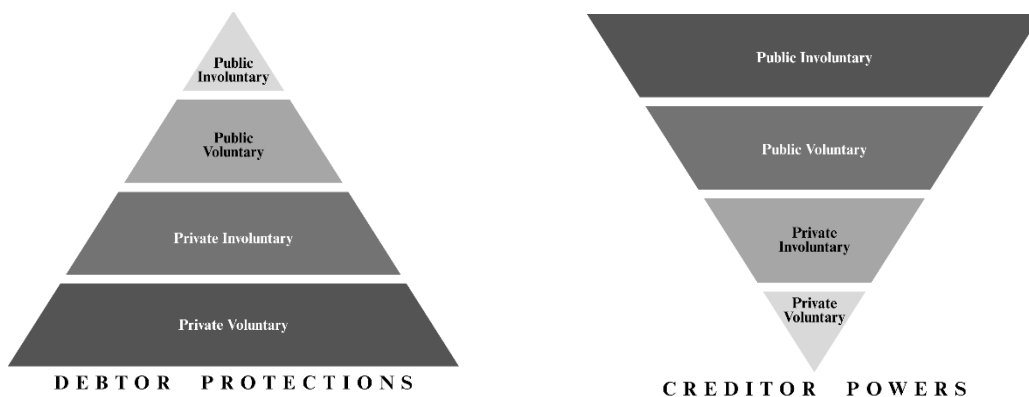
11. See *infra* notes 228.

12. See *In re Kucera*, 2009 WL 691000 (Bankr. D. Mass. Mar. 12, 2009) (differentiating voluntary secured debts “such as mortgage and security agreements” from involuntary secured debts “such as judgment liens and statutory liens”); *In re Westberry*, 215 F.3d 589, 591 (6th Cir. 2000) (finding that income tax debt is not “consumer debt” for bankruptcy purposes because it is not incurred voluntarily). See also MELISSA B. JACOBY, UNJUST DEBTS: HOW OUR BANKRUPTCY SYSTEM MAKES AMERICA MORE UNEQUAL (2024) (explaining that “[b]ankruptcy lawyers may believe that tort claimants care less about process than they do about money” as relative to “creditors that are lenders or commercial parties that extended credit voluntarily to the debtors”); Helen Donigan, *Calculating and Documenting Child Support Awards Under Washington Law*, 26 GONZ. L. REV. 13, 50–51 (1991) (discussing the voluntariness of debts in the context of child support); Lynn M. Lopucki, *The Unsecured Creditor’s Bargain*, 80 VA. L. REV. 1887, 1891 (1994) (arguing that involuntary unsecured creditors should be given higher priority than voluntary secured creditors).

13. For example, states have limited sovereign immunity waiver through state tort claims acts where the claims are related to a judicial or administrative hearing (IND. CODE § 34-13-3-3), arise from an employee’s actions in executing a court order (TEX. CIV. PRAC. & REM. CODE ANN. § 101.053), arise out of “the negligent deprivation of state of statutory rights” under state law (TENN. CODE ANN. § 9-8-307), or relate to the issuance or denial of a license or approval (TENN. CODE ANN. § 9-8-307(a)(2)(A) (incorporating 9-8-307(1)(V)).

voluntary debt, private involuntary debt, public voluntary debt, and public involuntary debt, as represented in Graphic A. Because the creditor is a private party and Michelle’s debt arose from a contract, Michelle is a “private voluntary debtor.” Reid’s debt did not arise from a contract, so he is a “private involuntary debtor.” Because Shirley owes money to a public entity pursuant to a lease, she is a “public voluntary debtor.” And Josh is a “public involuntary debtor” because he owes money to the government that does not arise from an agreement.¹⁴

Why does it matter that these four debtors can be described in this way, and that the law creates different protections for them and different rules for their creditors? Other than the differences for individual debtors, what does this say about debt policy more generally? This is my second contribution. To get to the debt ladder’s scaffolding, this Article had to traverse aspects of contract, tort, consumer, civil rights, bankruptcy, tax, and constitutional law. It is only by this doctrinal synthesis that we can clearly see the debt ladder and the two axes upon which it is based. And it is only by setting out the debtor protections and creditor powers in each ladder rung that a shocking conclusion emerges: when descending the debt classification ladder, legislators have simultaneously decreased debtor protections while increasing creditor powers.¹⁵ Thus, the visual representation looks less like the ladder of Graphic A and more like the paired pyramids represented in Graphic B.



Graphic B

14. I treat public debt as any (1) debt owed to a public entity, (2) debt that will be repaid to a public entity, even if it is passed through a private entity, and (3) child support. “Public entity” means a governmental entity at any level of government—federal, state, or municipal. Otherwise, the debt is a private debt. I treat debt that arises pursuant to a contract or agreement as voluntary debt. Debt that arises absent agreement is involuntary debt.

15. This is not unambiguously linear. *See infra* notes 204-207 and accompanying text (involuntary debtors have additional protections in bankruptcy); note 74 (constitutional and APA claims apply only to public debtors). For student loans, private voluntary debtors only have greater protections in collections; in other ways, public student loan debtors are in a superior position to private student loan debtors. *See* Jonathan D. Glater, *The Other Big Test: Why Congress Should Allow College Students to Borrow More Through Federal Aid Programs*, 14 N.Y.U. J. LEGIS. & PUB. POL’Y 11 (2011) (recognizing the dangers of private loan terms and arguing for lifting the cap on federal student loans). When viewed in their totality, however, the inverse relationship between debtor protections and creditor powers is undeniable.

Individual policy decisions may make perfect sense. It may be sensible to allow administrative tax offsets for overdue tax arrears. Only contracts should benefit from the strictures of common law contract formation principles. The sovereign cannot survive if it is subject to every challenge. Yet, this Article widens the lens to the larger structure of debt policy. When viewed in its totality, when we understand the paired pyramids, and when we consider the law's lack of awareness of the debtor's circumstances, it begs the question as to whether the current structure is useful, beneficial, or fair.

This Article is organized as follows. Part I looks at debt's design. It begins with the acknowledgement that, from the debtor's perspective, any money owed is debt, regardless of the creditor or the existence of a contract. Part I then looks at law's design, canvassing the many doctrines that combine to affect a debtor's experience. It calls attention to the disconnect between the debtor's understanding of their own debt and the law's treatment of the same debt. It concludes by naming the two axes upon which the law defines and distinguishes debt: private/public creditor, and voluntary/involuntary debtor. And it introduces the debt ladder scaffolding. Part II delves more deeply into those laws, organizing the analysis in the ladder structure and exploring how debtors are differentially protected and creditors are differently empowered across the rungs. Part III considers the effects of that structure, recognizing the shift from a standard ladder metaphor to the more accurate inverse pyramid metaphor. Part IV wrestles with the question as to whether the structure of the whole is worth the constituent parts. It recognizes that there may be compelling reasons for certain differences when viewed in isolation, but argues that when understood as a single arrangement, policymakers should consider whether the structure can stand. A brief Conclusion follows.

I. DEBT'S DESIGN

A. The Power of Individual Debt

Individuals can hold debt in different ways. One can owe money for home mortgages, back rent, back utility charges, credit card debt, auto loan debt,¹⁶ auto title debt, medical debt, student loans, home equity loans, installment loans, or payday loans. New kinds of debt products arise regularly, including gambling advances, release card debt,¹⁷ earned wage access

16. Auto loans can be direct, where the consumer gets a loan from a bank, credit union, or other private lender before buying a car, or indirect, where the auto dealer arranges the financing as part of the sale transaction. See CONSUMER FIN. PROT. BUREAU, CONSUMER VOICES ON AUTOMOBILE FINANCING (2016), https://files.consumerfinance.gov/f/documents/201606_cfpb_consumer-voices-on-automobile-financing.pdf; see also Adam J. Levitin, *The Fast and the Usurious: Putting the Breaks on Auto Lending Abuses*, 108 GEO. L.J. 1257, 1275-79 (2020).

17. Release cards are the debit cards that an incarcerated person is given when released, loaded with the money left in their prison account. Ariel Nelson & Stephen Raheer, *Captive Consumers*, INQUEST (Mar. 19, 2022), <https://inquest.org/captive-consumers/>. Release cards accrue fees that can become debt if unpaid, and charge users for "having an account, using the account, not using the account, and seeking customer service." *Id.*

program advances,¹⁸ refund anticipation loans,¹⁹ training repayment agreement debt,²⁰ and solar financing loans. Negotiated settlement agreements create debt, as do civil money judgments. Individuals may be in debt to the state for unpaid income taxes, property taxes, child support arrears, parking tickets, toll violations, or criminal fines and fees.

Debt can have different characteristics. There is secured debt and unsecured debt. Debt can accrue with or without interest; where interest accrues, it can be simple or compounded.²¹ An individual can owe debt to another individual, to an entity, or to the government. Debt often accrues after an extension of cash credit,²² but sometimes debt arises from use of a product or service. Individual debt may accrue based on consumption, like credit card debt, or be separate from consumption, as from a civil judgment or unpaid overdraft fees.

Perhaps that is why debt is so hard to define. Anthropologist David Graeber, in his 500-year history of debt, explains that “nobody seems to know exactly what it is, or how to think about it.”²³ Across disciplines, the definition of debt has differed.²⁴ Scholars and doctrines disagree about what is considered “debt.” TILA, perhaps consumer protection’s most potent lending disclosure statute, does not even define debt, only describing its

18. Earned wage access programs “facilitate[e] transfers of earned-but-unpaid wages to workers in advance of their standard periodic paydays.” Nakita Q. Cuttino, *The Rise of “Fringetech”: Regulatory Risks in Earned-Wage Access*, 115 NW. U. L. REV. 1505, 1508 (2015). Earned wage access programs charge fees or encourage tips at rates akin to 70 to 470 percent APR. *Id.* at 1510.

19. Refund anticipation loans are “loans secured by taxpayers’ expected tax refunds.” Leslie Book, *Refund Anticipation Loans and the Tax Gap*, 20 STAN. L. & POL’Y REV. 85, 86 (2009). Refund anticipation loans cost \$150-500 in fees and more than of taxpayers with such loans qualify for the earned income tax credit. *Id.*

20. Training repayment agreement debt occurs when an employment contract states that the employee will be responsible for repaying the employer for on-the-job trainings if the employee leaves within a certain time period. See REED SHAW ET AL., STAY-OR-PAY: FEDERAL ACTIONS TO END MODERN-DAY INDENTURED SERVITUDE ACROSS THE ECONOMY 9 (2023), https://protectborrowers.org/wp-content/uploads/2023/12/stay-or-pay-compendium_12-2023_FINAL.pdf. Such employees may also be liable for “liquidated damages . . . open-ended damages, equipment loans, dispute resolution costs” and other similar agreements. *Id.* at 10.

21. See Robert J. Sergesketter, *Interesting Inequities: Bringing Symmetry and Certainty to Prejudgment Interest*, 32 HOUS. L. REV. 231, 234 n.13 (1995) (“Simple interest involves paying interest only on the principal amount and not on the interest that has accumulated on that principal. . . . [Compound] interest is earned on the accumulated interest that has not yet been distributed.”).

22. The credit does not usually come in the form of actual cash. I use “cash credit” to mean that the credit was disbursed in liquid form.

23. DAVID GRAEBER, *DEBT: THE FIRST 5,000 YEARS* 4-5 (2014).

24. See JOHN MAYNARD KEYNES, *THE TREATISE ON MONEY* 3 (1930) (defining debt as a “contract[] for deferred payments”); GRAEBER, *supra* note 23, at 121 (defining debt as “an exchange that has not been brought to completion”); Gustav Peebles, *The Anthropology of Credit and Debt*, 39 ANN. REV. OF ANTHROPOLOGY 225 (2010) (characterizing debt as the separable corollary to credit); *Debt*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining debt as any one of the following: “Liability on a claim; a specific sum of money due by agreement or otherwise; 2. The aggregate of all existing claims against a person, entity, or state; 3. A nonmonetary thing that one person owes another, such as goods or services; 4. A common-law writ by which a court adjudicates claims involving fixed sums of money”).

counterpart, “credit.”²⁵ Where debt is defined in the law, statutes vary widely. The United States Bankruptcy Code defines “debt” broadly as “liability on a claim.”²⁶ The Fair Debt Collection Practices Act defines “debt” more narrowly as “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes.”²⁷ This omits tax debt or debt arising from criminal fines or fees.²⁸ While this author has included those obligations in the definition of debt,²⁹ others have not.³⁰ According to Professor Graeber, “[t]he very fact that we don’t know what debt is, the very flexibility of the concept, is the basis of its power.”³¹

And it does have power. The American economy is built on consumer debt.³² American households owe \$18.59 trillion in debt.³³ That sum includes \$13.07 trillion in mortgages, \$422 billion in outstanding home equity lines of credit, credit card debt equaling \$1.23 trillion, \$1.66 trillion in auto loans, and \$1.65 trillion in student loan debt.³⁴ In late 2025, almost five percent of household debt was overdue.³⁵ Five percent of nearly \$19 trillion dollars is more than \$900 million dollars of overdue debt. Thirty-five percent of American adults have

25. 15 U.S.C. § 1602(e). *See also* William D. Warren & Thomas R. Larmore, *Truth in Lending: Problems of Coverage*, 24 STAN. L. REV. 793, 795 (1972). Professor Abbye Atkinson explains policymakers’ “acoustic separation” of credit and debt: “Congress has curiously disconnected its regulation of credit and debt, acoustically separating them . . . in ways that assume credit can meaningfully function as a mechanism of enhanced socioeconomic capacity separately from its complement, debt. Moreover, this bifurcated approach exhibits tension in its relatively optimistic and expansive posture in the treatment of credit as compared to its relatively negative and restrictive treatment of debt.” Abbye Atkinson, *Borrowing Equality*, 120 COL. L. REV. 1403, 1406-07 (2020) (borrowing the term “acoustic separation” from Professor Meir Dan-Cohen. Meir Dan-Cohen, *Decision Rules and Conduct Rules: On Acoustic Separation in Criminal Law*, 97 HARV. L. REV. 625 (1984)).

26. 11 U.S.C. § 101(12).

27. 15 U.S.C. § 1692a.

28. *Id.*

29. Kate Sablosky Elengold, *Debt, Work, and the State*, 109 MINN. L. REV. 1309 (2025) [hereinafter *Debt, Work, and the State*]; Kate Sablosky Elengold, *Debt, Race, and Physical Mobility*, 112 CALIF. L. REV. 833 (2024) [hereinafter *Debt, Race, and Physical Mobility*]. *See also* Warren & Larmore, *supra* note 25, at 807-08 (arguing that TILA’s stilted definition of credit improperly omits involuntary creditors, especially where those creditors can and do allow the debtor to defer payment or pay in installments).

30. *See, e.g.*, Lena Pellandini-Simanyi, *Consumer Credit and Debt*, OXFORD BIBLIOGRAPHIES (June 21, 2024), <https://www.oxfordbibliographies.com/display/document/obo-9780199756384/obo-9780199756384-0269.xml> (defining debt by excluding family members, the state, or universities).

31. GRAEBER, *supra* note 23, at 5.

32. *Id.*, at 4-5.

33. *Household Debt and Credit Report Q3 2025*, FED. RSRV. BANK OF N.Y. CTR. FOR MICROECONOMIC DATA, <https://www.newyorkfed.org/microeconomics/hhdc.html> (last visited Jan. 15, 2026).

34. *Id.*

35. *Id.*

at least one debt that has been sent to collections.³⁶ Half of all Americans have medical debt.³⁷ And those data do not even include certain kinds of debt owed to the government. One source reports that 11.23 million American taxpayers owe the federal government a total of \$125 billion in back taxes.³⁸ Americans owe at least \$27.6 billion in court fines and fees, a number that is likely a gross underestimation.³⁹ Professor Abbye Atkinson explains that debt is so much a part of the fabric of American lives, it represents citizenship and belonging.⁴⁰ She also draws attention to the government’s decision to use credit products as social provision rather than providing an effective social safety net.⁴¹

B. The Law of Individual Debt

The Subsection above explored what debt is and the different ways that it can be explained and incurred. But for all the many kinds of debt and the different ways to define it, from the debtor’s perspective, debt is “money owed.” To a debtor, the debates above are irrelevant. A debtor does not distinguish between money they owe to a private bank or hospital, a public housing authority, the state government, or the federal Internal Revenue Service. They do not consider whether their debt was incurred from a contract, a service, or fees. If they cannot afford the debt, they are in trouble.⁴² What matters to the debtor is their rights and the creditor’s power, which are governed by federal and state law. But, unlike the individual debtor, the law *does* care whether the creditor is a private party or a public entity. The law *does* care whether the creditor agreed, in advance, to extend credit to the debtor. In fact, those attributes control the debtor’s experience of their debt and its collection. This is the “law of individual debt” and the reason why Michelle, Reid, Shirley, and Josh experience their respective \$15,000 debts so differently.

The law of individual debt is not a single doctrine. It is made up of various and disparate bodies of law that merge to create policy as it relates to individual debtors. This

36. CHRYSTIN ONDERSMA, DIGNITY NOT DEBT: AN ABOLITIONIST APPROACH TO ECONOMIC JUSTICE 7 (2024).

37. *Id.* at 18.

38. *A Record Number of Americans Owe Tax Debt This Year, But the IRS is Forgiving Millions*, FRESH START INFO., <https://freshstartinformation.org/record-number-owe-back-taxes-but-irs-forgives-millions/> (last visited Jan. 15, 2026).

39. Briana Hammons, *Tip of the Iceberg: How Much Criminal Justice Debt Does the U.S. Really Have?*, FINES & FEES JUST. CTR., https://finesandfeesjusticecenter.org/wp-content/uploads/2021/04/Tip-of-the-Iceberg_Criminal_Justice_Debt_BH1.pdf (last visited Jan. 15, 2026).

40. Abbye Atkinson, *Borrowing and Belonging*, 111 CALIF. L. REV. 1369 (2023) [hereinafter *Borrowing and Belonging*].

41. Abbye Atkinson, *Rethinking Credit as Social Provision*, 71 STAN. L. REV. 1093 (2019).

42. Debtors are regularly treated like criminals. GRAEBER, *supra* note 23, at 59 (noting that the synonyms for debt are related to criminality). See also Abbye Atkinson, *Consumer Bankruptcy, Nondischargeability, and Penal Debt*, 70 VAND. L. REV. 917, 920 (2017) [hereinafter *Consumer Bankruptcy, Nondischargeability, and Penal Debt*]. Debt born of financial hardship has been linked to emotional distress, depression, and suicide. Joe J. Gladstone et al., *Financial Shame Spirals: How Shame Intensifies Financial Hardship*, 167 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 42, 42 (2021) (gathering studies).

Subsection catalogs the aspects of contract, tort, consumer, civil rights, bankruptcy, tax, and constitutional law that cross and overlap to create the law of individual debt.⁴³ This cataloging leads to the Article's first insight: when understood in its totality, debt policy is organized around (1) the creditor's identity and (2) whether the creditor previously agreed to the debt.

1. *The Power of the Contract*

Whether debt arises from contract has a significant effect on the law of individual debt. Mortgage debt, credit card debt, rental debt, auto loan debt, payday loans, and student loan debt all arise from contract. Where debt arises from contract, common law principles, along with state and federal consumer protection laws, afford certain protections for debtors and create certain guardrails in debt collection.

Common law contract principles apply to loan contracts. A contract that does not have consideration and mutual assent to the essential terms may not be enforceable.⁴⁴ The many contracts that involve real estate or exceed a certain dollar value must satisfy the statute of frauds.⁴⁵ Unconscionable contracts—where there is a “gross disparity in the values exchanged,” gross inequality in bargaining power, or specific unconscionable terms like large liquidated damages—may be unenforceable.⁴⁶ The same is true for contracted debt incurred by fraud, duress, or coercion.⁴⁷

When debt arises via contract, certain consumer protection laws also apply. These laws require lenders to disclose certain information up front or follow certain procedures to mollify the information imbalances between the contracting parties. TILA requires lenders to make certain disclosures necessary for borrowers to compare loan terms across debt products.⁴⁸ TILA mandates that lenders make specific disclosures for various kinds of loans (*i.e.* credit cards, mortgage transactions, and private education loans),⁴⁹ in various types of credit-related communications (*i.e.* account-opening disclosures, periodic statements, and rate limitations),⁵⁰ and including various kinds of information (*i.e.* annual percentage rate

43. Different debt policy governs commercial debt and sovereign debt. This Article is limited to debt owned by individuals.

44. 17 C.J.S. CONTRACTS § 1 (2025).

45. *See, e.g.*, N.C. GEN. STAT. § 25-2-201 (statute of frauds).

46. RESTATEMENT (SECOND) OF CONTRACTS § 208 (AM. L. INST. 1981).

47. *See, e.g., In re Mason*, 300 B.R. 160, 169 (Bankr. D. Conn. 2003) (plaintiff established, by clear and convincing evidence, all elements of duress necessary for voiding of debt).

48. 15 U.S.C. § 1601 et seq. TILA authorizes the Consumer Financial Protection Bureau to issue regulations, which are collectively known as “Regulation Z.” 12 C.F.R. § 1026 et seq. Scholars have critiqued TILA as having been captured by industry, making the regulations less debtor protective. *See* Sefa M. Franken, *The Political Economy of the EC Consumer Credit Directive*, in CONSUMER CREDIT, DEBT AND BANKRUPTCY: COMPARATIVE AND INTERNATIONAL PERSPECTIVES 129-30 (Johanna Niemi, Iain Ramsay, & William C. Whitford, eds., 2009).

49. 12 C.F.R. § 1026 Subparts B and G (credit cards); 12 C.F.R. § 1026 Subpart E (mortgages); 12 C.F.R. § 1026 Subpart F (private education loans).

50. 12 C.F.R. § 1026.6 (account-opening disclosures); 12 C.F.R. § 1026.7-8 (periodic statements); 12 C.F.R. § 1026.30 (rate limitations).

calculations, record retention, and the right to cancel certain loans).⁵¹ Since TILA was passed in 1968, Congress has amended it many times to incorporate additional statutory protections and provisions.⁵² In addition to TILA and its progeny, the Real Estate Settlement Procedures Act (“RESPA”) requires that mortgage lenders provide certain disclosures and required changes to recordkeeping associated with land title information.⁵³ If a lender violates the terms of these disclosure laws, the borrower has legal recourse, including a private right of action to seek actual damages, costs, and reasonable attorney’s fees.⁵⁴

State usury laws limit high interest rates, generally capping interest rates between six and ten percent per annum, but allowing for higher rates by party agreement⁵⁵ or for certain kinds of loans.⁵⁶ Federal law layers on top, prohibiting usurious rates charged to active-duty military or their families through the Servicemember Civil Relief Act and the Military Lending Act.⁵⁷

Although a prior agreement to extend credit does afford certain protections and create guardrails against abuse, the law focuses largely on whether the *creditor* agreed to advance credit. Scholars have shown that the borrower’s volition is narrowly construed; if the borrower signed the contract, it is generally enforceable. Although fraud and coercion are defenses to

51. 12 C.F.R. §§ 1026.14, 1026.22 (annual percentage rate calculations); 12 C.F.R. § 1026.25 (record retention); 12 C.F.R. § 1026.47 (right to cancel private education loan).

52. *See* Fair Credit Billing Act of 1974, Pub. L. No. 93-495, 88 Stat. 1511; Consumer Leasing Act of 1976, Pub. L. No. 94-240, 90 Stat. 257; Truth in Lending Simplification and Reform Act of 1980, Pub. L. No. 96-221, 94 Stat. 164; Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 101 Stat. 552; Fair Credit and Charge Card Disclosure Act of 1988, Pub. L. 100-583, 102 Stat. 2969; Home Equity Loan Consumer Protection Act of 1988, Pub. L. No. 100-709, 102 Stat. 4725; Home Ownership and Equity Protection Act of 1994, Pub. L. No. 103-325, 108 Stat. 2190; Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. 104-208, 110 Stat. 3009-394; the Electronic Signatures in Global and National Commerce Act (“the E-Sign Act”) of 2000, Pub. L. 106-229, 114 Stat. 464; the Mortgage Disclosure Improvement Act of 2008, Pub. L. 110-289, 122 Stat. 2855; the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the “CARD Act”), 15 U.S.C. § 1601; the Higher Education Opportunity Act of 2009, Pub. L. 110-315, 122 Stat. 3078; and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”), Pub. L. 111-203, 124 Stat. 1376. These many laws and their protections have been incorporated, in part or in whole, into TILA and Regulation Z. CONSUMER FIN. PROT. BUREAU, TRUTH IN LENDING ACT 1 (2015), https://files.consumerfinance.gov/f/201503_cfpb_truth-in-lending-act.pdf.

53. 12 U.S.C. § 2601(b). *See also* 12 C.F.R. pt. 1024.

54. Truth in Lending Act, 15 U.S.C. § 1640(a); Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(f). The borrower cannot seek to rescind a contract for disclosure violations (12 U.S.C. § 2615) but may lead to monetary damages.

55. N.C. GEN. STAT. § 24-1.1; *Maximum Rate of Interest*, N.C. OFF. OF THE COMM’R OF BANKS, <https://nccob.nc.gov/news-research/maximum-rate-interest> (last visited Jan. 27, 2025) (allowing parties to contract for interest rates at fifteen and sixteen percent for home loans, depending on the loan’s principal amount).

56. *See, e.g.*, COLO. REV. STAT. § 5-12-101, 103 (limiting interest rates to eight percent, but allowing parties to contract for an interest rate up to forty-five percent); N.C. GEN. STAT. § 24-1, 53-176 (limiting interest rates to eight percent, but allowing higher rates for certain small dollar loans).

57. Servicemembers Civil Relief Act, 50 U.S.C. § 3901 et seq.; Military Lending Act, 10 U.S.C. § 987.

contract, they are difficult to prove. And such defenses do not extend to debtors who borrow because their life circumstances afford them no other choice. Professor Angela Littwin has written extensively about “coerced debt,” which is debt that was incurred under the threat of intimate personal violence.⁵⁸ Her proposals to treat such debt differently under the law have not yet found traction in legislative bodies or in the courts.⁵⁹ Professor Chrystin Ondersma questions whether contracts for “survival debt,” debt necessary to meet basic needs, should be considered voluntary.⁶⁰ Courts, however, regularly uphold such contracts, even when they include predatory or extractive terms.⁶¹ And scholars have queried whether terms contained in adhesive contracts, including clickwrap, shrinkwrap, and browsewrap licenses, should be binding.⁶² Yet courts regularly uphold such contracts.⁶³ That is why this Article argues that the voluntary/involuntary distinction in the law of individual debt turns on whether the creditor (not the debtor) agreed to extend credit in advance of debt’s accrual.

2. *Beyond Contract*

Certain laws apply to a creditor-debtor relationship regardless of whether the debt was accrued pursuant to a contract.⁶⁴ Predominately-disclosure laws like TILA and RESPA also

58. See generally Angela Littwin, *Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence*, 161 U. PA. L. REV. 363 (2013); Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 CALIF. L. REV. 951 (2012) [hereinafter *Coerced Debt*].

59. *Coerced Debt*, *supra* note 58, at 395-96 (“Assertions of coerced debt are likely to be met with particular skepticism In addition, victims of . . . coerced debt must prove a negative: that they did not incur a given financial obligation. . . .”).

60. See ONDERSMA, *supra* note 36, at 15 (defining “survival debt” as “debt that households incur to survive and achieve a standard of living consistent with human dignity—to access housing, food, clothing, transportation, and medical care”).

61. See *id.* at 61 (“[W]e know that households often have no choice but to turn to credit to survive, no matter how lousy the terms.”).

62. See Mark A. Lemley, *Terms of Use*, 91 MINN. L. REV. 459, 465-72 (2006) (explaining terms); Charles E. MacLean, *It Depends: Recasting Internet Clickwrap, Browsewrap, “I Agree,” and Click-Through Privacy Clauses as Waivers of Adhesion*, 65 CLEV. STATE L. REV. 43, 46 (2016) (arguing that clickwrap, browsewrap, “I Agree,” and click-through clauses are contracts of adhesion); Miriam A. Cherry, *Working for (Virtually) Minimum Wage: Applying the Fair Labor Standards Act in Cyberspace*, 60 ALA. L. REV. 1107, 1108-09 (critiquing “clickwrap” and “browsewrap” licenses).

63. See, e.g., *Feldman v. Google, Inc.*, 513 F.Supp.2d 229, 231 (E.D. Pa. 2007) (holding that a forum selection clause in an internet clickwrap agreement is enforceable); *Zaltz v. JDATE*, 952 F.Supp.2d 439, 450 (E.D.N.Y. 2013) (holding that the defendant’s mandatory forum selection clause was valid and enforceable); see also Mark A. Lemley, *Intellectual Property and Shrinkwrap Licenses*, 68 S. CALIF. L. REV. 1239, 1248-53 (cataloguing cases).

64. While the Uniform Commercial Code (where adopted) governs most commercial transactions that result in private voluntary debt, neither the initial draft nor subsequent drafts have adopted significant consumer protections. See Jean Braucher, *Foreword: Consumer Protection and the Uniform Commercial Code*, 75 WASH. U. L.Q. 1, 2 (1998) (recognizing that those responsible for drafting and amending the UCC have tried to keep special consumer provisions “to a minimum” and to “leave the job of consumer protection primarily to other state law and to federal law”); Caroline Edwards, *Article 2 of the Uniform Commercial Code and Consumer Protection: The Refusal to Experiment*, 78 ST.

contain certain substantive protections. TILA, for example, prohibits specific actions in connection with high-cost mortgage loans, limits fees on credit card accounts, and proscribes what can, must, and cannot be stated in advertisements for unsecured loan products.⁶⁵ RESPA protects debtors in mortgage lending by prohibiting certain kickbacks and reducing the amount home buyers must put in escrow.⁶⁶ The Fair Credit Reporting Act limits what and how creditors can report delinquencies and defaults to the credit reporting agencies.⁶⁷ And every state and the District of Columbia have laws prohibiting unfair and deceptive acts and practices in commerce, affording the consumer a private right of action.⁶⁸ Tort law may also be used to raise claims or defenses of common law fraud, intentional or negligent infliction of emotional distress, invasion of privacy, intentional interference with employment or contractual relationships, defamation, malicious prosecution, or abuse of process in the creation or collection of debt.⁶⁹

Civil rights law and special statutes also apply. The Equal Credit Opportunity Act (“ECOA”), enacted in 1974, makes it unlawful for lenders who regularly extend credit to discriminate against borrowers based on race, color, religion, national origin, sex, marital status, age, source of income, or because they exercised their rights under the Consumer Credit Protection Act.⁷⁰ For home mortgage lending, the Fair Housing Act (“FHA”) affords similar

JOHN’S L. REV. 663 (2004) (recognizing that Article 2 of the UCC “will continue to be one of the most important bodies of law to vigorously apply the principle of government restraint for the purpose of preserving freedom of contract”).

65. 12 C.F.R. § 1026.34 (high-cost mortgage loans); 12 C.F.R. § 1026.52 (limiting fees on credit card accounts under an open-end consumer credit plan); 12 C.F.R. § 1025.16 (advertising for open-end plans).

66. 12 U.S.C. § 2601(b).

67. See Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681x; *Fair Credit Reporting Act*, FED. TRADE COMM’N, <https://www.ftc.gov/legal-library/browse/statutes/fair-credit-reporting-act> (last visited Jan. 16, 2026) (providing a summary of the Fair Credit Reporting Act).

68. See Kate Sablosky Elengold, *Consumer Remedies for Civil Rights*, 99 B.U. L. REV. 587 (2019). The breadth and access to these protections varies dramatically by state. See NAT’L CONSUMER L. CTR., CONSUMER PROTECTION IN THE STATES (2018), <https://www.nclc.org/wp-content/uploads/2022/08/udap-appC.pdf>.

69. See *Debt Collection Fraud*, OFF. OF THE COMPTROLLER OF THE CURRENCY <https://www.occ.gov/topics/consumers-and-communities/consumer-protection/fraud-resources/debt-collection-fraud.html> (last visited Dec. 28, 2024) (describing debt collection fraud, warning signs, and ways to report). See also *Moore v. Greene*, 431 F.2d 584, 591 (9th Cir. 1970) (evidence of mental distress resulting from letters related to non-payment of legal services sufficient to sustain a verdict of infliction of emotional distress); *Wrenn v. Bank of Am. Home Loans, L.P.*, 2013 WL 369611 (S.D. W. Va. Jan. 30, 2013) (invasion of privacy claim is plausible based on the manner that defendant contacted plaintiff about plaintiff’s debt); *Polis v. Am. Liberty Fin., Inc.*, 237 F. Supp. 2d 681, 689 (S.D. W. Va. 2002) (mortgage company’s communication with plaintiff, which caused them to violate a contract with their counsel, could support a finding of tortious interference with contract); *Plessy v. Hayes Motor Co.*, 742 So. 2d 934, 940 (La. Ct. App. 1999) (malicious prosecution claim supported by evidence that car sales company did not have probable cause for reporting car as stolen); *McCullough v. Johnson, Rodenburg & Lauinger, L.L.C.*, 637 F.3d 939, 956–57 (9th Cir. 2011) (abuse of process verdict supported by substantial evidence that debt collection firm filed and pursued a time-barred lawsuit).

70. 15 U.S.C. § 1691.

protections, but limits the protected classes to race, sex, religion, familial status, national origin, color, and disability.⁷¹ Almost all states have analogous state lending and fair housing protections, some of which extend to additional protected classes.⁷² And some states have special statutes aimed at protecting particularly vulnerable parties like domestic violence survivors that may allow the debtor to avoid enforcement of the debt.⁷³ Government creditors are subject to the constitutional requirements of equal protection and due process, along with the requirements of the Administrative Procedures Act.⁷⁴

Bankruptcy law acts as a backstop for debtors. Consumer bankruptcy, filed under Chapter 7 or Chapter 13 of the United States Bankruptcy Code, offers debtors an opportunity to discharge most of their debts and build a fresh financial future.⁷⁵ Private debt is largely dischargeable; auto debt, auto title debt, unpaid utility debt, credit card debt, earned wage access debt, installment loans, routine medical debt, negotiated settlements, overdraft fees, payday loans, personal loans, refund anticipation civil judgments, emergency medical debt, fees and charges associated with back rent and other unpaid debts are all presumptively dischargeable.⁷⁶ Private student loan debt is the primary exception, as it is especially difficult to discharge.⁷⁷ Public debt is largely non-dischargeable.⁷⁸

3. Sovereign Immunity

Public creditors are treated differently than private creditors. Both states and the federal government benefit from the doctrine of sovereign immunity, which prohibits lawsuits

71. 42 U.S.C. § 1604 et seq.

72. Forty-nine states and the District of Columbia have state fair housing statutes. *State Fair Housing Act Protections*, LAW ATLAS (Aug. 2009), <https://lawatlas.org/datasets/state-fair-housing-protections-1498143743>. Certain states extend protections beyond the federal statute's protected classes. *See, e.g.*, WASH. REV. CODE § 49.60.222 (2019) (including marital status, sexual orientation, creed, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability, and the use of a trained dog guide or service animal); MASS. GEN. LAWS ch. 151B, § 4 (2018) (including gender identity, sexual orientation, genetic information, pregnancy or a condition related to pregnancy).

73. *See, e.g.*, 34 U.S.C. § 12491(b) (prohibiting landlords from taking certain otherwise permitted actions against tenants who are victims of domestic violence, dating violence, sexual assault, or stalking); N.Y. REAL PROP. LAW § 227-c(1) (allowing victim of domestic violence to break a lease without punishment).

74. *See, e.g.*, *Associated Mortg. Bankers v. Carson*, 279 F. Supp. 3d 58 (D.D.C. 2017) (APA); *Omegbu v. U.S. Dep't of Treasury*, 118 Fed. Appx. 989 (7th Cir. 2004) (due process).

75. *Consumer Bankruptcy, Nondischargeability, and Penal Debt*, *supra* note 42, at 923.

76. *See Discharge in Bankruptcy - Bankruptcy Basics*, UNITED STATES COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/discharge-bankruptcy-bankruptcy-basics> (last visited Sept. 22, 2024). *See also* 11 U.S.C. § 727 (regulating the discharge of debt).

77. 11 U.S.C. § 523(a)(8)(A) (individual debtor is not discharged from any debt for educational loans unless it would impose undue hardship); *In re Brunner*, 46 B.R. 752 (Bankr. S.D.N.Y. 1985), *aff'd*, 831 F.2d 395 (2d Cir. 1987) (per curiam).

78. 11 U.S.C. § 523(a).

against a sovereign without its consent.⁷⁹ State sovereign immunity flows both from the Eleventh Amendment and common law, which together protect states from all suits brought in state or federal court.⁸⁰ And while federal sovereign immunity is not rooted in the Constitution, it is nevertheless well-settled common law.⁸¹

Affirmative claims against public collectors are subject to sovereign immunity challenges, prohibiting an individual debtor from challenging their debt unless the state entity has explicitly waived sovereign immunity as to that claim. Although it does not extend to defenses, it does apply to affirmative defenses.⁸² Because sovereign immunity waivers are limited in number and scope and because there are several exceptions to those waivers, the state may violate an individual's rights with respect to debt creation or collection, but the debtor may have no path to recovery.⁸³

To sue the United States,⁸⁴ plaintiffs usually look to sovereign immunity waivers created by the Federal Tort Claims Act ("FTCA"),⁸⁵ the Tucker Act,⁸⁶ or the Administrative Procedures Act ("APA").⁸⁷ There are also limited waivers of sovereign immunity in specific statutes, including (1) the limited waiver allowing student loan debtors to sue the Department

79. Guy I. Seidman, *The Origins of Accountability: Everything I Know About the Sovereign's Immunity, I Learned from King Henry III*, 49 ST. LOUIS L.J. 393, 394 (2005); Katherine Florey, *Sovereign Immunity's Penumbra: Common Law, "Accident," And Policy in the Development of Sovereign Immunity Doctrine*, 43 WAKE FOREST L. REV. 765, 771 (2009).

80. U.S. CONST. amend. XI. *See also* Betts v. New Castle Youth Dev. Ctr., 621 F.3d 249 (3d Cir. 2010) (state sovereign immunity extends beyond the literal text of the Eleventh Amendment to comprise more than just immunity from suit in federal court, but also immunity from liability). Cities are not entitled to sovereign immunity via the Eleventh Amendment (*Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274 (1977)) but may still be entitled to another form of governmental immunity. *See infra* notes 221-222 and accompanying text.

81. *See* *United States v. Sherwood*, 312 U.S. 584, 586 (1941) ("The United States, as sovereign, is immune from suit save as it consents to be sued."); FEDERAL PRACTICE AND PROCEDURE § 3654 (Wright & Miller, 4th ed.).

82. *United States v. Washington*, 853 F.3d 946 (9th Cir. 2017) (citing *Berrey v. Asarco Inc.*, 439 F.3d 636, 645 (10th Cir. 2006)).

83. *See* *Beaulieu v. Vermont*, 807 F.3d 478, 484 (2d Cir. 2015) (finding that, while the Fair Labor Standards Act applies to the state of Vermont, sovereign immunity bars a private individual from enforcing that right in court).

84. One may be able to sue a federal agency if Congress statutorily authorized the agency to "sue and be sued." *See* U.S. CONST. art. III, § 2, cl.1 (providing the right of the U.S. to sue). If relief would be taken from the public treasury, however, the suit must be brought against the United States and can only proceed if the government expressly waived its sovereign immunity. *Lomas & Nettleton Co. v. Pierce*, 636 F.2d 971 (5th Cir. 1981). And if the claim could have been brought under the FTCA, the plaintiff must choose that route. *Mill Creek Group, Inc. v. Fed. Deposit Ins. Corp.*, 136 F. Supp. 2d 36, 43 (D. Conn. 2001) ("Even though Congress has given the FDIC the authority to "sue and be sued . . . if a suit is cognizable under § 1346(b) of the FTCA, the FTCA remedy is exclusive . . . despite the existence of a sue and be sued clause.") (internal citations omitted).

85. 28 U.S.C. § 1346.

86. 28 U.S.C. § 1346(a)(2), 1491.

87. 5 U.S.C. § 702.

of Education under the Higher Education Act⁸⁸ and (2) the limited waiver allowing individuals to sue the United States for violations of ECOA.⁸⁹ Many states have passed similar laws waiving sovereign immunity in specific circumstances, including through state-level Tort Claims Acts⁹⁰ and state-level Tucker Acts.⁹¹

If a debtor's injury sounds in tort, they may find a path to remedy through the FTCA. The FTCA provides a broad waiver of federal sovereign immunity when someone is injured by a United States employee's negligent or intentional actions if a private defendant would be liable in similar circumstances.⁹² Although the waiver is broad, the Act includes several exceptions to the waiver that may limit a debtor's claims. The FTCA's "misrepresentation exception" excludes claims of "misrepresentation, deceit, or interference with contract rights."⁹³ Courts have interpreted this exception to cover both negligent and intentional misrepresentation, negligence in the representation itself and in the conduct underlying the representation, and misrepresentations leading to economic injuries incurred in a commercial setting.⁹⁴ A debtor's concern about unfair or deceptive practices or fraud, for example, would likely be stymied by the misrepresentation exception.⁹⁵ In *United States v. Burke*, the plaintiff debtor sued the government for pursuing a debt claim against her even though they knew that the plaintiff's signature on the underlying contract was forged.⁹⁶ The court reluctantly dismissed the plaintiff's infliction of emotional distress counterclaim because it fell under the misrepresentation exception to the FTCA's sovereign immunity waiver.⁹⁷ The FTCA also contains a "discretion exemption," which excepts claims based on any act or omission of a

88. 20 U.S.C. § 1082(a)(2). The HEA sovereign immunity waiver excludes claims against contracted loan servicers. 20 U.S.C. § 1082(a)(4).

89. 15 U.S.C. § 1691a(e), (f). *See also* Moore v. U.S. Dept. of Agric. on Behalf of Farmers Home Admin., 55 F.3d 991, 993-94 (5th Cir. 1995) (finding that ECOA waives sovereign immunity against governmental entities).

90. Miles McCann, *State Sovereign Immunity*, NAT'L ASS'N OF ATT'YS GEN. (Nov. 11, 2017), <https://www.naag.org/attorney-general-journal/state-sovereign-immunity/#ref1>.

91. *See* George Pelling & Alexander Botting, *Investor Transfers: Lender Considerations in an Everchanging Fund Finance Market*, CADWALADER (Jan. 10, 2025), <https://www.cadwalader.com/fund-finance-friday/?search=Sovereign%20Immunity&> (collecting and describing individual state sovereign immunity rules across twelve blog posts labeled "FFF Sovereign Immunity Series").

92. 28 U.S.C. § 1346(b) (waiver); 28 U.S.C. § 2680 (enumerated exceptions). Because the FTCA only applies in cases where private citizens would be liable, the FTCA cannot be invoked for due process or equal protection claims. *Fed. Deposit Ins. Corp. v. Meyer*, 510 U.S. 471 (1994).

93. 28 U.S.C. § 2680(h).

94. *Mill Creek Group, Inc. v. Fed. Deposit Ins. Corp.*, 136 F. Supp. 2d 36, 43 (D. Conn. 2001) (dismissing plaintiff's claims of breach of the covenant of good faith and fair dealing, breach of fiduciary duty, fraud, intentional misrepresentation, collusion, detrimental reliance, and fraud pursuant to a state statute under § 2680(h)).

95. *See* Am. State Bank & Trust Co. of Williston v. Anderson, 2011 WL 6217046, *7-8 (D. Mont. Dec. 14, 2011) (misrepresentation exception barred debtor plaintiff's allegations of wrongful interference with contract).

96. *United States v. Burke*, 548 F. Supp. 724 (D. S.D. 1982).

97. *Id.* at 729 (calling the government's actions "inexcusable," but finding that plaintiff's counterclaim was barred by sovereign immunity).

government employee who, exercising due care, makes a discretionary decision in implementing a statute or regulation, even if the discretion was abused.⁹⁸ A debtor's claims about contracting terms, negligent loan management, or execution of its debt collection authority may fall within this exception.⁹⁹

If a debtor has a contract or other non-tort claim, they may find a path to relief from a government creditor under the Tucker Act.¹⁰⁰ The Tucker Act gives jurisdiction to the Court of Federal Claims to hear claims against the United States arising from the Constitution, a federal statute, or an express or implied contract with the government. Another statute, known as the "Little Tucker Act" gives federal district courts jurisdiction to hear similar claims for damages less than \$10,000.¹⁰¹ When a plaintiff brings a contract claim under the Tucker Act, federal common law contract principles apply.¹⁰² Tucker Act claims usually arise in three categories: contractual, illegal extraction, and entitlement to payment from the Treasury Department.¹⁰³ Because claims under the Tucker Act are not limited to commercial contracts,¹⁰⁴ they may offer a vehicle for a debtor to use contract doctrine like mistake, fraud, duress, or unconscionability to protect themselves against liability.¹⁰⁵ Courts, however, have construed the sovereign immunity waiver under the Tucker Act narrowly.¹⁰⁶

4. *The Process of Debt Collection*

Debt collection is governed by federal and state law. Statutes regulate whether a creditor must file a lawsuit to collect on outstanding debt, how a debt collector can behave

98. 28 U.S.C. § 2680(a).

99. *See* Pearson v. United States, 831 F. Supp. 2d 514, 515-16 (D. Mass. 2011) (discretion exemption invoked against claim that FDIC negligently managed and liquidated plaintiff's defaulted loans); Am. State Bank & Trust Co. of Williston, 2011 WL 6217046, at *4-6 (D. Mont. Dec. 14, 2011) (discretion exemption invoked where plaintiff debtor asserted tort claims related to loans arising from farm loan program). The FTCA also excepts "[a]ny claim arising from the activities of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives," which could arguably arise for a public voluntary debtor. 28 U.S.C. § 2680(n).

100. 28 U.S.C. §§ 1346(a)(2), 1491.

101. 28 U.S.C. § 1346(a)(2).

102. Gregory C. Sisk, *The Tapestry Unravels: Statutory Waivers of Sovereign Immunity and Money Claims Against the United States*, 71 GEO. WASH. L. REV. 602, 614 (2003).

103. NAT'L CONSUMER L. CTR., COLLECTION ACTIONS § 10.2.15.6 (6th ed. 2024) [hereinafter COLLECTION ACTIONS] (collecting cases).

104. *See, e.g.,* Boaz Hous. Auth. v. United States, 141 Fed. Cl. 74 (2018) (permitting claims alleging that HUD breached contracts and allowing money damages).

105. *See* Mill Creek Grp. v. Fed. Deposit Ins. Corp., 136 F. Supp. 2d 36, 51 (D. Conn. 2001) (considering contract doctrine in assessing plaintiff's contract claims against the FDIC).

106. *See e.g.,* Am. Fed'n of Gov't Emps., AFL-CIO v. United States, 258 F.3d 1294, 1301 (Fed. Cir. 2001) (recognizing the "principle that waivers of sovereign immunity, such as that set forth in § 1491(b)(1), are to be construed narrowly."); Norman v. United States, 429 F.3d 1081, 1095 (Fed. Cir. 2005) (finding no jurisdiction for Tucker Act claim). *But see* Adam A. Bartolozzo, *Lowering the King's Ears: Delimiting the Waiver of Sovereign Immunity for Bid Protests After Percipient.ai*, Procurement Law 1,16 (Fall 2024) (noting that the Percipient.ai court exhibited an "expansive reading of the Tucker Act's waiver of immunity," at least as with respect to bid protests).

prior to filing suit, and what rights and obligations the collector has after being awarded a judgment.

For private creditors, state law generally governs the process of suing and collecting on a debt judgment. Pre-suit, if a creditor seeks the help of a third-party debt collector, the Federal Debt Collection Practices Act (“FDCPA”) prohibits specific forms of abusive collection practices.¹⁰⁷ The FDCPA also gives debtors the right to demand that collectors stop calling, reroute collection communication to the debtor’s attorney, or demand the collector provide verification of the debt.¹⁰⁸ Forty-five states have passed similar laws to curb abusive debt collection practices¹⁰⁹ and thirty-six jurisdictions subject debt collectors to licensing or registration standards.¹¹⁰ Some state statutes broaden coverage to include original creditors.¹¹¹

If the debtor continues to evade payment, a private creditor can sue the debtor for the principal of the debt, adding interest, fees, court costs, and attorney’s fees.¹¹² If sued, the debtor can assert various defenses to enforcement as set forth above. But if the creditor is successful, they become a “judgment creditor” and can access other forms of debt collection.¹¹³ What methods are permissible is a matter of state law. In most states, a judgment creditor can collect debt directly from the debtor’s bank account, wages, or interest in real or personal property.¹¹⁴ In limited circumstances, some private judgment creditors can recover debt in collaboration with the state by offsetting the debtor’s tax refund.¹¹⁵ State law also governs whether and what exemptions the debtor can claim are protected from collection.¹¹⁶ In states recognizing tenancy by the entirety, a creditor cannot access a debtor’s real property if held as a tenancy by the

107. 15 U.S.C. § 1692a et seq. *See also* 12 C.F.R. § 1006 (2022) (Regulation F). The FDCPA only applies to third-party collectors. 15 U.S.C. § 1692a.

108. 15 U.S.C. §§ 1692c, 1692g.

109. NAT’L CONSUMER L. CTR., FAIR DEBT COLLECTION, APPENDIX D (10th ed. 2022) [hereinafter FAIR DEBT COLLECTION] (listing state statutes).

110. *Id.*

111. *See, e.g.*, *Masuda v. Citibank*, 38 F. Supp. 3d 1130 (N.D. Cal. 2014) (California); *Wells Fargo Bank v. Scarlett*, 2013 WL 4401315 (D. Md. Aug. 14, 2013) (Maryland); *Gingiloski v. Com. Recovery Servs.*, 2017 WL 2334946 (E.D. Mich. May 30, 2017) (Michigan). For a fuller catalog of states and cases, *see* FAIR DEBT COLLECTION, *supra* note 109, at 16.2.3.3.1 n.116. Additional federal and state laws, including the Telephone Consumer Protection Act of 1991 and the Federal Trade Commission’s do-not-call registry further govern debt collection attempts. 47 U.S.C. § 227; 47 C.F.R. §§ 64.1200 to 64.1201; 47 U.S.C. § 227(b)(3); 15 U.S.C. § 6151(a).

112. *See* COLLECTION ACTIONS, *supra* note 103 (describing creditors’ recovery of attorney fees, collection expenses, and post judgement interest). The bank could also have sold Michelle’s debts to a debt buyer. *See* JACOBY, *supra* note 12, at 13-14 (offering a similar example of a creditor card debtor).

113. *Am. Express Bank v. Randall*, 365 P.3d 157 (Utah Ct. App. 2015) (finding that certain rules did not apply to judgment creditor); *Humphrey v. Herridge*, 103 Md. App. 238 (1995) (finding for judgment creditors on judgment debtors claims of abuse of process, trespass, conversion, and intentional infliction of emotional distress).

114. *See, e.g.*, CAL. CIV. PROC. CODE § 699.080 (2011) (setting out kinds of property subject to levy to satisfy money judgment); N.Y. C.P.L.R. 5201 (same); OHIO REV. CODE ANN. § 2716.01 (permitting judgment creditors to garnish judgment debtor’s wages).

115. Kate Sablosky Elengold & Sophie Laing, *Offsetting Justice* (manuscript on file with author).

116. These laws vary across jurisdiction. *See* COLLECTION ACTIONS, *supra* note 103, at Appendix H.

entireties.¹¹⁷ And certain federal laws apply to all judgment debtors, including regulations that exempt certain federal benefits from garnishment for a certain period of time.¹¹⁸

A private judgment creditor can seize any non-exempt property in the amount necessary to collect the judgment, usually including fees, costs, interest, and attorney's fees.¹¹⁹ Federal and state statutes set mandatory caps on pre- and post-judgment interest rates.¹²⁰ Federal court interest rates change based on the treasury yield,¹²¹ while states generally set interest rates around nine or ten percent.¹²² In the forty-six states that allow wage garnishment for private debts,¹²³ federal law limits garnishment in excess of 25 percent of weekly wages or the amount by which the debtor's disposable income is more than thirty times the minimum wage per week.¹²⁴ Once the debt is reduced to judgment, the statutory collections period,

117. *See, e.g.*, N.C. GEN. STAT. § 1-304 (providing that only separate property may be levied and sold from a married woman debtor). That exemption does not apply to federal creditors. *United States v. Craft*, 535 U.S. 274 (2002). *See also* *United States v. Rodgers*, 461 U.S. 677 (1983) (federal tax lien can attach to a debtor's property interest even if that interest cannot unilaterally be alienated).

118. *See* 31 C.F.R. §§ 212.1 to 212.12 (exempting certain federal benefits from collection for two months if they are directly deposited onto a prepaid card or into a bank account). This rule does not protect funds exempt under state law, federal benefits deposited by check, exempt federal benefits in excess of the payments deposited in the last two months, or benefits transferred to another account. *Id.* It does include social security benefits, supplemental security income ("SSI") benefits, veteran's benefits, civil service and federal retirement and disability benefits, servicemember pay, military annuities and survivor benefits, federal student aid, railroad retirement benefits, and financial assistance from the Federal Emergency Management Agency ("FEMA"). *Can a Debt Collector Take my Federal Benefits, Like Social Security or VA Payments?*, CONSUMER FIN. PROT. BUREAU (Jan. 29, 2024), <https://www.consumerfinance.gov/ask-cfpb/can-a-debt-collector-take-my-social-security-or-va-benefits-en-1157/>. *See also* 42 U.S.C. § 407 (protecting federal old-age, survivors, and disability insurance benefits from "execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law").

119. 28 U.S.C. § 3203(c)(2)(A) ("A writ of execution shall specify the date that the judgment is entered, the court in which it is entered, the amount of the judgment if for money, the amount of the costs, the amount of interest due, the sum due as of the date the writ is issued, the rate of post judgment interest, the name of the judgment debtor, and the judgment debtor's last known address.").

120. *See* Donald F. Paine, *Judgments: Costs, Interest and Attorney Fees*, TENN. B.J. 36 (2005). *See also* 28 U.S.C. § 1961 (describing interest calculation for interest on judgements)..

121. 28 U.S.C. § 1961.

122. *See* N.Y. C.P.L.R. § 5004(a) (post-judgment rate of nine percent per annum for consumer debt); CAL. CIV. PROC. CODE § 685.010(a) (post-judgment rate of ten percent unless a statute provides otherwise); MISS. CODE ANN. § 75-17-7 (2023) (allowing the presiding judge to assign post-judgment interest rate). For a selection of state law related to pre- and post-interest judgment, *see Interest—Pre & Post Judgment*, WHITE & WILLIAMS LLP, <https://www.whiteandwilliams.com/assets/htmldocuments/INTEREST%20-%20PRE%20and%20POST%20JUDGMENT%20-%20REV.%2012-31-19.PDF>.

123. Carolyn Carter, *Protecting Wages, Benefits, and Bank Accounts from Judgment Creditors*, NAT'L CONSUMER L. CTR. (Oct. 29, 2020), <https://library.nclc.org/article/protecting-wages-benefits-and-bank-accounts-judgment-creditors>.

124. 15 U.S.C. §§ 1671 to 1677. *See also* Michael Best & Carolyn Carter, *No Fresh Start: Will States Protect Families From Debt Collectors Seizing Wages and Bank Balances?*, NAT'L CONSUMER L. CTR. (Dec. 2024), https://www.nclc.org/wp-content/uploads/2025/02/2024.12_Report_No-Fresh-Start.pdf.

which is generally longer than the original statute of limitations and can be extended, is the only time constraint.¹²⁵

Federal government debt collection is different. It is governed by a series of law, including the Federal Debt Collection Procedures Act of 1990 (“Procedures Act”),¹²⁶ Federal Claims Collection Act of 1966 (“FCCA”),¹²⁷ which was later amended by the Debt Collection Act of 1982 (“DCA”),¹²⁸ and the Debt Collection Improvement Act of 1996 (“DCIA”).¹²⁹

Law requires that federal government creditors use certain tools to collect debt, including administrative offset, tax refund offset, federal salary offset, referral to private collection contractors or agencies with an internal debt collection center, reporting debt to credit reporting bureaus, garnishing wages, and litigation or foreclosure, where relevant.¹³⁰ Administrative collection tools, including offsets, wage garnishment, bank levies, and property liens, allow the government to collect debt without first going to court, so long as the debtor is given proper notice and an opportunity to object.¹³¹ The government can use these tools for as long as necessary to recoup the debt plus interest and fees.¹³² And once the federal government achieves a judgment lien against the debtor’s property for debt owed, the debtor is barred from receiving most federal grants or loans.¹³³ State creditors are bound by similar state law when collecting debt from their citizens. These laws vary state by state,¹³⁴ but all states have some statute that allows for administrative offset.¹³⁵

125. *See, e.g.*, VA. CODE ANN. § 8.01-251 (2022) (stating the post-judgment collection period is ten years, which can be extended by court order).

126. 28 U.S.C. § 3001 et seq.

127. 31 U.S.C. § 3701 et seq. *See also* 31 C.F.R. pts. 900-904; 31 C.F.R. 285. The Treasury Department also maintains manuals and guides. *Guidance Documents*, DEP’T OF TREASURY, <https://home.treasury.gov/guidance> (last visited Jan. 16, 2026).

128. Pub. L. No. 97-365, 96 Stat. 1749 (1982).

129. Pub. L. No. 104-134, 110 Stat. 1321-358 (1996).

130. *See* Fogg, *supra* note 9, at 6 (defining “offset” as “an equitable right allowing parties who are mutual debtors and creditors to each other to net out their debts, even if those debts arise from separate transactions”). *See also* 31 U.S.C. § 3711(f)(9).

131. 31 U.S.C. § 3711(a). This section does not apply to federal student loans. *Id.* at (c)(1)(C). The Higher Education Act governs federal student loans. 20 U.S.C. §§ 1070-1099d.

132. 31 U.S.C. § 3716(e)(1).

133. 28 U.S.C. § 3201(e).

134. *See, e.g.*, COLO. REV. STAT. § 24-30-202.4; 30 ILL. COMP. STAT. 210/1 et seq., N.C. GEN. STAT. § 105A-1 to N.C. GEN. STAT. § 105A-16; SD ST § 1-55-3.

135. ALA. CODE § 40-18-103; ALASKA STAT. ANN. § 23.20.486; A.R.S. § 42-1122; Ark. Admin. Code 016.20.2-15900; West’s ANN. CAL. GOV. Code § 12419.13; COLO. REV. STAT. ANN. § 39-21-108; CONN. GEN. STAT. ANN. § 12-742; D.C. Code § 47-143; DEL. CODE ANN. tit. 30, § 545; FLA. STAT. ANN. § 213.67; GA. CODE ANN. § 48-7-163; HAW. CODE R. § 17-606-03; IDAHO CODE ANN. § 1-1624; 15 ILL. COMP. STAT. 405/10.05; IND. CODE ANN. § 6-8.1-9.7-7; IOWA CODE ANN. § 421.65; KAN. STAT. ANN. § 75-6216; KY. REV. STAT. ANN. § 44.065; LA. STAT. ANN. § 1676; ME. STAT. tit. 36, § 185-A; MD. CODE ANN., Tax - General § 13-915; MASS. GEN. LAWS ANN. 7A. § 19; MICH. COMP. LAWS ANN. § 12.136; MINN. STAT. ANN. § 16D.18; MISS. CODE ANN. § 27-7-603; MO. ANN. STAT. § 32.385; MONT. CODE ANN. § 17-4-105; NEB. REV. STAT. ANN. § 48-665; NEV. ADMIN. CODE § 353C.100; N.H. REV. STAT. ANN. § 282-A:159; N.J. STAT. ANN. § 54:49-12.7; N.M. STAT. ANN. § 7-

In addition to the general laws covering governmental debt collection, specific statutes also apply in certain circumstances. The Internal Revenue Code provides specific rules and powers for collecting back taxes and details the sole mechanism for challenging the collection.¹³⁶ State tax codes similarly govern state tax collection, including by implementing additional collection tools like licensing restrictions.¹³⁷ Federal and state child support laws encourage, and in some places mandate, use of certain collection tools.¹³⁸ In addition to tax offset and wage garnishment, states coerce child support payments by restricting driver's licenses,¹³⁹ car registrations,¹⁴⁰ occupational or professional licenses,¹⁴¹ or, for those who are incarcerated, taking a cut of money transfers from family members to inmates for basic living expenses.¹⁴²

Like child support, specific laws create additional debt collection tools for unpaid civil or criminal fines and fees. Thirty-seven states either allow or require the state to suspend or revoke a debtor's driver's license for overdue fines and fees, arising from both major felonies and minor civil infractions.¹⁴³ In twenty states, those same debts can result in a registration ban for the debtor's car, even if the car is used by other drivers.¹⁴⁴ And at least nine states and municipalities restrict a debtor's occupational license when a debtor owes civil or criminal fines or fees.¹⁴⁵ If the debtor is incarcerated, money transfers from outside to the inmate will

2C-2; N.Y. TAX LAW § 171-f (McKinney 2015) N.C. GEN. STAT. ANN. § 105A-3; N.D. CENT. CODE ANN. § 57-38.3-04; OHIO REV. CODE ANN. § 3123.22; OKLA. STAT. ANN. tit. 40, § 2-619; OR. ADMIN. R. 150-305-0350; 72 PA. STAT. & CONS. STAT. § 1712-E(c); 44 R.I. GEN. LAWS ANN. § 44-30.1-3; S.C. CODE ANN. § 12-56-62; S.D. CODIFIED LAWS § 1-55-13; TENN. CODE ANN. § 67-1-1808; TEX. GOV. CODE ANN. § 403.055; UTAH CODE ANN. § 63A-3-501; VA. CODE ANN. § 2.2-4801; VT. STAT. ANN. tit. 32, § 5934; WASH. REV. CODE ANN. § 43.20B.630; W. VA. CODE ANN. § 14-1-37; WIS. STAT. ANN. § 71.93; WYO. STAT. ANN. § 39-11-102(c)(XX).

136. 26 U.S.C. § 6301 (mandating that the Secretary of the Treasury collect taxes imposed by the Internal Revenue Code ("IRC")); 26 U.S.C. § 6304. The IRC creates private causes of actions if the IRS fails to release a lien and for unauthorized disclosure of a tax return. 26 U.S.C. § 7432; 26 U.S.C. § 7431. *But see* COLLECTION ACTIONS, *supra* note 103, at § 10.2.15.10 (collecting cases establishing that taxpayer remedies are subject to rigid procedural requirements). The same rights do not accrue to assessment challenges. 26 U.S.C. § 7433. If the IRS violates its own collection statutes, the taxpayer can sue for actual damages, with certain limitations and no opportunity for appeal. 26 U.S.C. § 7433; 26 U.S.C. § 6673(b). Some actions are limited to \$100,000 in recovery and frivolous suits can cost the taxpayer \$10,000. 26 U.S.C. § 6406.

137. *Debt, Work, and the State*, *supra* note 29.

138. *Debt, Race, and Physical Mobility*, *supra* note 29, at Subsection I.C.

139. All fifty states and the District of Columbia restrict a debtor's driver's license as a mechanism to coerce child support collection. *Id.* at Appendix A.

140. Fourteen states and the District of Columbia either explicitly or implicitly restrict a car owner's registration to coerce child support collection. *Id.* at Appendix B.

141. Every state and the District of Columbia have legislation authorizing occupational licensing restrictions for unpaid child support. *Debt, Work, and the State*, *supra* note 29, at 107 tbl. 2.

142. Nelson & Rahe, *supra* note 17, at 7.

143. *Debt, Race, and Physical Mobility*, *supra* note 29, at 835-36.

144. *Id.* at 836.

145. *Debt, Work, and the State*, *supra* note 29, at 144 tbl. 4.

be offset to repay fines and fees debt.¹⁴⁶ For unpaid fines or restitution, federal law allows public creditors to tack on ten to fifteen percent to the debt.¹⁴⁷ The state can collect for a period of twenty years following the judgment,¹⁴⁸ including by placing liens on the debtor's property,¹⁴⁹ revoking probation or supervised release,¹⁵⁰ or imprisonment.¹⁵¹ States use similar collection tools for other forms of public involuntary debt, including unpaid tolls,¹⁵² unpaid administrative fees to state agencies,¹⁵³ and unpaid debt for state emergency assistance.¹⁵⁴

5. *A Quick Note*

I would be remiss not to explicitly recognize that the existence of legal rights that accrue to debtors through the law may not actually be accessible for debtors. There are both financial costs and procedural barriers to successfully discharging one's debts in bankruptcy.¹⁵⁵ The same is true outside of bankruptcy. A debtor seeking to vindicate their rights in court is stymied by the need for transportation, time, and money to pursue their case.¹⁵⁶ That is without even considering the costs associated with retaining a lawyer; almost ninety-eight percent of litigants across family law, domestic violence, landlord-tenant, and small claims matters are pro se.¹⁵⁷ And it does not account for the many procedures that are enshrined in law or simply practiced in courtrooms that make it difficult for debtor's to assert their rights.¹⁵⁸ This is largely true for debtors; Professor Daniel Wilf-Townsend describes consumer contract actions as "assembly-line litigation," where "courts rubber-stamp the

146. Nelson & Raheer, *supra* note 17, at 7.

147. 18 U.S.C. § 3612(g). *See* 18 U.S.C. § 3572(h), (i) for definitions of delinquency and default.

148. 18 U.S.C. § 3613(b).

149. 18 U.S.C. § 3613(c).

150. 18 U.S.C. § 3613A(a)(1).

151. 18 U.S.C. § 3614. The law also provides that "In no event shall a defendant be incarcerated under this section solely on the basis of inability to make payments because the defendant is indigent." *Id.* at (c).

152. *See, e.g.*, DEL. CODE ANN. tit. 21, § 2733(a)(8) (1929) (driving restrictions for unpaid tolls).

153. *See, e.g.*, OKLA. STAT. ANN. tit. 63, § 1-229.13(F) (1994) (driving restrictions for unpaid fees to the state Alcoholic Beverage Laws Enforcement Commission).

154. *See, e.g.*, N.H. REV. STAT. ANN. § 206:26-bb(II) (2022) (driving restrictions for unpaid reimbursement for use of search and rescue team).

155. Rafael I. Pardo, *An Empirical Examination of Access to Chapter 7 Relief by Pro Se Debtors*, 26 EMORY BANKR. DEV. J. 5 (2009) (finding that pro se debtors who filed for bankruptcy after the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 were most likely to have their Chapter 7 cases dismissed prior to discharge); Chrystin Ondersma, *Small Debts, Big Burdens*, 103 MINN. L. REV. 2211 (2019) (describing the burdens of filing for consumer bankruptcy and proposing a fast track process for those in poverty).

156. *See* J.J. Prescott, *Improving Access to Justice in State Courts with Platform Technology*, 70 VAND. L. REV. 1993, 1996 (2017) ("[A]ccess to justice is subverted by the fact that courts continue to operate on the age-old model of in-person, face-to-face dispute resolution in which a litigant must physically go to a specific courthouse during business hours and meet with a specific decisionmaker, normally after waiting in a long queue with others in exactly the same situation.").

157. Jessica K. Steinberg, *Demand Side Reform in the Poor People's Court*, 47 CONN. L. REV. 741, 743 (2015). *See also* FAIR DEBT COLLECTION, *supra* note 109, at § 1.4.9.5 (collecting studies).

158. *See* Elengold & Laing, *supra* note 115 at Part I.B.

plaintiffs' claims with little or no analysis and issue judgments against the absent defendants.”¹⁵⁹ Therefore, it is critical to understand that just because the law affords debtors extra protections, the many roadblocks make it difficult for debtors to actually assert those rights.

* * *

Only when we step back to assess the power of the contract, the rights and responsibilities beyond the contract, and the special laws and exceptions that apply only to public debtors can we see the landscape clearly. The law of individual debt affects the debtor in many important ways, but its patterns and structure are disconnected from the debtor. And, while complicated, when viewing the law of individual debt in its totality, it becomes clear that it is organized around two axes: public creditor versus private creditor and voluntary creditor versus involuntary creditor. Those two axes create four different classes of debtors: private voluntary, private involuntary, public voluntary, and public involuntary.

II. IT'S ALL DEBT TO ME

The collection of varied laws has created an artificial and unequal separation across debtors that is most easily understood by comparing the debtor protections and creditor powers across the four debtor classes (or ladder rungs). To expedite that undertaking, this Part returns to our four debtors who each owe \$15,000 but cannot pay. Because the prior Part set out the law, this Part focuses on where it applies and when it has different applications across debtor classes. By setting out each hypothetical debtor's rights and protections as compared to their creditor's rights and powers, we can clearly see the separation of the debtor classes. But it also raises something larger and more concerning: when descending the debt ladder, the law of individual debt simultaneously decreases debtor protections while increasing creditor powers.

A. The First Rung: Private Voluntary Debt

An individual holds private voluntary debt when they owe money to a private person or non-government entity based on a prior agreement.¹⁶⁰ We thus return to Michelle, the Philadelphia woman who owes \$15,000 to Commonwealth Bank. Under the landscape of federal and state debt policy, Michelle is a private voluntary debtor.

Using Michelle's story, this Subsection walks through the ways that the laws set forth above apply to private voluntary debtors, allocating debtor protections and creditor powers. It reflects a critical takeaway: Private voluntary debtors benefit from law providing a significant

159. Daniel Wilf-Townsend, *Assembly-Line Plaintiffs*, 135 HARV. L. REV. 1704, 1709 (2022) (“Assembly-line litigation is litigation in which a sophisticated corporate plaintiff brings a high volume of similar, small-value claims against individual natural-person defendants who are almost universally unrepresented and who often do not appear in court.”).

160. An agreement need not be enforceable to be qualified as voluntary. As set forth below, a debtor may still have meritorious defenses to enforcement.

number of tools to protect them from (1) problematic or illegal contracts; (2) abusive debt collection tactics; (3) debt collection that interferes with the debtor's basic needs; and (4) crushing debt.

1. *Debtor Protections*¹⁶¹

Federal and state laws create guardrails to protect private voluntary debtors like Michelle at four stages: creation of the promise, enforcement of the promise, collection of the debt, and discharge of the debt.

Commonwealth Bank agreed to extend credit to Michelle and therefore had procedural and substantive obligations at the creation of the creditor-debtor relationship. Commonwealth Bank would have been required to incorporate the disclosures required by TILA into the credit card agreement.¹⁶² TILA regulations required Commonwealth Bank to give Michelle written notice of certain account-opening disclosures, including by highlighting the annual percentage rate (“APR”), any introductory rate, any rate that would be applied after the introductory rate expires, and any fee or percentage amounts to be charged.¹⁶³ It also mandates that Commonwealth Bank consider Michelle's ability to pay before opening a credit card in her name and limit certain fees on the credit card account.¹⁶⁴ Disclosures required by TILA's progeny, such as those required by the Fair Credit and Charge Card Disclosure Act and the Credit Card Accountability Responsibility and Disclosure Act, would also apply.¹⁶⁵ Other federal laws relevant only to certain kinds of loans, such as RESPA's application to home loan mortgages, would not apply. If Commonwealth Bank failed to follow the applicable provisions of TILA or its progeny, Michelle would have a private right of action and could seek actual damages, costs, and reasonable attorney's fees.¹⁶⁶

State and federal law also protects Michelle during the implementation of the contract. Pennsylvania usury law limits high interest rates, capping the interest rate at six percent per annum.¹⁶⁷ Credit cards, as open-end credit plans, are primarily regulated by TILA and therefore state usury rates are inapplicable.¹⁶⁸ But because Michelle is active-duty Marine, the Servicemember Civil Relief Act kicks in and Michelle can be charged no more than a six

161. I define “debtor protections” broadly as any legal rights that accrue to a debtor, including explicit protections for debtors along with any claims or defenses that a debtor could assert in challenging debt collection. I define “creditor powers” to include any legal rights the creditor has to collect debt and any legal mechanisms that undermine debtor protections.

162. 15 U.S.C. § 1601 et seq.

163. 12 C.F.R. § 1026.6(b)(1)(i).

164. 12 C.F.R. § 1026.51(a); 12 C.F.R. § 1026.52.

165. Fair Credit and Charge Card Disclosure Act of 1988, Pub. L 100-583, 102 Stat. 2969; Credit Card Accountability Responsibility and Disclosure Act of 2009 (the “CARD Act”), 15 U.S.C. § 160. Other federal laws relevant only to certain kinds of loans, such as RESPA's application to home loan mortgages, would not apply to Michelle.

166. Truth in Lending Act, 15 U.S.C. § 1640(a).

167. PA Chap. 5 Sect. 2 § 201. This is in keeping with other state usury laws. *See, e.g.*, N.C. GEN. STAT. § 24-1.1.

168. If the usury law had applied, someone charged a usurious rate would be able to sue to recover three times the amount of the excess interest. PA Chap. 5 Section 2 § 502.

percent interest rate.¹⁶⁹ Her loan would also be covered by ECOA and the Pennsylvania Human Relations Act, so the bank could not have charged her a higher rate or higher fees because she is a woman or because she was unmarried.¹⁷⁰ Although violation of TILA, ECOA, or the Human Relations Act would not allow Michelle to void the contract, she could sue for monetary damages, costs, and attorney's fees.¹⁷¹

At enforcement, Michelle could argue that her debt was coerced by her ex-boyfriend Paul and, therefore, unenforceable. Although fraud, duress, and coercion are all viable defenses to contract enforcement,¹⁷² Michelle is unlikely to successfully argue that she is not responsible for the debt.¹⁷³ She could also attempt to avoid contract enforcement by claiming that the contract did not meet the standard rules of contract law—consideration, mutual assent, and conscionability.¹⁷⁴ Especially if a bank agent was aware of her situation with her former boyfriend, she might be more successful in asserting Pennsylvania's law prohibiting unfair and deceptive acts and practices in commerce.¹⁷⁵ If successful, she would be entitled to seek treble actual damages under that law, known as Unfair Trade Practices and Consumer Protection Law in Pennsylvania.¹⁷⁶ She could also assert a common law fraud claim, which is generally more difficult to prove than violation of the Unfair Trade Practices and Consumer Protection Law.¹⁷⁷

Finally, Michelle can discharge her debt in bankruptcy. At any point in time, Michelle could file for Chapter 7 or 13 bankruptcy, which would halt the collections process until the debt is discharged.¹⁷⁸ Credit card debt is generally dischargeable debt,¹⁷⁹ so Michelle could

169. 50 U.S.C. § 3937.

170. 15 U.S.C. § 1691 (prohibition on discrimination based on sex or marital status); Act of Oct. 27, 1955, P.L. 744, No. 222 (prohibition on discrimination based on sex).

171. Truth in Lending Act, 15 U.S.C. § 1640(a); Equal Credit Opportunity Act, 15 U.S.C. § 1691e; 1955, P.L. 744, No. 222, Section 9 (monetary damages).

172. *See, e.g., In re Mason*, 300 B.R. 160, 169 (Bankr. D. Conn. 2003) (establishing plaintiff by clear and convincing evidence all elements of duress necessary for voiding of debt).

173. *Coerced Debt*, *supra* note 58, at 395-96 (“Assertions of coerced debt are likely to be met with particular skepticism, because the person the victim will be blaming is her significant other In addition, victims of . . . coerced debt must prove a negative: that they did not incur a given financial obligation.”).

174. 17 C.J.S. CONTRACTS § 1 (2025) (a contract that does not have consideration and mutual assent to the essential terms may not be enforceable); RESTATEMENT (SECOND) OF CONTRACTS § 208 (AM. L. INST. 1981) (unconscionability).

175. 73 PA. CONS. STAT. §§ 201-1 to 2019.2.

176. 73 PA. CONS. STAT. § 201-9.2.

177. *See Debt Collection Fraud*, OFF. OF THE COMPTROLLER OF THE CURRENCY <https://www.occ.gov/topics/consumers-and-communities/consumer-protection/fraud-resources/debt-collection-fraud.html> (last visited Dec. 28, 2024) (describing how debt collection fraud works, warning signs, and ways to report it).

178. NAT'L CONSUMER L. CTR., SURVIVING DEBT § 2 (15th ed. 2024) [hereinafter SURVIVING DEBT].

179. Credit card debt is not categorically exempt unless there was a misrepresentation of the card was used to purchase last-minute luxury goods or services. 11 U.S.C. § 727 (Bankruptcy Code – Discharge); 11 U.S.C. § 523(a)(2).

use the bankruptcy system for a “fresh start.”¹⁸⁰ And she could claim certain exemptions consistent with Pennsylvania law.¹⁸¹ Bankruptcy comes with downsides,¹⁸² but it is a mechanism by which a debtor can get out from under many debts, including most private voluntary debts.

2. *Creditor Powers*

Protections for the debtor must be viewed alongside a creditor’s power to enforce and collect on a debt. Private voluntary creditors like Commonwealth Bank can collect in two ways: through attempted voluntary collection and by filing a lawsuit against the debtor to compel collection.¹⁸³ Both voluntary and judicial collection are regulated by state and federal law. Although creditors seeking to enforce private voluntary debt do have clear legal avenues to seek redress, they must do so within the confines of both pre- and post-suit debt collection regulations.

Commonwealth Bank would likely first attempt voluntary collection, either directly contacting the debtor or engaging a third-party debt collector to do so.¹⁸⁴ Federal and state laws limit how, when, and how often debt collectors can communicate with debtors. Because the FDCPA and Pennsylvania’s Fair Credit Extension Uniformity Act do not apply to original creditors, it would only apply if Commonwealth Bank hired a third-party debt collector.¹⁸⁵ Imagine that Commonwealth Bank hired Collector Company to collect on the debt. That collector would be prohibited from calling Michelle late at night, falsely claiming that a legal had been filed, or falsely telling Michelle she could go to jail for her unpaid debt. If they violated the FDCPA, Michelle would have a cause of action against Collector Company.¹⁸⁶

If Commonwealth Bank and Collector Company were both unsuccessful at convincing Michelle to repay the debt voluntarily, Commonwealth Bank could file suit against Michelle, suing her for principal of the debt, adding interest, fees, court costs, and attorney’s

180. *But compare Borrowing and Belonging*, *supra* note 40, at 1404-05 (challenging bankruptcy’s “fresh start” narrative).

181. 42 PA. CONS. STAT. § 8123.

182. Some scholars have alternatively argued that consumer bankruptcy does not accrue to the benefit of the debtors, but rather to the benefit of former and future creditors. *Borrowing and Belonging*, *supra* note 40, at 1409-10; Pamela Foohey et al., *Life in the Sweatbox*, 94 NOTRE DAME L. REV. 219, 258-60 (2018).

183. If the debt is secured, the creditor can also recoup debt by repossessing or foreclosing on the security interest. These processes are set forth in state statutes.

184. Creditors may also sell debt to debt buyers who then collect on their own behalf.

185. 15 U.S.C. § 1692a; 73 PA. CONS. STAT. § 2270.3 (defining debt collector). Some state debt collection laws extend to original creditors. *See, e.g.*, N.C. GEN. STAT. § 105A-2.

186. 15 U.S.C. § 1692c(a)(1) (prohibiting debt collector from communicating with debtor about the debt after 8:00 PM); 15 U.S.C. § 1692e(4) (prohibiting debt collector from falsely representing or implying that debtor will face imprisonment or seizure of property or wages); 15 U.S.C. § 1692d(5) (prohibiting creditors from calling or engaging anyone on the phone “repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number”).

fees.¹⁸⁷ Michelle could assert any of the contract or tort defenses discussed above, but if Commonwealth Bank was successful, they would become a “judgment creditor.” Imagine that the court ruled in the bank’s favor for the full amount of the debt, along with costs and attorney’s fees. After judgment, the bank could file a writ of execution, giving Michelle notice of the judgment and her related rights.¹⁸⁸ Commonwealth Bank would need to give Michelle notice because, under federal and state law, certain property and assets might be exempt from collection if Michelle claims such exemptions. Pennsylvania law sets out the exemptions Michelle can claim from collection, so she is able to keep an interest in her home, her clothing, her pension, and \$300.¹⁸⁹ Federal regulations also exempt certain federal benefits from garnishment for two months if they are directly deposited onto a prepaid card or into a bank account.¹⁹⁰

Commonwealth Bank can then seize any non-exempt property in the amount necessary to collect the judgment. The bank may place a levy on Michelle’s car and her two bank accounts.¹⁹¹ She would be grateful to live in Pennsylvania, where she would not face wage garnishment.¹⁹² If the bank’s collections from Michelle’s assets did not fully satisfy her debt, the bank could monitor Michelle’s real property for seizure for five years and personal property for twenty years (or more, with extensions) or until the debt (including interest and fees) is fully satisfied.¹⁹³

B. The Second Rung: Private Involuntary Debt

We now return to Reid, the Memphis man who owes \$15,000 to a private Tennessee hospital.¹⁹⁴ Reid’s protections and Memphis Memorial’s powers are created and constrained based on two primary facts: the hospital is a private creditor and the hospital is an involuntary

187. See COLLECTION ACTIONS, *supra* note 103 (describing creditors’ recovery of attorney fees, collection expenses, and post judgement interest). The bank could also have sold Michelle’s debts to a debt buyer. See JACOBY, *supra* note 12, at 13-14 (offering a similar example of a creditor card debtor).

188. PA. R. CIV. P. 3252.

189. PA. R. CIV. P. 3101.1. See also *Shearer v. Naftzinger*, 747 A.2d 859 (Pa. 2000).

190. See 31 C.F.R. §§ 212.1 to 212.12. This rule does not protect funds exempt under state law, federal benefits deposited by check, exempt federal benefits in excess of the payments deposited in the last two months, or benefits transferred to another account. *Id.* It does include social security benefits, supplemental security income (“SSI”) benefits, veteran’s benefits, civil service and federal retirement and disability benefits, servicemember pay, military annuities and survivor benefits, federal student aid, railroad retirement benefits, and financial assistance from the Federal Emergency Management Agency (“FEMA”). *Can a Debt Collector Take My Federal Benefits, Like Social Security or VA Payments?*, CONSUMER FIN. PROT. BUREAU (Jan. 29, 2024), <https://www.consumerfinance.gov/ask-cfpb/can-a-debt-collector-take-my-social-security-or-va-benefits-en-1157/>. See also 42 U.S.C. § 407.

191. PA. R. CIV. P. 3023.

192. 42 PA. CONS. STAT. § 8127 (allowing wage garnishment only for certain debts like child support and certain residential leases). See also *Wage Garnishment for Consumer Debts: Reforms Needed in the Current Crisis and Beyond*, NAT’L CONSUMER L. CTR. (Nov. 2020), https://www.nclc.org/wp-content/uploads/2022/10/IB_Wage_Garnishment_Covid_and_Beyond.pdf.

193. PA. R. CIV. P. 3101.1. See also *Shearer v. Naftzinger*, 747 A.2d 859 (Pa. 2000).

194. One nationally representative study of more than 2,300 adults found that unexpected bills, like emergency medical care, is a “major contributor” to the medical debt crisis. Lunna Lopes et al., *supra* note 1.

creditor because it did not agree in advance to become Reid’s creditor. Using Reid’s story, this Subsection walks through the private involuntary debtor’s protections and their creditor’s powers. It reflects a takeaway: While private involuntary debtors have fewer protections than similarly-situated voluntary debtors, private creditors are generally limited to the same collection tools whether the debt they are collecting is voluntary or involuntary.

1. *Debtor Protections*

Private involuntary debtors retain many of the significant legal protections available to private voluntary debtors. The critical difference is that, because private involuntary debtors like Reid are indebted due to an action or transaction outside of an agreement, their debt is largely outside the province of contract law.¹⁹⁵

For the same reasons, Reid cannot rely on disclosure statutes like TILA, limiting both its procedural and substantive protections, because those requirements are related to an originating contract.¹⁹⁶ He cannot claim violations of state usury law or claim that there was lack of consideration for the debt. He will not be able to void the debt by reliance on common law contract doctrines like unconscionability, fraud, or coercion to invalidate the debt. If Reid feels his bill was inflated because of his race, he will probably not be able to turn to ECOA, as it is unlikely to extend to involuntary debt.¹⁹⁷

Many protections, however, remain intact for Reid. If the hospital hires a debt collector who uses abusive debt collection tactics, Reid could argue a violation of the FDCPA or Tennessee’s analogous law.¹⁹⁸ If it rises to a certain level, Reid may be able to sue the hospital or the collector for misrepresentation, fraud, unfair or deceptive acts and practices, intentional or negligent infliction of emotional distress, invasion of privacy, intentional interference with employment or contractual relationships, defamation, malicious prosecution, abuse of process, invasion of privacy, or harassment.¹⁹⁹ For example, if Reid believed that his

195. The quasi-contract doctrine of *quantum meruit* might apply in this or a similar scenario, but it would more likely benefit the hospital’s collection efforts rather than protect Reid from contract enforcement. Restatement (Third) of Restitution and Unjust Enrichment § 31 (2011) (“Because quantum meruit alleged a fictitious promise to pay, it was equally available to recover the value of benefits conferred in cases where the defendant had made no promise, express or implied. A classic example is the action to recover the value of medical services rendered to an unconscious patient. No lawyer today would describe the patient’s obligation as contractual, but restitution in such cases—being pleaded in quantum meruit—was long said to be based on a ‘contract implied in law.’”).

196. See *supra* notes 48-52, 65. See also Warren & Larmore, *supra* note 25, at 808 (TILA “concerns not the transaction creating debt but the transaction by which the creditor and debtor voluntarily agree to allow the debtor to defer payment of the debt”).

197. See *supra* note 70.

198. 15 U.S.C. §§ 1692 to 1692p; TENN. CODE ANN. § 62-20-101 et seq. Tennessee’s debt collection law does not cover original creditors except under specific circumstances.

199. See, e.g., *Moran v. Prime Healthcare Mgmt., Inc.*, 208 Cal. Rptr. 3d 303 (Cal. Ct. App. 2016) (assessing emergency room patient’s action against owners and hospitals for their billing practices under California’s Unfair Competition Law and the Consumer Legal Remedies Act); *Espinosa v. Metcalf*, 575 F. Supp. 3d 250, 261 (D. Mass. 2021) (judgment debtor sufficiently pled violations of state UDAP law, Massachusetts regulations, and conversion for actions related to judgment creditor’s debt collection

medical debt was incurred based on misrepresentation, he could assert that claim as a defense to collection.²⁰⁰ It is unnecessary to have a contract to rely on those legal doctrines.

Even though usury limits do not apply to Reid's scenario, he would be protected by federal and state statutes setting mandatory caps on pre- and post-judgment interest rates.²⁰¹ Federal court interest rates change based on the treasury yield,²⁰² while Tennessee limits the interest rates to ten percent, unless a judge decides otherwise.²⁰³

Reid could also file for bankruptcy under Chapter 7 or 13. In this case, the designation of Reid's emergency medical debt might also mean that the debt is not classified as "consumer debt" in bankruptcy.²⁰⁴ Where a filer's debts are not primarily consumer debts, the debtor need not pass a means test before qualifying for Chapter 7 bankruptcy.²⁰⁵ So at any point in time, Reid could file for bankruptcy, which would halt the collection process until the debt was discharged.²⁰⁶ Civil judgments, emergency medical debt, fees and charges associated with back rent and other unpaid debts are all presumptively dischargeable.²⁰⁷

2. *Creditor Powers*

Creditors collecting private involuntary debt can use the same remedies and methods for collecting private voluntary debt described above.²⁰⁸ Like Commonwealth Bank, Memphis

tactics). *See also* FAIR DEBT COLLECTION, *supra* note 109, at 15.3 (explaining tort remedies for invasion of privacy associated with debt collection).

200. *See CFPB Takes Aim at Double Billing and Inflated Charges in Medical Debt Collection*, CONSUMER FIN. PROT. BUREAU (Oct. 1, 2024), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-aim-at-double-billing-and-inflated-charges-in-medical-debt-collection/#:~:text=The%20CFPB's%20action%20aims%20to,said%20CFPB%20Director%20Rohit%20Chopra> (describing illegal medical billing practices). This guidance has since been withdrawn by the CFPB.

201. *See* Paine, *supra* note 120, at 36. *See also* 28 U.S.C. § 1961 (describing interest calculation for interest on judgements).

202. 28 U.S.C. § 1961.

203. TENN. CODE ANN. § 47-14-123.

204. *See, e.g., In re Sijan*, 611 B.R. 850, 856-57 (S.D. Ohio 2020).

205. ONDERSMA, *supra* note 36, at 107.

206. SURVIVING DEBT, *supra* note 178, at § 2.

207. *See Discharge in Bankruptcy - Bankruptcy Basics*, UNITED STATES COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/discharge-bankruptcy-bankruptcy-basics> (last visited Sept. 22, 2024). *See also* 11 U.S.C. § 727 (regulating the discharge of debt).

208. *See supra* Subsection II.A.2. Although unlikely and not consistent with my reading of the FDCPA, if a court were to adopt *Sijan's* determination that emergency medical debt is non-consumer debt (*see supra* note 204), those debts would fall outside of the rules and requirements of the FDCPA. 15 U.S.C. § 1692a(5) (defining "debt" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment"). Some state laws also limit their debt collection protections to consumer debts. *See, e.g.,* CAL. CIV. CODE § 1788.2(b) (defining "debt collection" as "any act or practice in connection with the collection of consumer debts"); 205 ILL. COMP. STAT. 740/2 (defining

Memorial (as judgment creditor) must afford Reid the opportunity to claim exemptions.²⁰⁹ Under Tennessee state law, Reid would be able to exempt \$35,000 in interest in his home,²¹⁰ \$10,000 in personal property,²¹¹ social security and disability benefits from his father, and prescription health care aids.²¹² If Reid's non-exempt assets were insufficient to satisfy the judgment, under Tennessee law, the hospital could garnish twenty-five percent of Reid's disposable income.²¹³ The hospital would, however, be bound by the ten percent post-judgment collection interest cap.²¹⁴

C. The Third Rung: Public Voluntary Debt

At the third rung, public voluntary debtors, the identity of the creditor changes from a private entity to a public one. That shift dramatically alters the landscape for the debtor. This brings us back to Shirley, the single mother who left a public housing unit with \$15,000 owed to the Housing Authority of the City of Raleigh. Shirley's likely experience, as explored below, illuminates how different it is for a debtor to owe \$15,000 to a public entity rather than a private one. This Subsection's primary takeaway is that, for public voluntary debtors, the balance shifts as private debtors lose certain protections and public creditors gain both liability shields and uniquely-governmental collection tools.

1. Debtor Protections

As a public debtor, Shirley has significantly fewer protections under the law. Although contract, debt collection, and constitutional protections apply in certain circumstances, legislation carveouts and sovereign immunity defenses limit debtor protections and possibilities for recovery.

Many contract-related laws apply to public voluntary debtors. Because Shirley's debt is neither a student loan nor a public utility loan, TILA and its progeny apply, thus requiring the housing authority to provide certain disclosures and substantive rights to Shirley.²¹⁵ The

“consumer debt” as “money or property, or their equivalent, due or owing to be due or owing from a natural person by reason of a consumer credit transaction” and defining “credit transaction” as “a transaction between a natural person and another person in which property, service, or money is acquired on credit by that natural person from such other person primarily for personal, family, or household purposes”).

209. *See supra* notes 188-190.

210. TENN. CODE ANN. § 26-2-301 (2023).

211. *Id.* at § 26-2-103(a) (2023).

212. *Id.* at § 26-2-111 (2023). The procedure for seeking exemptions is set out in TENN. CODE ANN. § 26-2-114 (2023).

213. TENN. CODE ANN. § 26-2-106 (2023) (income subject to garnishment cannot exceed the lesser of 25 percent of disposable income per week or the amount that the weekly disposable earnings exceed 30 times the federal minimum hourly wage). Because Reid does not have dependents, he is not eligible for the additional \$2.50 per week wage exemption. TENN. CODE ANN. § 26-2-107 (2023).

214. TENN. CODE ANN. § 47-14-123.

215. 12 C.F.R. § 1026.3(c), (f). TILA does not apply to state student loans. Sophie Laing, *The Worst of Both Worlds: An Investigation of State Student Loan Lending* at 12 (working paper) (on file with the author) (citing 15 U.S.C. § 1650(a)(7); 15 U.S.C. § 1650(a)(8)(A)). If this had been a state-issued

FHA protects Shirley from discrimination at the hands of the state.²¹⁶ And while ECOA does cover government creditors, the CFPB has declined thus far to open rulemaking on ECOA to include landlords as creditors under the law.²¹⁷

Public voluntary debtors may also file actions against public creditors in much the same way that a private debtor could.²¹⁸ Shirley could seek to have her lease contract voided or pursue damages under theories of unconscionability, duress, coercion, warranties, intentional or negligent infliction of emotional distress, invasion of privacy, intentional interference with employment or contractual relationships, defamation, malicious prosecution, abuse of process, or unfair and deceptive practices acts.²¹⁹ Because public housing is so

mortgage loan, instead of a rental arrearage, RESPA would not apply. 12 U.S.C. § 2602(1)(B)(ii); 12 U.S.C. § 2602(1)(B)(iv).

216. The Fair Housing Act applies to “any person,” which is broadly construed. 42 U.S.C. § 3602(d). *See also* United States v. City of Black Jack, 508 F.2d 1179 (8th Cir. 1974) (applying the FHA to a city’s zoning code); Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, 576 U.S. 519 (2015) (determining whether a city entity violated the FHA in allocating low-income housing tax credits). Shirley would need to first advise the Raleigh Housing Authority’s Section 504 Compliance Officer in writing of the complaint. ADMISSIONS AND CONTINUED OCCUPANCY POLICY, RALEIGH HOUS. AUTH. 13 (2025), <https://rhanc.gov/wp-content/uploads/2025/03/ACOP-For-2025-FINAL.pdf>.

217. Letter from Nat’l Consumer L. Ctr., to Rohit Chopra, Dir. Consumer Fin. Prot. Bureau (Aug. 12, 2024), <https://www.consumerfinanceandfintechblog.com/wp-content/uploads/sites/58/2024/08/Petition.pdf> (proposing the change). In fact, the CFPB has recently proposed re-writing Regulation B to limit ECOA’s reach, not to expand it. Stephanie Jackman et al., *CFPB’s Proposed Reg B Overhaul: Ending ECOA Disparate Impact, Narrowing Discouragement, and Reshaping SPCPs*, TROUTMAN PEPPER LOCKE (Nov. 12, 2025), <https://www.consumerfinancialserviceslawmonitor.com/2025/11/cfpbs-proposed-reg-b-overhaul-ending-ecoa-disparate-impact-narrowing-discouragement-and-reshaping-spcps/>.

218. A debtor, however, would have to have knowledge of their rights, their rights violation, and the court system to file an affirmative action, most likely without the aid of counsel. *See* Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants’ Rights*, 27 GEO. J. ON POVERTY L. & POL’Y 97, 120 (2019) (“Although the private market addresses some areas of public rights, it rarely supports representation of poor tenants seeking to vindicate their right to safe housing.”).

219. *See, e.g.*, *Easterling v. Collector, Inc.*, 692 F.3d 229, 235 (2d Cir. 2012) (per curiam) (holding that a debt collector’s representation to debtor that her federal student loans were nondischargeable was deceptive in violation of the FDCPA); *Stoltz v. Brattleboro Hous. Auth.*, 259 B.R. 255, 259 (D. Vt. 2001) (“Even though [a provision of the Bankruptcy Code] permits a landlord to resort to eviction where a debtor tenant fails to repay rent discharged in bankruptcy proceeding, public housing tenants may be protected from eviction under [the anti-discrimination provision] of the Bankruptcy Code.”); *In re Day*, 208 B.R. 358, 370–73 (Bankr. E.D. Pa. 1997) (holding that an implied warranty of habitability is applicable to public housing tenants and can reduce debtor-tenants’ obligation in bankruptcy); *In re Mason*, 300 B.R. 160, 169 (Bankr. D. Conn 2003) (consolidated debt of two federally backed student loans was void because of duress). Some states do exempt certain state actors from coverage. *See, e.g.*, MASS. GEN. LAWS ch. 93A, § 3 (exempting “transactions or actions otherwise permitted under laws as administered by any regulatory board . . . acting under statutory authority”); ME. STAT. tit. 9A § 14-103(4) (exempting certain entities from the definition of “student loan servicer” in Student Borrower Bill of Rights).

regulated, it is unlikely that she would be successful on a common-law contract claim. She could also assert state constitutional claims, as the city entity is subject to such allegations.²²⁰

In suing a government entity, Shirley would need to be aware that certain valid claims against a public creditor may be stymied by sovereign or governmental immunity. While municipalities do not generally derive sovereign immunity from the Eleventh Amendment,²²¹ they do hold governmental immunity in certain situations. North Carolina courts have determined that housing authorities provide governmental functions and are entitled to governmental immunity.²²² In *Evans v. Housing Authority of Raleigh*, for example, the North Carolina Supreme Court found that the housing authority was entitled to governmental immunity as to plaintiff's claims of breach of warranty of habitability, breach of express warranties, negligence, negligence per se, and unfair and deceptive trade practices.²²³ If Shirley proceeded against the Housing Authority on a contract claim or defense, North Carolina housing authorities waive their immunity as to that contract by entering it in the first place.²²⁴ But if her action sounded in tort, it would be blocked because North Carolina municipalities are immune from tort claims that arise from governmental functions.²²⁵ Similarly, although the North Carolina Debt Collection Act applies to original creditors and state actors, a claim under the Act will likely be dismissed because of governmental immunity.²²⁶ The only exception arises if the Housing Authority had purchased certain liability insurance.²²⁷

Finally, Shirley could file for bankruptcy under Chapter 7 or 13. Her public housing debt would likely be dischargeable.²²⁸ And although government debt often takes priority over other claims,²²⁹ government creditors must still abide by bankruptcy laws.²³⁰

220. *See, e.g.,* *Caulder v. Durham Hous. Auth.*, 433 F.2d 998 (4th Cir. 1970) (allowing public housing resident to bring due process claim against housing authority in federal court).

221. *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274 (1977).

222. *Evans v. Hous. Auth. of City of Raleigh*, 359 N.C. 50 (2004).

223. *Id.* at 52.

224. *Wray v. City of Greensboro*, 370 N.C. 41, 47 (2017) (“A State or local government [waives] immunity when it enters into a valid contract, to the extent of that contract.”); *Data Gen. Corp. v. City of Durham*, 143 N.C. App. 97, 100 (2001) (“[W]here the entity enters into a valid contract, the entity ‘implicitly consents to be sued for damages on the contract in the event it breaches the contract.’”).

225. *Moffitt v. City of Asheville*, 103 N.C. 237 (1889) (explaining governmental immunity). *See also* *Wall v. City of Raleigh*, 121 N.C. App. 351 (Ct. App. 1996) (finding that city was engaged in governmental functions in collecting parking fines and late fees).

226. *Wall*, 121 N.C. App. 351.

227. *Evans*, 359 N.C. at 56-57.

228. *See* 11 U.S.C. § 523(a) (setting out categorically non-dischargeable debt under chapter 7); 11 U.S.C. § 1328(a) (setting out discharge provisions of chapter 13). If the state had already used its administrative offset authority, bankruptcy would afford only limited opportunities to recoup those forced payments.

229. 31 U.S.C. § 3713.

230. *See, e.g.,* *United States v. Harchar*, 371 B.R. 254 (N.D. Ohio 2007) (chapter 13 debtors stated claim for violation of automatic stay when IRS froze their accounts); *In re Atkins*, 279 B.R. 639 (Bankr. N.D.N.Y. 2002) (awarding \$30,000 compensatory damages where government creditor violated bankruptcy law). *See also* *Fogg, supra* note 9, at 28-30.

2. *Creditor Powers*

At the same time that public debtors face greater hurdles to asserting their rights, public creditors enjoy greater collection tools that extend beyond those available to private creditors. Unlike private creditors like Commonwealth Bank and Memphis Memorial, the City of Raleigh can collect through administrative means, without first getting a court order. When the Housing Authority makes this choice, it takes the dispute out of the courts, dissolving Shirley's opportunity to assert defenses or counterclaims. Not only is the venue different, but the housing authority also has additional uniquely-governmental collection tools at its disposal.

The City of Raleigh and its related entities are bound by state law when collecting debt. The Raleigh Housing Authority is authorized to send debts like Shirley's to the state's Debt Setoff Unit.²³¹ The Debt Setoff Unit works with the North Carolina Department of Revenue to intercept state tax returns to repay debt to collaborating agencies like the Housing Authority.²³² When Shirley files her taxes the following year, she will discover that her entire state income tax refund had been withheld and sent instead to the Housing Authority.²³³ The Housing Authority would also report Shirley's debt to HUD's EIV Debts Owed Program, which is an online clearinghouse of individuals and families who owe debt to a public housing authority.²³⁴ Because a debtor who owes money to a public housing agency is not eligible for any subsidized housing programs, if she later applied, Shirley would be denied public or subsidized housing in any state.²³⁵

If this had been a state debt, rather than a debt to the city housing authority, the state may have engaged its partnership with the United States Treasury to offset Shirley's debt through the Treasury Offset Program. The federal government implements its non-tax collection tools through two programs – the “Cross-Servicing” Program and the Treasury Offset Program (“TOP”).²³⁶ The former allows the Treasury Department to coordinate a

231. *Debt Setoff Unit*, N.C. DEP'T OF REVENUE, <https://www.ncdor.gov/local-government/debt-setoff-unit> (last visited Jan. 29, 2025). Although North Carolina participates in the Treasury Offset Program (*Cash Management Improvement Act Agreement Between the State of North Carolina and the Secretary of the Treasury*, DEP'T OF TREASURY (Jan. 20, 2022), <https://www.osc.nc.gov/nc-2022-tsa-signed/open>), it is not clear whether this debt could be recovered through federal tax offsets.

232. North Carolina Setoff Debt Collection Act, N.C. GEN. STAT. § 105A et seq. *See also Debt Setoff Unit*, N.C. DEP'T OF REVENUE, <https://www.ncdor.gov/local-government/debt-setoff-unit> (last visited Jan. 29, 2025).

233. *Debt Setoff Unit*, N.C. DEP'T OF REVENUE, <https://www.ncdor.gov/local-government/debt-setoff-unit> (last visited Jan. 29, 2025).

234. U.S. DEP'T OF HOUS. & URB. DEV., DEBTS OWED TO PUBLIC HOUSING AGENCIES AND TERMINATIONS (Aug. 2013), <https://www.hud.gov/sites/dfiles/OCHCO/documents/52675.pdf>.

235. *Id.*

236. BUREAU OF FISCAL SERV., FISCAL YEAR 2021 REPORT TO THE CONGRESS: U.S. GOVERNMENT RECEIVABLES AND DEBT COLLECTION ACTIVITIES OF FEDERAL AGENCIES 12 (Nov. 2022), <https://www.kc.fiscal.treasury.gov> (describing these two programs). TOP was created as part of the DCIA. Fogg, *supra* note 9, at 14.

centralized collection effort for debts referred by other creditor agencies.²³⁷ The latter allows the government to implement administrative offset by withholding money that the debtor would otherwise get from the United States—including tax refunds, tax credits, social security benefits, veteran’s benefits, federal income, and other government payments—to pay a debt to a federal agency.²³⁸ Although the TOP is run by the federal government, it also authorizes the Department of Treasury to use the same methods to collect both tax debt and non-tax debt for individual states in certain circumstances or pursuant to a contract.²³⁹

D. The Fourth Rung: Public Involuntary Debt

Finally, return to Josh, who lives in Baton Rouge, Louisiana with his two teenage children, and who owes \$5,000 to the State of Louisiana and \$10,000 to the Internal Revenue Service for failure to pay taxes. For the last decade, Josh worked as a construction manager, making approximately \$105,000 annually. When Josh’s mom died last year, he drained his savings and used much of his disposable income for her care and funeral.

Let me add some additional facts to this hypothetical. In April, when preparing to file taxes, Josh discovered that he owed \$8,000 to the federal government and \$2,500 to the state of Louisiana. He did not have the money to pay, and he filed his taxes without the money due. Josh’s financial situation continued to deteriorate. He lost his job at the construction company. He was able to get a job as an entry-level pest control technician, but his annual income plummeted to \$35,000.²⁴⁰

As soon as Josh failed to pay his taxes due, he became a public involuntary debtor to both the federal government and the State of Louisiana. Each month that he failed to pay, his debt to each entity grew. The IRS charged him a 0.5 percent failure to pay penalty, which incurred interest every month and increased to one percent after several months.²⁴¹ The State of Louisiana also charged Josh monthly penalties at a much higher rate: five percent the first month, ten percent the second month, continuing at that increasing rate until the penalty maxed out at twenty-five percent per month.²⁴² After receiving a call from an IRS agent inquiring

237. *Id.* Non-tax offsets for debts owed to other parts of the federal government are run through the Treasury Department Bureau of the Fiscal Service, which implements TOP. *Id.*, at 12.

238. *Id.* See also 26 U.S.C. § 6402(d) (allowing the IRS to offset any tax refund for any liability owed to another federal agency). There are certain payments that are exempt from offsets under the TOP. DEP’T OF TREASURY, TREASURY OFFSET PROGRAM PAYMENTS EXEMPT FROM OFFSET BY DISBURSING OFFICIALS (NON-TAX DEBT COLLECTION) (Jan. 21, 2025), <https://fiscal.treasury.gov/files/debt-management/dmexmpt.pdf>.

239. 31 U.S.C. § 3716(h)(1). For purposes of administrative offsets, the terms “debt” and “claim” include debts owed to a state. 31 U.S.C. § 3701(b)(2); 31 U.S.C. § 3716. Under both sections, the term “debt” largely excludes debts arising out of taxes, social security, and tariff laws. *Id.* at 3701(d).

240. A pesticide handler must be licensed in Louisiana. *The National Occupation Licensing Database*, NAT’L CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/labor-and-employment/the-national-occupational-licensing-database> (last visited Nov. 25, 2024).

241. 26 U.S.C. § 6651(a)(2), (a)(3). See also *Failure to Pay Penalty*, INTERNAL REVENUE SERV., <https://www.irs.gov/payments/failure-to-pay-penalty> (last visited Jan. 29, 2025). The penalty fees cannot exceed 25 percent of the unpaid tax bill. *Id.*

242. *Penalties*, LA. DEP’T OF REVENUE (Nov. 7, 2024), <https://revenue.louisiana.gov/collections/general-sources/penalties/>.

about his assets, the IRS sent a notice of levy on Josh's salary and his personal property to pay off the federal debt.

When April rolled around again, Josh determined that, based on that year's accounting, he was due a \$250 federal tax refund and qualified for the Earned Income Tax Credit at an estimated amount of \$5,150.²⁴³ Josh was shocked, therefore, when he received no tax refund from either the federal government or the state. He was laid off from his position when he was unable to renew his pesticide handler's license.²⁴⁴ He also learned that the DMV would not renew his license when it came time.²⁴⁵ Josh and his family fell into a financial downward spiral. They were evicted from their home and moved their three-person family in with Josh's dad.

This Subsection completes this Article's systematic exploration of debtor protections and creditor powers that create a debtor classification ladder. Through its exploration of the laws affecting public involuntary debtors, it concludes that the public involuntary debtor's plight is unsustainable: suffering under crushing debt, afforded minimal rights to challenge that debt, and subject to the state's extensive and punitive collection tools.

1. Debtor Protections

Public involuntary debtors have the fewest protections of any of the four debt classifications. Like private involuntary debtors, public involuntary debtors cannot turn to contract law or statutory law protecting contracting parties.²⁴⁶ This means that Josh loses the protections of statutes like TILA and RESPA, along with common law contract defenses like unconscionability and duress.

Josh does retain certain rights and protections. If either the State of Louisiana or the United States sued Josh in court, he would be able to assert related counterclaims.²⁴⁷ Any post-judgment collection would abide by the legal interest rate limits.²⁴⁸ And he retains constitutional rights such as the guarantees of equal protection and due process.

Even if Josh had cognizable claims against the federal government related to the existence or collection of his underlying debt, he would most likely be stymied by sovereign immunity protections. The Tucker Acts (both Big and Little) are largely inapplicable to public involuntary debt because their waivers are principally related to an underlying contract with

243. *Earned Income Tax Credit (EITC) Assistance*, INTERNAL REVENUE SERV., <https://apps.irs.gov/app/eitc/results/> (last visited Jan. 29, 2025) (using the IRS Earned Income Tax Credit Assistant to estimate eligibility for and estimated amount of EITC where annual income is \$35,000 with two qualifying children).

244. Louisiana law allows for the suspension, revocation, or denial of professional licenses. LA. STAT. ANN. § 47:1603 (C)(3)(a) (incorporating LA. STAT. ANN. § 47:296.3).

245. *Id.*

246. *See supra* notes 195-97.

247. *United States v. Washington*, 853 F.3d 946 (9th Cir. 2017) (citing *Berrey v. Asarco Inc.*, 439 F.3d 636, 645 (10th Cir. 2006)).

248. *See, e.g.*, 31 U.S.C. § 3717(a)(1).

the United States.²⁴⁹ While the FTCA may still apply to public involuntary debt, its relevant exemptions essentially swallow the immunity waiver for Josh. The FTCA largely exempts claims related to taxes, regulation of the monetary system, and claims arising out of national defense or military actions.²⁵⁰ Josh is left, then, only with limited remedies contained in the Internal Revenue Code.²⁵¹ Josh's claims against the state would likely fare no better. States have exempted the sovereign immunity waiver for claims related to a judicial or administrative hearing,²⁵² claims arising from an employee's actions in executing a court order,²⁵³ claims arising out of "the negligent deprivation of state of statutory rights" under state law,²⁵⁴ and for claims related to the issuance or denial of a license or approval.²⁵⁵

Josh could always file for Chapter 7 or 13 bankruptcy. He would not be successful under Chapter 7, however, because tax debt, like many public involuntary debts, is

249. *See* *Coleman v. United States*, 116 Fed. Cl. 461, 468 (2014) ("[T]he Tucker Act waives sovereign immunity to allow jurisdiction over claims against the United States (1) founded on an express or implied contract with the United States, (2) seeking a refund from a prior payment made to the government, or (3) based on federal constitutional, statutory, or regulatory law mandating compensation by the federal government for damages sustained."); *United States v. Mitchell*, 463 U.S. 206, 216–17 (1983) ("Not every claim invoking the Constitution, a federal statute, or a regulation is cognizable under the Tucker Act, . . . and the claimant must demonstrate that the source of substantive law he relies on 'can be fairly interpreted as mandating compensation by the Federal Government for the damages sustained.'" (quoting *United States v. Testan*, 424 U.S. 392, 400 (1976))); *see also* CYC. FED. PROC. § 2:497 (3d ed. 2025) ("Jurisdiction under the Tucker Act, other than as to claims founded upon the Constitution or law of Congress or an executive departmental regulation, is confined to claims upon express or implied contracts with the United States or for damages, liquidated or unliquidated, in cases not sounding in tort."). The primary exception is a claim sounding in illegal extraction or entitlement to payment, where the debtor would need to prove that the government has "money that was improperly paid, extracted or taken from the complainant in contravention of the Constitution, a statute or regulation." *Norman v. United States*, 429 F.3d 1081, 1095 (Fed. Cir. 2005). Some debtors have successfully argued illegal extraction when a government entity has used tools like tax offsets or wage garnishment to collect debt. *See, e.g.,* *Greene v. Dep't of Justice Fin. Litig. Unit*, 2013 WL 5707873 (N.D. Okla. Oct. 18, 2013) (dismissing for lack of jurisdiction but finding that taxpayer facing an offset for criminal fines stated a claim for illegal extraction); *Ibrahim v. United States*, 112 Fed. Cl. 333 (2013) (finding that taxpayer stated an illegal extraction claim based on tax refund offset based on another person's debt). Even this limited approach is cabined, however, as it does not apply to certain claims. *See, e.g.,* *White v. Wright*, 284 F. Supp. 3d 998 (N.D. Cal. 2018) (dismissing Little Tucker Act claim for lack of jurisdiction where Veterans' Judicial Review Act affords exclusive remedial procedure); *Monroe v. United States*, 143 Fed. Cl. 315 (2019) (finding that Uniformed Services Former Spouses Protection Act eliminated Tucker Act jurisdiction); *Eliot v. United States*, 96 Fed. Cl. 666 (2011) (finding that district courts, not the Court of Claims under the Tucker Act, have exclusive jurisdiction for claims related to a fine or forfeiture).

250. 28 U.S.C. § 2680.

251. 28 U.S.C. § 2680(c) (exemption); 26 U.S.C. §§ 6330, 7422, 7432, 7433 (Internal Revenue Code provisions).

252. IND. CODE § 34-13-3-3. The Indiana Tort Claims Act also exempts claims arising from performance of a discretionary function, discretionary adverse actions related to permits or licenses, unintentional misrepresentation, or an injury to any person on probation. *Id.*

253. TEX. CIV. PRAC. & REM. CODE ANN. § 101.053.

254. TENN. CODE ANN. § 9-8-307.

255. *Id.* at (2)(A) (incorporating 9-8-307(1)(V)).

categorically non-dischargeable under Chapter 7.²⁵⁶ Chapter 13 bankruptcy does allow debtors to discharge some public involuntary debt through what is known as a “superdischarge.”²⁵⁷ Although certain tax debts are excluded, filing can lift certain debt-related restrictions, like driver’s license and professional license restrictions.²⁵⁸ Josh, however, would not be approved under Chapter 13; without any income, his bankruptcy filing would not be confirmed.²⁵⁹ Even if he had income, pursuing a Chapter 13 discharge is more expensive and more likely to fail than pursuing a Chapter 7 discharge.²⁶⁰ And, while his bankruptcy case was pending, Josh would be required to pay federal and state income taxes,²⁶¹ and he probably would not be able to discharge his tax debt in the end.²⁶²

2. Creditor Powers

Governments at all levels have enhanced their already-significant collection tools to collect public involuntary debt, meaning that Josh will face serious consequences from both the IRS and the State of Louisiana. Both entities retain all of the significant collection tools

256. 11 U.S.C. § 523(a)(1).

257. See 11 U.S.C. § 1328(a) (providing the discharge provisions of Chapter 13). See also *Consumer Bankruptcy, Nondischargeability, and Penal Debt*, supra note 42, at 938 (explaining the “superdischarge”). Certain debts owed to the state remain nondischargeable under Chapter 13. *Id.* (“Per Section 1328(a), Chapter 13 filers cannot discharge . . . certain tax debts; debts incurred through false pretense, false representation, or fraud; domestic support obligations; student loans to the extent they are nondischargeable in a Chapter 7 proceeding; and a ‘restitution, or a criminal fine, included in a sentence on the debtor’s conviction of a crime.’”).

258. Edward R. Morrison & Antoine Uettwiller, *Consumer Bankruptcy Pathologies*, 173 J. INST. & THEORETICAL ECON. 174 (2017). Even so, filing a Chapter 13 bankruptcy has not always been successful in getting the debtor’s car out of the city’s impound. See *In re Cordova*, 668 B.R. 413 (Bankr. N.D. Ill. 2025) (recognizing that “[t]he Plaintiffs allege, and the City does not dispute, that the City demanded an upfront lump sum amount, often over \$1,000.00, and treatment of its claim in the Plaintiffs’ [bankruptcy] plan[s] as fully secured in exchange for the turnover of the vehicles”).

259. See 11 U.S.C. § 109(e) (stating that “[o]nly an individual with regular income” may be a debtor under Chapter 13); *In re Wark*, 542 B.R. 522, 539 (Bankr. D. Kan. 2015) (stating that “individual with regular income” is defined in 11 U.S.C. § 101(30) as an “individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title”).

260. Sara S. Greene et. al., *Cracking the Code: An Empirical Analysis of Consumer Bankruptcy Outcomes*, 101 MINN. L. REV. 1031, 1036 (2017) (undertaking an empirical study of the success of Chapter 13 bankruptcies and finding that only 36.5% of Bankruptcy 13 filings are successful such that the debts are ultimately discharged); Scott F. Norberg, *Consumer Bankruptcy’s New Clothes: An Empirical Study of Discharge and Debt Collection in Chapter 13*, 7 AM. BANKR. INST. L. REV. 415, 440 (1999) (study found that approximately 32% of chapter 13 debtors “successfully completed a plan and received a discharge”); JACOBY, supra note 12, at 17 (“Chapter 13 has always been a longer and pricier road to debt relief . . . [and] most people don’t [finish their Chapter 13 plan].”).

261. *Bankruptcy*, INTERNAL REVENUE SERV. (Sept. 26, 2024), <https://www.irs.gov/businesses/small-businesses-self-employed/declaring-bankruptcy> (federal government); *Bankruptcy*, LA. DEP’T OF REVENUE (Nov. 7, 2024), <https://revenue.louisiana.gov/collections/individual-collections/bankruptcy/> (state government).

262. Only older tax debts are eligible for discharge in bankruptcy. *Bankruptcy*, INTERNAL REVENUE SERV. (Sept. 26, 2024), <https://www.irs.gov/businesses/small-businesses-self-employed/declaring-bankruptcy>.

identified above arising from the FCCA, DCA, DCIA, and the Procedures Act, for the federal government, and state law for Louisiana.²⁶³ Only limited protections, like those that exist in the Internal Revenue Code, protect Josh from abusive collection tactics.²⁶⁴

Both the federal and state government are most likely to engage their administrative tools to collect from Josh, rather than sue him in court. As discussed earlier, laws incentivize or mandate that government creditors seek to recoup debt through administrative offset, tax refund offset, federal salary offset, referral to private collection contractors or agencies with an internal debt collection center, reporting debt to credit reporting bureaus, garnishing wages, and litigation or foreclosure are equally applicable to collecting public involuntary debt.²⁶⁵ But federal and state laws authorize, encourage, or require that state creditors use *additional* means to recoup specific kinds of public involuntary debt.²⁶⁶

The Internal Revenue Code provides specific rules and powers for collecting back taxes.²⁶⁷ Without prior notice to Josh, the IRS can offset his tax refund,²⁶⁸ including by offsetting his Earned Income Tax Credit payment.²⁶⁹ If Josh wanted to contest that offset, he could, but only after his entire debt has been paid back through annual offsets.²⁷⁰ Josh likely did not even know about the offset until he noticed that he did not get a return, making it unlikely that he could ask for an offset bypass refund.²⁷¹ And even though the IRS offset his entire refund and EITC payment to pay down his debt, Josh still owed more than \$4,500 to the

263. See *supra* Subsection II.C.2.

264. 26 U.S.C. § 6304. The Internal Revenue Code creates private causes of actions if the IRS fails to release a lien and for unauthorized disclosure of a tax return. 26 U.S.C. § 7432; 26 U.S.C. § 7431. *But see* COLLECTION ACTIONS, *supra* note 103, at § 10.2.15.10 (collecting cases establishing that taxpayer remedies are subject to rigid procedural requirements). The same rights do not accrue to assessment challenges. 26 U.S.C. § 7433. If the IRS violates its own collection statutes, the taxpayer can sue for actual damages, with certain limitations and no opportunity for appeal. 26 U.S.C. § 7433; 26 U.S.C. § 6673(b). Some actions are limited to \$100,000 in recovery and frivolous suits can cost the taxpayer \$10,000. 26 U.S.C. § 6406.

265. See *supra* notes 130-135 and accompanying text.

266. For the most part, the creditor powers in this Subsection are for public involuntary debt. Student loan debt is an exception. States use driving restrictions, for example, to collect unpaid student loan debt. *Debt, Race, and Physical Mobility*, *supra* note 29.

267. 26 U.S.C. § 6301 (mandating that the Secretary of the Treasury collect taxes imposed by the Internal Revenue Code).

268. See Fogg, *supra* note 9, at 4 (describing three different ways the IRS can “offset” its liability to a taxpayer by withholding money to pay off a prior liability the taxpayer owes to the government).

269. 26 U.S.C. § 6402(a) (allowing the Secretary to credit the amount of any income tax overpayment “against any liability . . . on the part of the person who made the overpayment”). Scholars and advocates have lobbied the IRS to use its discretion to stop offsetting tax refunds for EITC-eligible taxpayers. See Fogg, *supra* note 9, at 40.

270. *Flora v. United States*, 357 U.S. 63 (1958), *aff’d on reh’g*, 362 U.S. 145 (1960) (taxpayers may seek a refund of an incorrectly assessed tax but must first pay the disputed amount). See also Fogg, *supra* note 9, at 16-17 (explaining how the *Flora* rule can result in a claim that is barred by the statute of limitations).

271. See Fogg, *supra* note 9, at 38-40 (explaining the offset bypass process). Nor would Josh be eligible for such an accommodation because he was also subject to Louisiana’s TOP claim for failure to pay state income tax. *Id.*

federal government. His debt will continue to grow because of interest, and the IRS will continue to use its extraordinary collection procedures until the debt is fully repaid, or ten years has elapsed.²⁷²

After notice to Josh,²⁷³ the IRS can also seek repayment through a levy on his income, bank accounts, or property.²⁷⁴ And unlike in other government seizure actions, the first \$750 of Josh's monthly income is not protected when the IRS recoups tax debt.²⁷⁵ The IRS can also seize a portion of Josh's wages²⁷⁶ and his personal property, subject to only minimal exemptions like clothes, certain pension payments, and certain public benefits, any of his real property, personal property, or intangible property.²⁷⁷ Josh could have asked the IRS to use its discretion to remove the levy from his meager property assets,²⁷⁸ and, if that was not successful, claim exemptions to the property levy.²⁷⁹ Based on Josh's wages and dependents, his take-home salary would be fully exempt from garnishment.²⁸⁰ But he would have had to know to make the request in advance. The IRS can also attempt collection through the Federal Payment Levy Program, which allows the government to levy non-tax federal payments owed to the taxpayer, including federal contractor payments, certain social security benefits, some federal salaries, and military retirement.²⁸¹

272. 26 U.S.C. § 6502.

273. 26 U.S.C. § 6330. *See also Internal Revenue Manual 5.1.9*, INTERNAL REVENUE SERV. (Sept. 2, 2025), https://www.irs.gov/irm/part5/irm_05-001-009.

274. Once a taxpayer fails to pay assessed taxes, the IRS has a lien on the debtor's personal and real property in the amount of that debt (along with interest, payments, and fees). 26 U.S.C. § 6321; 26 U.S.C. § 6330. Certain exceptions are set forth in 26 U.S.C. § 6322.

275. 31 U.S.C. § 3701(d)(1) (exempting tax debts from the protections created by in 31 U.S.C. § 3716 (c)(3)(A)(I) and (II)).

276. 26 U.S.C. § 6334(d).

277. 26 U.S.C. § 6331. Specific exemptions are listed in 26 U.S.C. § 6334. Federal tax liens can even apply to a debtor's property held as a tenancy by the entireties, where only one spouse owes debt. *United States v. Craft*, 535 U.S. 274 (2002). *See also United States v. Rodgers*, 461 U.S. 677 (1983) (federal tax lien can attach to a debtor's property interest even if that interest cannot unilaterally be alienated). This is true even if state law holds that the private creditor of one spouse cannot place a lien on the debtor's property if that property is held as a tenancy by the entireties. *Compare Craft*, 535 U.S. 274 with *Long v. Earle*, 277 Mich. 505 (1936).

278. 26 U.S.C. § 6331(f) (allowing the Secretary to drop levy where the cost of collection would exceed fair market value of the property).

279. 26 U.S.C. § 6334 (enumerating property exempt from levy).

280. INTERNAL REVENUE SERV., TABLES FOR FIGURING AMOUNT EXEMPT FROM LEVY ON WAGES, SALARY, AND OTHER INCOME (2025), <https://www.irs.gov/pub/irs-pdf/p1494.pdf> (Josh makes \$35,000 pre-tax annually; his weekly take-home pay, post-tax, would be less than the exempt amount of \$657.69 for a person married filing jointly with two dependents).

281. *Federal Payment Program*, INTERNAL REVENUE SERV., <https://www.irs.gov/businesses/small-businesses-self-employed/federal-payment-levy-program> (last visited Jan. 29, 2025). The percentage of reduction on payments subject to the levy varies from 15 percent to 100 percent. *Id.*

States have similar authority and processes when it comes to collecting unpaid taxes. The Louisiana Department of Revenue immediately began its collection process from Josh.²⁸² Penalties, interest, and collection costs increased his overall balance due. Josh likely did not know to seek either an installment payment plan or an offer to compromise prior to collection onset.²⁸³ Therefore, the Louisiana’s Debt Collection Practices Act controls, which offers only minimal debtor protections like prohibiting contacting third parties and limiting the number of mailings.²⁸⁴ After no success trying to collect the debt through voluntary payment, the state Department of Revenue turned to its other collection tools, including driver’s license and occupational license restrictions.²⁸⁵

Once Josh’s debt to the state was 180 days delinquent, the Louisiana Department of Revenue sent it to the Treasury Offset Program for collection via federal tax refund offset.²⁸⁶ In this case, because Josh owed more to the federal government than he was set to receive in tax refund and tax credits, the state would not receive anything from the offset in the first year. But, the debt would remain active, and the federal government would continue to offset tax refunds until the entire debt is repaid.²⁸⁷

It is worth noting here that, although Josh’s debt is owed due to tax arrearages, taxes are not unique when it comes to enhanced and aggressive collection tools. Federal and state law has allowed and required similar collection tools for other kinds of public involuntary debt, including civil and criminal fines and fees, child support, tolls, and parking tickets – basically, any money owed to the state.

III. INVERSE PYRAMIDS AND THE PUBLIC INVOLUNTARY DEBTOR

So far, this Article has gathered, analyzed, and organized many bodies of law to better understand the law of individual debt to include four debtor classes: private voluntary, private involuntary, public voluntary, and public involuntary. The law creates those classes based on the creditor’s identity and whether that creditor agreed to advance money or services to the debtor.

282. *About Collections*, LA. DEP’T OF REVENUE (Mar. 6, 2025), <https://revenue.louisiana.gov/collections/individual-collections/about-collections/> (penalties range from 0.5 percent to 25 percent).

283. LA. STAT. ANN. § 47:1603. *See also Offer in Compromise*, LA. DEP’T OF REVENUE (Nov. 7, 2024), <https://revenue.louisiana.gov/collections/general-sources/offer-in-compromise/>.

284. The state is arguably subject to LA. STAT. ANN. § 9:3516(18) (defining “creditor”). The FDCPA does not apply to state actors. 15 U.S.C. § 1692a(6)(C).

285. Louisiana law allows for the suspension and denial of driver’s licenses and allows for the suspension, revocation, or denial of professional licenses. LA. STAT. ANN. § 47:1603 (C)(3)(a) (incorporating LA. STAT. ANN. § 47:296.2); LA. STAT. ANN. § 47:1603 (C)(3)(a) (incorporating LA. STAT. ANN. § 47:296.3).

286. *Treasury Refund Offsets*, LA. DEP’T OF REVENUE (Nov. 7, 2024), <https://revenue.louisiana.gov/collections/business-tax-enforcement/treasury-refund-offsets/>.

287. In fiscal year 2024, TOP recovered more than \$720 million in state income tax debt. *How the Treasury Offset Program (TOP) Collects Money for State Agencies*, BUREAU OF THE FISCAL SERV. (Jan. 16, 2025), <https://fiscal.treasury.gov/top/state-programs.html>.

But the rights and obligations allotted to the four classes are not equal. Private voluntary debtors are entitled to the greatest protection, and their creditors must abide by the tightest regulation. Private involuntary debtors have fewer protections because they cannot seek relief based on contract, but their creditors remain subject to regulation. When the state is the creditor, public voluntary debtors are limited in asserting their rights by sovereign immunity and creditor tools are broadened in scope. Most importantly, public creditors can use administrative, rather than judicial, tools to collect debt. Finally, public involuntary debtors have the fewest protections and face the harshest collection tools. Not only are their rights either explicitly exempted or implicitly blocked by sovereign immunity, but a series of laws have also authorized the most aggressive and punitive collection tools for public



Graphic B

involuntary debts. The simple ladder graphic, therefore, does not accurately reflect the landscape for individual debtors. Instead, the legal landscape is more appropriately reflected in the paired pyramids illustrated below. As we descend the debt ladder, debtor protections wane as creditor powers increase.

With that understanding, this Part moves from diagnosis to analysis. The law of individual debt situates Michelle, Reid, Shirley, and Josh in different places in a way that is both asymmetrical and unfair. It is most disadvantageous to Josh, our public involuntary debtor, who finds himself in an untenable position vis-à-vis the state: suffering under crushing debt, subject to punitive collection tools, and unlikely to be able to repay his ever-increasing debt. This Part focuses on debtors like Josh. It defines and describes involuntary debtors, explores the repercussions of public involuntary debt collection on those debtors, expands the lens to consider similar effects on the broader community, and considers whether and what value the current system has to the state and society.

A. What

Public involuntary debt is any debt owed by an individual to the state without a prior agreement. Josh, for example, owes money to his state and the federal government for overdue taxes. He is not alone. More than 11 million Americans currently owe the IRS a total of \$125

billion in back taxes.²⁸⁸ In 2023, the Treasury Department withheld \$45 trillion in payments owed to taxpayers to recoup debt that those taxpayers owed to the state.²⁸⁹ There is a similar landscape at the state level: in 2025, for example, the New York Department of Taxation and Finance collected almost two billion dollars in tax debt collection.²⁹⁰

While tax debt is an archetypal example of public involuntary debt, it is not the only one. Millions of Americans owe debt to the state because of fines and fees associated with civil infractions and criminal charges. In addition to fines assessed for the illegal conduct, justice-involved individuals are charged fees for everything from probation and parole to jail and prison phone calls.²⁹¹ According to one study, in December of 2024, more than 18 percent of working-age adults reported that they incurred a fine or fee, primarily from traffic and parking infractions, twenty-five of whom already had outstanding fines and fees debt.²⁹² Another study of 24 states found that, in five years, courts had imposed nearly \$14 billion in fines and fees.²⁹³ The repercussions for such debt are significant. At least eleven million Americans are, at any one time, without a driver's license or a car registration because they owe fines or fees.²⁹⁴ Researchers found that over thirteen years, 38,000 Texans and 8,000 Wisconsin residents were jailed for failure to pay fines and fees.²⁹⁵ In Oklahoma, traffic fines were the most likely cost of debt-based incarcerations.²⁹⁶

288. *A Record Number of Americans Owe Tax Debt This Year, But the IRS Is Forgiving Millions*, FRESH START INFO, <https://freshstartinformation.org/record-number-owe-back-taxes-but-irs-forgives-millions/> (last visited Jan. 17, 2026).

289. *Instructional Workbook for Preparing the "Treasury Report on Receivables and Debt Collection Activities,"* DEP'T OF TREASURY, <https://www.fiscal.treasury.gov/files/debt-management/fy18-tor-instructional-workbook.pdf> (last visited Jan. 29, 2025). For a description of offsets, see Elengold & Laing, *supra* note 119.

290. *Fiscal Year Tax Collections: 2024-2025*, N.Y. STATE DEP'T OF TAX'N & FIN (Dec. 4, 2025), https://www.tax.ny.gov/research/collections/fy_collections_stat_report/2024-2025-annual-statistical-reports.htm (Section II, Table 3).

291. *50-State Fee Surveys*, END JUSTICE FEES, <https://endjusticefees.org/fee-surveys/> (last visited Jan. 17, 2026) (surveying each state for justice-associated fees, including assessments and surcharges, probation and parole fees, electronic monitoring fees, warrant fees, counsel or public defender fees, record clearing fees, jail and prison phone call fees, medical co-pay fees, juvenile fees, and driver's license reinstatement fees).

292. Aravind Boddupalli et al., *Fines, Fees, and Financial Strain: Challenges for State and Local Governments in a Time of Fiscal Uncertainty*, TAX POL'Y CTR. 6, 9 (Oct. 22, 2025) <https://taxpolicycenter.org/sites/default/files/2025-10/FINES-FEES-AND-FINANCIAL-STRAIN.pdf>.

293. Lillian Patil & Tanisha Pierrette, *Imposing Instability: How Court Fines and Fees Destabilize Government Budgets and Criminalize Those Who Cannot Pay*, FINES & FEES JUSTICE CTR. 11 (July 2025). The data are incomplete as most states were only about the provide partial responses, likely leading to a significant undercount of actual fees assessed and collected. *Id.* at 11.

294. *Debt, Race, and Physical Mobility*, *supra* note 29, at 837-38.

295. Johann D. Gaebler et al., *Forgotten but not Gone: A Multi-State Analysis of Modern-Day Debt Imprisonment*, PLOS ONE (Sept. 13, 2023), <https://doi.org/10.1371/journal.pone.0290397>.

296. *Id.*

Child support debt is also public involuntary debt. In 2022, nearly one in five American children benefited from child support, receiving an aggregate of \$30.5 billion.²⁹⁷ But data also showed that approximately \$114 billion in child support remains uncollected annually.²⁹⁸ Because so many child support debtors have very low incomes,²⁹⁹ it is likely that less than half of outstanding arrearages will be paid over the next decade.³⁰⁰ Even so, the state continues to employ punitive collection tools, regardless of the obligor's ability to pay. In 2023, the Treasury Offset Program recovered more than \$1.6 billion in child support obligations.³⁰¹ Child support arrearages are the primary reason a worker faces wage garnishment; half of all workers with a wage garnishment had a child support obligation.³⁰² And one study discovered that 5% of all fathers and 15% of African American fathers had faced jail time for child support debt.³⁰³

B. Who

Public involuntary debtors are largely poor and from minoritized groups—mostly Black and Hispanic. These demographics are constant across two levels: (1) who owes public involuntary debt; and (2) who faces the most punitive collection tools for public involuntary debt.

Individuals who hold public involuntary debt are disproportionately poor and people of color. According to one report, nearly one in twenty-five adults experienced court- or incarceration-related fines and fees in 2024.³⁰⁴ Of those, almost half came from a household living below 200 percent of the federal poverty level.³⁰⁵ In a national representative study of nonelderly adults, researchers found that Black and Latine adults reported being charged or owing money for fines and fees at higher rates than White adults.³⁰⁶ Case studies in Chicago,

297. *The Key to Child Support Enforcement Success*, THOMSON REUTERS (Aug. 27, 2024), <https://legal.thomsonreuters.com/blog/the-key-to-child-support-enforcement-success/>.

298. *Id.*

299. Courtney E. Lollar, *Criminalizing (Poor) Fatherhood*, 70 ALA. L. REV. 125, 141–42 (2018).

300. *Id.* at 142.

301. *How the Treasury Offset Program (TOP) Collects Money for State Agencies*, BUREAU OF THE FISCAL SERV. (Jan. 16, 2025), <https://www.fiscal.treasury.gov/top/state-programs.html>.

302. *The U.S. Wage Garnishment Landscape: Through the Lens of the Employer*, ADP RSCH. INST. (2017), <https://www.adpresearch.com/wp-content/uploads/2020/08/The-U.S.-Wage-Garnishment-Landscape-Through-the-Lens-of-the-Employer-Full-Report.pdf>.

303. Noah Zatz et al., *Get to Work or Go to Jail: Workplace Rights Under Threat*, UCLA INST. FOR RSCH. ON LAB. & EMP. (Mar. 2016), <https://irle.ucla.edu/wp-content/uploads/2016/03/Get-To-Work-or-Go-To-Jail-Workplace-Rights-Under-Threat.pdf>.

304. Boddupalli et al., *supra* note 292. See also Aravind Boddupalli, *The Unjust Burden of Fines and Fees*, MILKEN INST. REV., <https://www.milkenreview.org/articles/the-unjust-burdens-of-fines-and-fees?IssueID=58> (last visited Jan. 17, 2026) (noting Urban Institute data finding that families with incomes below 200 percent of the poverty level and Hispanic and Black adults are disproportionately burdened with court- and incarceration-related fines and fees).

305. *Id.* at 3.

306. *Id.* at 2 (Black adults reported rates of 20 percent, Latine adults reported rates of 22 percent, and White adults reported rates of 15 percent). See also *Investigation of the Ferguson Police Department*,

the District of Columbia, Minnesota, North Carolina, and Seattle show similar disproportionality.³⁰⁷ Child support debt are similar. Not only are families receiving child support disproportionately from low-income and minoritized populations,³⁰⁸ but so are those noncustodial parents facing child support arrearages. In 2018, 300,000 noncustodial parents fell below the poverty line because of their child support obligations.³⁰⁹ And approximately seven out of every ten dollars in arrears is owed by parents with incomes below \$10,000 annually.³¹⁰ Many are incarcerated, disabled, or lack a high school education.³¹¹

Taxes present a slightly different story, but with a similar outcome. A significant portion of unpaid income tax debt is owed by high-income individuals, primarily due to misreporting, tax evasion, or failure to make estimated tax payments.³¹² One report explains that “[m]ost current estimates identify high-income taxpayers with complex investments as well as taxpayers with large, complicated business transactions as those where the gap between taxes owed and taxes reported and paid are actually concentrated.”³¹³ But it goes on to note that, because of budget shortfalls at the IRS and the resulting staff constriction, “[t]he scales have tilted towards IRS targeting less complex issues and returns.” It is unsurprising, therefore, that the IRS audits Black taxpayers 2.9 to 4.7 times more often than it audits non-Black taxpayers and audits low-income taxpayers at a rate five times greater than everyone else.³¹⁴ Scholars have been particularly concerned that the IRS spends disproportionate time policing low-income taxpayers who claim the EITC.³¹⁵

U.S. DEP’T OF JUST. CIV. RTS. DIV. 10, 52 (Mar. 4, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf (showing that the city’s use of fines and fees to raise revenue disproportionately burdened Black residents).

307. Boddupalli et al., *supra* note 292, at 5 (collecting studies).

308. Joseph Llobrera, *Child Support Cooperation Requirements in SNAP are Unproven, Costly, and Put Families at Risk*, CTR. ON BUDGET & POL’Y PRIORITIES (Feb. 5, 2020), <https://www.cbpp.org/research/food-assistance/child-support-cooperation-requirements-in-snap-are-unproven-costly-and-put> (one of every five families receiving SNAP benefits are entitled to child support); *Id.* (of families entitled to child support, 41 percent are non-Hispanic White, 29 percent are Black, and 26 percent are Hispanic).

309. Megan Rivera et al., *Administrative Actions for a Family-Centered Child Support Program*, CTR. ON POVERTY & INEQ. GEO. L. 2 (2023), <https://www.georgetownpoverty.org/wp-content/uploads/2023/10/Administrative-Actions-for-a-Family-Centered-Child-Support-Program-Oct2023.pdf#:~:text=Unreasonably%20high%20child%20support%20orders%E2%80%94that%20do%20not,between%20poverty%20or%20unmanageable%20child%20support%20debts>.

310. Nicole Langston, *Welfare Debt*, 113 CAL. L. REV. 1889, 1892 (2025).

311. Lollar, *supra* note 299, at 141.

312. *Tax Debt in America: Key Statistics and Trends*, TAX HUB (Oct. 1, 2025), <https://www.tax-hub.net/knowledge-center/tax-debt-in-america-key-statistics-and-trends>.

313. *IRS Audits Poorest Families at Five Times the Rate for Everyone Else*, TRANSACTIONAL RECS. ACCESS CLEARINGHOUSE (Mar. 8, 2022), <https://trac.syr.edu/tracirs/latest/679/>.

314. Joshua D. Blank & Leigh Osofsky, *Democratic Accountability and Tax Enforcement*, 61 HARV. J. ON LEGIS. 251, 254, 260 (2024) (gathering research); *IRS Audits Poorest Families at Five Times the Rate for Everyone Else*, TRANSACTIONAL RECS. ACCESS CLEARINGHOUSE (Mar. 8, 2022), <https://trac.syr.edu/tracirs/latest/679/>.

315. Blank & Osofsky, *supra* note 314, at 254, 260-62 (gathering research).

The collection tools used to collect or punish tax arrears are also disproportionately meted out against poor people and people of color, creating a double whammy. Research shows a correlation between the proportion of Black residents and use of fines and fees to raise municipal revenue.³¹⁶ When a municipality seeks to raise revenue through fines and fees, that choice is disproportionately borne by those who are poor, Black, or Hispanic.³¹⁷

Driver’s license suspensions and revocations, which wreak havoc on a debtor’s life,³¹⁸ are disproportionately applied to people of color. Studies in North Carolina, New York, and Florida show that “driver’s license suspensions are strongly correlated with race.”³¹⁹ An empirical review of driver’s license suspensions in North Carolina, for example, uncovered disturbing trends showing that Black and Hispanic drivers are disproportionately hit with debt-based driving suspensions.³²⁰ Researchers find similar outcomes for debt-based occupational licensing restrictions.³²¹

C. How

This Subsection focuses on how holding public involuntary debt and facing the resulting collection tools have negatively affected debtors, families, communities, and society.

At its most basic level, debt and debt collection are correlated with negative repercussions for the debtor. Owning debt and experiencing debt collection is “significantly correlate[d]” with significant downsides for the debtor, including “depression, drinking, neurotic disorders, and suicide contemplation and attempts.”³²² More specifically, those downsides are exacerbated by the way the creditor state collects involuntary debts. Of adults with (only) traffic or parking ticket debt, a recent study showed that 15 percent experienced housing insecurity, 20 percent had trouble paying utility bills, and 32 percent faced food insecurity.³²³ For those with criminal or incarceration-related debt, almost one in three relevant adults reported that they struggled with housing, 40 percent struggled with utility bills, and 57

316. Akheil Singla et al., *Race, Representation, and Revenue: Reliance on Fines and Forfeitures in City Governments*, 56 URB. AFFS. REV. 1132-1167 (2020).

317. *Targeted Fines and Fees Against Communities of Color*, U.S. COMM’N ON C.R. 3 (Sept. 2017), https://www.usccr.gov/files/pubs/2017/Statutory_Enforcement_Report2017.pdf.

318. *See Debt, Race, and Physical Mobility*, *supra* note 29.

319. Lisa Foster, *The Price of Justice: Fines, Fees and the Criminalization of Poverty in the United States*, 11 U. MIAMI RACE & SOC. JUST. L. REV. 1, 21 (2020). *See also* Melissa Toback Levin, *Driver’s License Suspensions for Nonpayments: A Discriminatory and Counterproductive Policy*, 48 HASTINGS CONST. L.Q. 73, 73-74 (2020) (“Driver’s license suspension rates in zip codes with the highest concentrations of people of color are generally higher than in zip codes with the most concentrated white populations.”). *See also* William E. Crozier & Brandon L. Garrett, *Driven to Failure: An Empirical Analysis of Driver’s License Suspension in North Carolina*, 69 DUKE L. J. 1585, 1606 (2020) (studying debt-based driving restrictions in North Carolina).

320. Crozier & Garrett, *supra* note 319, at 1606.

321. *Locked Out: How DC Bans Workers with Unpaid Fines from More and 125 Jobs or Starting a Business, and What We Can Do About It*, TZEDEK DC (2023), <https://static1.squarespace.com/static/57056a9e0442629a7a43ca60/t/6581e846fd68313c2ea4342b/1703012429020/TZ+-+23+Locked+Out+Report+1.6.pdf>.

322. ONDERSMA, *supra* note 36, at 44.

323. Patil & Pierrette, *supra* note 293, at 29.

percent experienced food insecurity.³²⁴ A 2018 survey of more than 900 Alabamans holding court debt found that 44 percent used payday or title loans to pay off their debt.³²⁵

Punitive collection tools like driver's and occupational license suspensions make it more difficult to pay off debt and escape poverty, punishing the debtor, their family, and their communities.³²⁶ Losing an occupational license decreases hourly earnings by approximately ten percent,³²⁷ and losing a driver's license is correlated with job loss.³²⁸ In one survey, 42 percent of New Jersey drivers with suspended licenses lost their jobs, and 45 percent of those remained unemployed for the suspension period.³²⁹ For those who did find work, nearly 90 percent reported a pay decrease.³³⁰ In addition to job loss, debtors with suspended licenses reported difficulty getting to a doctor, caring for their children, and grocery shopping.³³¹ Nearly a third were evicted.³³²

Even without a license revocation, public involuntary debtors report negative outcomes for themselves and their families. Researchers have found that fines and fees debt is correlated with longer periods of homelessness,³³³ which extends the reach of the harm beyond the individual debtor. Assessing unreasonable child support obligations causes stress to the noncustodial parent, the custodial parent, and the child(ren). It undermines the relationship between the noncustodial parent and the child and “doubles the likelihood of a child's incarceration, even accounting for parental education, family income, race, and other factors.”³³⁴ It can also lead to a child's mental health problems, low school achievement,

324. *Id.*

325. ALABAMA APPLESEED ET AL., UNDER PRESSURE: HOW FINES AND FEES HURT PEOPLE, UNDERMINE PUBLIC SAFETY, AND DRIVE ALABAMA'S WEALTH DIVIDE 31 (2018), <https://www.alabamaappleseed.org/wp-content/uploads/2018/10/AA1240-FinesandFees-10-10-FINAL.pdf>. Payday loans are also associated with negative outcomes. Paige Marta Skiba & Jeremy Tobacman, *Do Payday Loans Cause Bankruptcy?*, 62 J.L. & ECON. 485, 486 (2019).

326. Neil L. Sobol, *Griffin v. Illinois: Justice Independent of Wealth?*, 49 STET. L. REV. 399, 429 (2020).

327. MORRIS M. KLEINER, LICENSING OCCUPATIONS: ENSURING QUALITY OR RESTRICTING COMPETITION? 76 (2006).

³²⁸ *Targeted Fines and Fees Against Communities of Color*, U.S. COMM'N ON C.R. 36 (Sept. 2017), https://www.usccr.gov/files/pubs/2017/Statutory_Enforcement_Report2017.pdf; Evelyn Blumenberg & Gregory Pierce, *A Driving Factor in Mobility? Transportation's Role in Connecting Subsidized Housing and Employment Outcomes in the Moving to Opportunity (MTO) Program*, J. OF AM. PLANNING ASS'N, 80:1, 55 (2014) (noting that the “few studies that directly compare the relative benefits of cars and public transit find that automobiles better facilitate job acquisition and job retention than public transit”).

329. *Targeted Fines and Fees Against Communities of Color*, U.S. COMM'N ON C.R. 36 (Sept. 2017), https://www.usccr.gov/files/pubs/2017/Statutory_Enforcement_Report2017.pdf.

330. *Id.*

331. *Id.* at 93.

332. *Id.*

333. *The Impacts of Individual and Household Debt on Health and Well-Being*, AM. PUB. HEALTH ASS'N (Oct. 25, 2021), <https://www.apha.org/policy-and-advocacy/public-health-policy-briefs/policy-database/2022/01/07/the-impacts-of-individual-and-household-debt-on-health-and-well-being>.

334. Lollar, *supra* note 299, at 129, 151-52.

greater likelihood of ending up in the juvenile justice system, or increased risk of teen pregnancy.³³⁵

The law governing public involuntary debt collection also harms broader society. Suspending driver's licenses has "negative ramifications for GDP, tax revenue, and employers."³³⁶ An Arizona study found that restoring 7,000 licenses increased GDP by near \$150 million and led to increased employment and tax revenue.³³⁷ And debt collection costs the state money and undermines trust in the government. Utilizing punitive collection tools "divert[s] limited public safety resources away from core missions like violence prevention and solving serious crimes" and undermine[s]. . . . public safety by eroding community trust and misallocating enforcement capacity."³³⁸ Finally, society is negatively affected when debtors are forced into difficult circumstances. Not only does the debtor suffer, but a survey of 900 debtors discovered that nearly 40 percent admitted to committing a crime to pay off their debt to the state.³³⁹

D. Why

So far, this Part has focused on the problems with the current state of public involuntary debt and the state's collection mechanisms. There is, however, a flip side to consider: the value to the state. Assessing the value is not a straightforward or singular exercise because the state may have different or multiple goals that affect the analysis. The state might be trying to raise revenue, ensure public safety, promote family self-sufficiency, and/or foster trust in government. This Section considers whether and how the law of individual debt helps the state meet those goals. It concludes that the current state of the law does add value for the state, but cautions readers not to overstate that value, especially in light of the countervailing negative repercussions.

1. Revenue and the Public Fisc

The primary rationale for the current structure of public involuntary debt is the state's interest in raising revenue and protecting the public fisc. Raising revenue and budgeting is necessary for governments at all levels to operate, and to provide citizens with infrastructure, education, public safety, and many public services.³⁴⁰ Therefore, it is reasonable for state actors to consider how money is raised, spent, and saved. To determine whether the current state of the law of individual debt meets those goals, we must consider (1) whether collection of public involuntary debt is financially efficient overall and (2) whether each of the collection tools is financially efficient.

335. *Id.* at 151-52.

336. Levin, *supra* note 319, at 75.

337. *Id.*

338. Boddupalli et al., *supra* note 292.

339. Foster, *supra* note 319, at 23.

340. Ramil Abbasov, *Government Budgeting and Expenditure: A Multifaceted Analysis of Economic Growth, Fiscal Sustainability, and Social Impact*, 17 *iBUSINESS*, 32-55 (2025), <https://doi.org/10.4236/ib.2025.171002>.

Taxation is a profitable endeavor. The Internal Revenue Service collects more than 4 trillion dollars from personal income tax returns annually.³⁴¹ State tax collections, primarily from personal income taxes, account for nearly half of all state government revenue.³⁴² Generally, tax debt collection is financially efficient. For example, it costs the IRS only 34 cents to collect every one hundred dollars.³⁴³

Child support debt collection is also connected to protecting the public fisc. Collecting this debt (1) directly reimburses the state for public benefits given to the custodial parent, and (2) indirectly benefits the public fisc by taking pressure off the state to provide for children.³⁴⁴ It is less clear, however, whether child support collection is financially efficient for the state. States spend approximately one dollar, plus personnel costs, to collect every \$4.30 in child support.³⁴⁵ Where the child support collected is routed to the state rather than the custodial family,³⁴⁶ the financial benefit is even less clear. A pilot debt relief program in San Francisco showed that child support payors make more consistent and timely child support payments when their debts to the state are forgiven.³⁴⁷ Even though the direct cost benefit analysis to the state is unclear, because increased child support payments decrease childhood poverty, result in better educational and behavioral outcomes for affected children, and stabilize the custodial family's financial lives,³⁴⁸ consistent child support payments indirectly benefits the state in significant ways that are harder to measure.

Cities and towns benefit financially from civil and criminal fines and fees. In 2017, according to the United States Census Bureau, municipalities raised \$14.9 billion from fines and forfeitures.³⁴⁹ Fines and fees are a “consistent” source of revenue, which can be “especially important for small jurisdictions that may not have many other revenue sources to

341. *What does it cost the IRS to collect taxes?*, USA FACTS (June 13, 2025) <https://usafacts.org/articles/what-does-it-cost-the-irs-to-collect-taxes/> (citing statistics from 2023).

342. *How States Raise Their Tax Dollars*, PEW (June 2, 2025), <https://www.pew.org/en/research-and-analysis/data-visualizations/2025/06/how-states-raise-their-tax-dollars-fy-2024>.

343. *Id.*

344. Elengold & Laing, *supra* note 119.

345. Margaret Ryznar, *Two Direct Rights of Action in Child Support Enforcement*, 62 CATH. U. L. REV. 1007, 1015 (2013). *See also* Lollar, *supra* note 299, at 129 (complaining that the “economics underlying the system are both inefficient and morally troubling”).

346. *See Debt, Race, and Physical Mobility*, *supra* note 29.

347. Heather Hahn et al., *Relief from Government-Owed Child Support Debt and Its Effects on Parents and Children*, URB INST., at vi (Aug. 2019), https://www.urban.org/sites/default/files/publication/100812/relief_from_government-owed_child_support_debt_and_its_effects_on_parents_and_children_2.pdf.

348. *See* Lauren A Hall et al., *Who Pays Child Support? Noncustodial Parents' Payment Compliance*, FAM. WELFARE RSCH. & TRAINING GRP., SCH. OF SOC. WORK, UNIV. OF MD., at i (May 2014), <https://www.ssw.umaryland.edu/media/ssw/fwrtg/child-support-research/cs-caseload-special-issues/paymentcompliance.pdf>; Jooyoung Kim et al., *Exploring the Long-Term Effects of Child Support*, INST. FOR RSCH. ON POVERTY (June 2022), <https://www.irp.wisc.edu/wp/wp-content/uploads/2022/07/CSRA-2020-2022-T16.pdf> (citing several studies documenting child support policy's “positive effects,” which include “reducing child poverty rates, better educational and behavioral outcomes for children, and benefits in child food security, health, and housing stability”).

349. ONDERSMA, *supra* note 36, at 52.

rely on.”³⁵⁰ Cities can also pre-sell that revenue to private investors, recouping a large lump sum advance payment.³⁵¹ Cities similarly package and sell their property tax liens to private investors in exchange for a lump sum payment on the front end.³⁵² These sales allow cities to plan and cover large expenditures.³⁵³ Like child support, however, there is some doubt whether the collection of unpaid fines and fees is financially efficient. A report in 2021 showed that New Mexico counties spent at least 41 cents to collect every dollar of fines and fee revenue.³⁵⁴ In Florida, court clerks are considered “successful” per written guidance if they collect nine percent of the fines and fees imposed in felony judgments.³⁵⁵ And a Pennsylvania study found that fines and fees constituted less than 1 percent of a county’s budget in 2022, and jurisdictions “often spend far more collecting costs than they receive because of the staff time needed for collections and payment.”³⁵⁶ Others agree that fines and fees are “an inefficient source of government revenue”³⁵⁷ and some argue that continued reliance on such fees will undermine municipal budgeting processes.³⁵⁸

We must also consider other ways that the current state of the law of individual debt protects the public fisc. Sovereign immunity, by its very nature, is designed to protect the state against challenges that will cost the state money and distract state actors from the critical work of running a government.³⁵⁹ Similarly, the laws that carve out government collectors from

350. C. Jarrett Dieterle et al., *How States Use Occupational Licensing to Punish Student Loan Defaults*, RSTREET (Sept. 14, 2018), <https://www.rstreet.org/commentary/how-states-use-occupational-licensing-to-punish-student-loan-defaults/>.

351. ONDERSMA, *supra* note 36, at 52 (Chicago leased its 36,000 parking meters to an investment consortium in exchange for \$1.2 billion).

352. ANDREW W. KAHRL, *THE BLACK TAX: 150 YEARS OF THEFT, EXPLOITATION, AND DISPOSSESSION IN AMERICA* 320-21 (2024).

353. ONDERSMA, *supra* note 36, at 52. Such an approach, however, has a financial downside. The majority of the money brought in from parking meters will go to the private entity, not the state. Whereas the investment consortium bought the rights to the parking meter fees for seventy-five years for a \$1.2 billion payment to the city, the private consortium made back its investment in only eleven years, with sixty-four years of profits to come. *Id.*

354. *Death by Fees: How New Mexico Punishes Poverty*, END JUSTICE FEES (Sept. 15, 2021), <https://endjusticefees.org/news/death-by-fees-how-new-mexico-punishes-poverty/>. One county reported that they spent \$1.17 to collect every dollar. *Id.*

355. *Id.* at 13.

356. Nadia Mozaffar, Esq. & Aqilah David, *Heavy Burdens: The Weight of Juvenile Fees and Fines in the Keystone State*, JUV. L. CTR., at 8 (Oct. 24, 2025), https://issuu.com/juvenile_law_center/docs/heavy_burdens_the_weight_of_juvenile_fees_and_fin?fr=sZjNiZDglMTkyNTc (calling this a “startling revelation”).

357. Matthew Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties*, BRENNAN CTR. FOR JUST., at 5 (2019), https://www.brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf (assessing collection of fines and fees across three states).

358. Patil & Pierrette, *supra* note 293 (“Governments also risk accumulating uncollectable debt by imposing a significant financial burden on a population that simply cannot afford to pay, creating a ‘lose-lose’ outcome.”).

359. Crozier & Garrett, *supra* note 326, at 92 (arguing that criminal fines and fees debt is “typically not reliably collected”, making it a poor source for revenue generation).

disclosure, reporting, or substantive requirements, such as the FDCPA, serve the same goal. Although this author has found no empirical analysis, it is well understood that subjecting a government to tort liability, court procedures, and regulation would have a significant financial cost.³⁶⁰

So far, this Part has given a rough estimate of the financial efficiency of the law of public involuntary debt overall. Recognizing that certain collection tools are more effective at recouping unpaid dollars than other tools, it now looks at the efficiency and effectiveness of specific collection tools permitted to collect public involuntary debt.

Tax scholar Joshua Blank argues that “collateral tax sanctions,” including offsets and passport revocation, result in “significant tax collections.”³⁶¹ Scholars have similarly shown increased child support collections with the use of immediate income withholding and income tax intercepts.³⁶² Other uniquely-government collection tools applicable only to public involuntary debt, however, have been criticized as punitive and ineffective. Scholars and advocates have repeatedly found that driver’s license suspensions and revocations do not lead to increased collections and instead divert money that could be spent elsewhere.³⁶³ Professor Levin argues that debt-based driving restrictions have “negative ramifications for GDP, tax revenue, and employers.”³⁶⁴ He cites a Phoenix, Arizona study, which found that when 7,000 drivers had their licenses reinstated, GDP increased by an estimated \$149.6 million and

360. MICHAEL D. CONTINO & ANDREAS KUERSTEN, CONG. RSCH. SERV., R45732, THE FEDERAL TORT CLAIMS ACT (FTCA): A LEGAL OVERVIEW ii, 34 (2023), https://www.congress.gov/crs_external_products/R/PDF/R45732/R45732.8.pdf; LEGIS. BUDGET & FIN. COMM. OF THE PA. GEN. ASSEMBLY, A REPORT ON THE LIMITATIONS ON LIABILITY UNDER PENNSYLVANIA’S SOVEREIGN AND GOVERNMENTAL IMMUNITY LAWS s-6 (June 2022) <https://www.palbf.gov/Resources/Documents/Reports/720.pdf> (survey of Pennsylvania municipalities found that more than 80 percent of local government entities anticipated a negative effect on services provided to the community if the state eliminated the damages cap and 75 percent said that they would expect to increase taxes or fees). *See also* Beth Colgan, *Graduating Economic Sanctions According to Ability to Pay*, 103 IOWA L. REV. 53, 70 (2017) (arguing that court dockets are often clogged by hearings where courts require people with outstanding debt to appear periodically, as well as hearings triggered when debtors fall behind on payments).

361. Joshua D. Blank, *Collateral Compliance*, 162 U. PA. L. REV. 719, 745-46 (2014).

362. Maria Cancian et al., *Child Support: Responsible Fatherhood and the Quid Pro Quo*, 635 ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI. 140, 149 (2011) (collecting studies). *See also* Rebekah Selekmán & Amy Johnson, *An Examination of the Use and Effectiveness of Child Support Enforcement Tools in Six States*, MATHEMATICA (Aug. 2019), https://aspe.hhs.gov/sites/default/files/private/pdf/262936/Child_Support_Enforcement_Tool_Issue_Brief.pdf. *But see* Thomas Oldham & Bruce M. Smyth, *Child Support Compliance in the USA and Australia: To Persuade or Punish?*, 52 FAM. L. Q. 325, 336 (2018) (arguing that “despite the allocation of substantial resources to the problem, child support compliance in the United States has not changed much over the last twenty years”).

363. Joni Hirsch & Priya Sarathy Jones, *Driver’s License Suspension for Unpaid Fines and Fees: The Movement for Reform*, 54 U. MICH. J. L. REFORM 875, 881 (2021); ONDERSMA, *supra* note 36, at 32 (“The most punitive collection tools do not seem the best tools for debt collection. For example, when a debtor loses their driver’s license, it is hard to imagine how they will be able to pay off debt to the state.”).

364. Levin, *supra* note 319, at 75.

employment and tax revenue both increased.³⁶⁵ Similar critiques can and have been made of debt-based occupational licensing suspensions and revocations.³⁶⁶

2. *Deterrence*

The state may be using the law around public involuntary debt and debt collection to deter nonpayment or deter crime. In the tax context, research has shown that enforcement actions have spillover effects, “suggesting that enforcement actions can shape compliance norms within communities and networks.”³⁶⁷ IRS enforcement actions can act as a “preventative mechanism” to “sustain[] voluntary compliance among historically compliance taxpayers.”³⁶⁸ Similarly, a study of child support sanctions and collections in specific Michigan and Wisconsin counties in the late 1970s found that the combination of proactive threats of jail time and actual jail sentences did correlate with higher child support payments.³⁶⁹ Professor Eric Lopresti argues, however, that there is no empirical support for the notion that more severe penalties will deter nonpayment, and that “[o]verly severe penalties” can undermine marginal deterrence, increase disputes, and encourage decisionmakers to avoid implementation, “which could actually reduce their value as deterrents.”³⁷⁰ At least with respect to driving restrictions, there is no evidence that suspending driver’s licenses for nonpayment of debt is effective as a deterrent to nonpayment.³⁷¹

While a state might be interested in deterring nonpayment, it also might be interested in deterring crime. But studies have found that criminal fines and fees are not a deterrent to crime. In fact, one study found that, of the nearly 900 Alabamans interviewed in 2019, thirty-eight percent “admitted to committing at least one crime to pay off their fines and fees.”³⁷² Another study of juvenile offenders found that restitution fines “evinced a significantly higher likelihood of recidivism.”³⁷³ Professor Abbye Atkinson critiques the costs associated with using government officials and civil servants to collect debt because it undermines their role in impartial public safety.³⁷⁴ Others argue the same with respect to driver’s restrictions, noting that “[l]aw enforcement and court actors waste thousands of hours and millions of dollars that could be devoted to public safety when they are instead citing, stopping, finding, arresting,

365. *Id.*

366. *Debt, Work, and the State*, *supra* note 29.

367. Brett Collins et al., *Indirect Deterrence Effects from IRS Filing and Payment Compliance Programs*, INTERNAL REVENUE SERV., at 2 <https://www.irs.gov/pub/irs-soi/25rpindeterfilingpaycomp.pdf>.

368. *Id.* at 2-3 (focusing only on Automatic Collection System notices, CP59 notices, and field collection visits).

369. Richard Lempert, *Organizing for Deterrence: Lessons from a Study of Child Support*, 16 L. & SOC. REV. 513, 528-29 (1982), <https://doi.org/10.2307/3053471>.

370. Eric Lopresti, *What's Wrong with Strict Liability and Nonmonetary Penalties? The Case for Reasonable Fault-Based Civil Tax Penalties and Procedural Protections*, 72 TAX L. 589, 596 (2019).

371. Crozier & Garrett, *supra* note 326, at 1624.

372. Foster, *supra* note 319, at 23.

373. Alex R. Piquero & Wesley G. Jennings, *Justice System–Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent*, 15 YOUTH VIOLENCE & JUV. JUST. 219 (2017), <https://journals.sagepub.com/doi/full/10.1177/1541204016669213>.

374. *Consumer Bankruptcy, Nondischargeability, and Penal Debt*, *supra* note 42, at 957-58.

and prosecuting people for driving on a suspended license or detaining individuals who pose no risk to public safety.”³⁷⁵ Scholars have shown that jurisdictions heavily reliant on fines, fees, and forfeitures “tend to solve fewer violent crimes.”³⁷⁶

3. *Trust in the Government*

Finally, it is worth considering a state’s interest in maintaining trust in the system overall. Professor Blank explains that individuals pay their taxes at least in part because they perceive everyone else to be paying.³⁷⁷ This is a form of “reciprocity theory” and is predicated on an overall sense of fairness.³⁷⁸ With respect to court fines and fees, there is a similar fairness argument that “individuals who ‘use’ the criminal legal system should bear some of the costs associated with its ‘use.’”³⁷⁹ In Ohio, the state’s “pay-to-stay” program charges inmates “something akin to room and board,” for example, was endorsed as a way to “offset the costs associated with” incarceration and promote “the importance of offender accountability.”³⁸⁰ If a taxpayer, or someone who owes parking debt, or a noncustodial child support obligor does not believe that others are held to the same standards, those individuals may choose not to pay. This kind of cyclical downstream consequence could have calamitous consequences for city and state budgets, for trust in the government, and for social responsibility and cohesion.

Some argue, however, that the current approach to public involuntary debt collection does the opposite—undermines public trust in the system. Researchers have argued that this is the case in the imposition of fines and fees,³⁸¹ in the application of particular collection tools,³⁸² and in the state’s use of child support collection to recoup public benefit outlays. Professor Lopresti explains that overly harsh penalties may be seen as unfair, especially if they infringe on basic liberties.³⁸³ And Professor Blank acknowledges that collateral tax sanctions

375. Hirsch & Jones, *supra* note 363, at 881.

376. Boddupalli et al., *supra* note 292, at 5.

377. Blank, *supra* note 361, at 747-48 (explaining that people pay their income taxes because of “the perception that others are reciprocating one’s tax compliance, a desire to avoid the negative signal of tax noncompliance, and the belief that payment of taxes is a duty of citizenship”).

378. *Id.* at 762. See also Libby Nelson, *The “Fairness” Debate Over Student Loan Forgiveness, Explained*, VOX (Aug. 31, 2022 at 9:00 AM), <https://www.vox.com/policy-and-politics/23322129/student-loan-forgiveness-fair-inflation>; Zach Friedman, *Student Loan Forgiveness Is Completely Unfair To These People*, FORBES (May 31, 2022 at 8:30 AM), <https://www.forbes.com/sites/zackfriedman/2022/05/31/student-loan-forgiveness-is-completely-unfair-to-these-people/?sh=4f74144b1035> (exploring why individuals who had already paid off their student loan debt found Biden’s 2023 student loan forgiveness proposal to be unfair).

379. Wesley Dozie & Daniel Kiel, *Debt to Society: The Role of Fines & Fees Reform in Dismantling the Carceral State*, 54 U. MICH. J.L. REFORM 857, 864 (2021) (highlighting arguments made by state legislatures justifying fines and fees).

380. Katherine Porter, *A “Debt” to Society?: Reassessing the Constitutionality of Pay-to-Stay Programs in Ohio’s Jails and Prisons*, 44 Ohio N. Univ. L. Rev. 415, 417 (2018).

381. Boddupalli, *supra* note 292 (“Revenue-motivated policing and sentencing practices can, in turn, undermine public trust and the perceived legitimacy of the criminal legal system”).

382. Eric Lopresti, *What’s Wrong with Strict Liability and Nonmonetary Penalties? The Case for Reasonable Fault-Based Civil Tax Penalties and Procedural Protections*, 72 TAX L. 589 (2019).

383. Lopresti, *supra* note 382, at 614.

may have negative consequences, including by recognizing that a government's use of particularly punitive sanctions may be seen as evidence of illegitimate brute deterrence undertaken by the government, leading instead to lost faith in the government.³⁸⁴

* * *

This Subsection has only touched the surface of how the state may value the law as it related to public involuntary debt collection and whether that value is borne out in reality. It has acknowledged that the state has a compelling stake in collecting public involuntary debt and that the current law affords it tools to do so. It has also shown, however, that the value to the state should not be overstated. Before accepting the law as it currently stands, policymakers should consider whether the current laws meet compelling state goals and balance that value against the negative repercussions set forth earlier in this Part.

CONCLUSION

Legislation is enacted piecemeal. Common law is developed one dispute at a time. Statutes are written and amended and rescinded across decades and by different decisionmakers. And so it goes. Yet we do not experience law and policy in increments or pieces. Rather, we move through the world affected by the many and disparate laws that attach to our conduct, our relationships, and our worlds.

This Article has identified, explained, and explored the way that varied laws and doctrine come together to create the “law of individual debt.” In so doing, it has offered both scaffolding and mapping to understand, holistically, how the law treats debtors and creditors across two axes: public/private and voluntary/involuntary. It asks and answers the question: why are four-similarly situated debtors, each carrying \$15,000 of debt that they cannot repay, treated so differently under the law?

This is not the first Article to suggest that legislators have not “thoughtfully or systematically” considered debt policy.³⁸⁵ And debt policy is not particularly unique in its complex and layered make-up. Professor Peter Margulies recognizes and navigates the varied doctrine and multiple regulators that arise in law surrounding algorithmic activity.³⁸⁶ Entire areas of scholarship have surfaced around the doctrinal mash-up known as “cimmigration,”³⁸⁷

384. Blank, *supra* note 361, at 769-75.

385. Professor Chrystin Ondersma notes that “policymakers do not thoughtfully and systematically identify and consider what types of debt should be discouraged or even abolished, and what type of debt might be useful.” ONDERSMA, *supra* note 36, at 34.

³⁸⁶ Peter Margulies, *Adjudicating Algorithms: Accountability in Regulation of Surveillance, Privacy, and Discrimination*, 45 CARDOZO L. REV. 1, 4 (2023).

³⁸⁷ Vlasta Jalusic, *Less Than Criminals: Cimmigration "Law" and the Creation of the Dual State*, 81 IUS GENTIUM 69, 71 (2020) (defining “cimmigration” as “the linking of criminal and immigration procedures and the corresponding policies, and creating special border regimes and legal systems for groups of undesirable migrants.”).

in turn leading to scholarship on “adminigration”³⁸⁸ and “criministrative law.”³⁸⁹ Professor Todd Aargaard argues that “environmental law” should be expanded beyond its “canon of statutes” and offers a taxonomy for classifying environmental laws into canon, subcanon of diminished prominence, and noncanonical laws.³⁹⁰ And Professor Melissa Murray calls attention to the under-appreciated relationship between family law and criminal law, explaining that these “strange bedfellows” intersect in the “regulation of marriage, sex, and intimate life.”³⁹¹

Just as those scholars broke down and reimaged complex and layered doctrines, so too has this Article deconstructed the laws that affect individual debtors and rebuilt a scaffolding to understand their totality as the law of individual debt. Armed with the complete picture, scholars and policymakers can consider the extent to which the current system is efficient, effective, and fair. And they can consider if, when, and how to overhaul or tweak individual parts to achieve the optimal balance for debtors, creditors, and the state.

³⁸⁸ Susan Bibler Coutin & Walter J. Nicholls, *Adminigration: City-Level Governance of Immigrant Community Members*, 49 LAW & SOC. INQUIRY 1595, 1596 (2024) (defining “adminigration” to be “the ways that city-level policies and practices engage immigration policymaking by incorporating and/or excluding immigrant residents”).

³⁸⁹ Yael Cohen-Rimer, *Criministrative Law: Data-Collection, Surveillance, and the Individualization Project in U.S. Child Welfare Law*, 44 COLUM. J. GENDER & L. 500, 502 (2024) (arguing that child welfare law is more appropriately called “criministrative” law” because it “operat[es] in a legal sphere that is both administrative and criminal.”).

³⁹⁰ Todd S. Aagaard, *Environmental Law Outside the Canon*, 89 IND. L.J. 1239, 1244 (2014).

³⁹¹ Melissa Murray, *Strange Bedfellows: Criminal Law, Family Law, and the Legal Construction of Intimate Life*, 94 IOWA L. REV. 1253, 1256 (2009).