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Dying to Get Out of Debt: Consumer Insolvency Law and Suicide in Japan

Mark D. West*

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ABSTRACT

This Article explores the complex relation between consumer insolvency law and suicide in Japan, where bankruptcies and suicides have increased dramatically in recent years. The statistical and interview evidence, some of which relates to the creation of a relatively efficient and socially acceptable insolvency mechanism in 2001, suggests that law is at least indirectly relevant to decisions to take one's own life. Law can bring about debt control and stigma mitigation, each of which can lead to lower levels of stress and depression, each of which can lead to lower suicide rates. Still, responses to the law, even in relatively homogeneous Japan, are varied and ambiguous, and seldom if ever is insolvency law the sole cause of suicide. The causal mechanism behind the law's apparent force appears to be a complex calculus of economic and social factors.

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INTRODUCTION

On a cold night in February 2003, Kazuyoshi Saito (not his real name, but the story is as he related it to me) stood on the platform of the Utsunomiya line waiting for the next express train. He knew the schedule precisely, and he also knew that the train did not stop at that station. His intent, on this night as on the two previous occasions that he had come to the station, was to gauge precisely when he should jump in front of the speeding train in order to maximize his chances of death and minimize his chances of merely being injured. Doing so, he reasoned, would be the best way to relieve himself of the \$300,000 in debt that he had incurred over the past decade – a debt that his annual income of \$30,000 was unlikely to wipe out any time soon.

Having confirmed his timing calculations, he stopped by a local convenience store, bought a newspaper and a bottle of whiskey, and returned to his cluttered apartment, the rent for which he had not paid in four months. In the newspaper, he read for the first time stories about a new legal process called “civil rehabilitation.” He had heard of it before, but had not followed the news closely enough to know much about it; his problems were bigger than that. But as he read, he learned of debtors who had chosen the new process as an alternative to bankruptcy. He had never considered himself a candidate for bankruptcy; that would only make his life more miserable, and it was miserable enough as it was. But “civil rehabilitation” sounded more appealing, and he didn’t think that his neighbors and friends, or at least those who still remained, would shun him as they might had he filed for bankruptcy.

The next day, instead of jumping in front of the train as per his original plan, he contacted a lawyer. He soon filed for civil rehabilitation, sought psychological counseling at the urging of his attorney, and gave up thoughts of suicide.

Sadly, many debtors in Japan jump. In 2002, 32,143 Japanese committed suicide – about 88 per day.¹ Of these, 9,530 left suicide notes. Police who investigate the suicides divide the notes by category based on the primary reason for suicide mentioned in the notes. The largest group, 3,682 victims, claimed health problems were the cause. The second largest group, 3,279 victims, or about 9 per day for a country with a population half that of the United States, explicitly blamed economic factors as the primary motivation. If the percentage of those who cite economic factors for their suicide is the same among those victims who do not leave notes, the number of such victims would reach 30 per day – 30 people killing themselves every day over the economy -- and the number of unsuccessful attempts is estimated to be ten times the completions.²

Stories about these debt-suicide victims have appeared with increased frequency. In a 2002 report, the New York Times, noting that “as many as two million Japanese are effectively bankrupt,” finds that statistics are skewed because “every year thousands of people in distress commit suicide, police statistics show, rather than face their debt collectors, friends, and families in shame.”³ The Japanese Economy Minister blames “the system for the high number of debt – caused suicides in Japan, calling it unimaginable in the West, where businesses are allowed to fail yet people make a fresh start on life.”⁴ The Washington Post offers personal portraits of despair involving hanging suicide-pact executives,⁵ and Japanese morning “wide” television

¹ Figures from Keisatsucho Seikatsu Anzenkyoku Chiikuka, Heisei 14nenchu ni okeru Jisatsu no Gaiyo Shiryo [Statistical Outline of 2002 Suicides] (2003), available at <http://www.npa.go.jp/toukei/chiiki2/jisatsu.pdf>.

² Yoshitomo Takahashi, Chukonen Jisatsu [Middle-Aged Suicide] 7 (2003).

³ Ken Belson, Struggling in Debt, Sacrificing Pride, N.Y. Times, Dec. 28, 2002, at B1, B3.

⁴ Yuri Kageyama, In tough times, suicides over debts surge in Japan’s shame culture, Mar. 6, 2003, available on LEXIS.

⁵ See Mary Jordan & Kevin Sullivan, Suicides, Depression Unveil Japan’s Angst, Wash. Post, Oct. 7, 1998, at A1.

shows feature family members of debt-suicide victims telling sad tales with follow-ups from reporters telling the next potential victims, “you don’t have to die!”⁶

This Article examines this complex relation among suicide, debt, and insolvency law in Japan. In so doing, it contributes to at least three areas of literature. First, and most narrowly, this Article is the one of the few detailed discussions available in English of Japanese consumer insolvency⁷, a field that has been rejuvenated with the passage of the new legal regime described herein. Bankruptcy in Japan is difficult for both economic and social reasons, and I use suicide – the most extreme consequence of those difficulties – to explore those underlying institutional problems. Second, this Article brings to the social-science debate on the factors that influence suicide⁷ evidence from two new contexts: Japan and insolvency law. As for Japan, despite growing evidence of debt-suicide linkage, Japanese mass media saturation of the issue following several well-publicized 2003 incidents, and 2003 efforts to control an active underground loan market, little formal research has been conducted. As for insolvency law, one study indicates a positive relation between bankruptcy and long-term suicide rates in Germany,⁸ but in examining bankruptcy solely as a socioeconomic phenomenon, it ignores the role of law both as a source of the problem and as a potential solution. Finally and most broadly, this Article adds to a growing body of work that attempts to gain insight into the obviously complex relation among indebtedness, law, health, and happiness.⁹

⁶ Su-pa- Mo-ningu, ABC-TV, July 9, 2003 broadcast.

⁷ Hwei-Lin Chuang & Wei-Chiao Huang, Economic and Social Correlates of Regional Suicide Rates: A Pooled Cross-Section and Time-Series Analysis, 26:3 *J. Socio-Economics* 277089 (1997); Daniel S. Hamermesh & Neal M. Soss, An Economic Theory of Suicide, 82:1 *J. Pol. Econ.* 83-98 (1974).

⁸ Sigfried Weyerer & Andreas Wiedenmann, Economic Factors and the Rates of Suicide in Germany Between 1881 and 1989, *Psychological Report*, 76, no. 3., part 2, at 1331 (June 1995).

⁹ See, e.g., Teresa A. Sullivan, Elizabeth Warren, & Jay Lawrence Westbrook, *The Fragile Middle Class: Americans in Debt* (2000), Melissa B. Jacoby, Teresa A. Sullivan, & Elizabeth Warren, Rethinking the Debates Over Health Care Financing: Evidence from the Bankruptcy Courts, 76 *N.Y.U. L. Rev.* 375 (2001); Melissa B. Jacoby, Does Indebtedness Influence Health? A Preliminary Inquiry, 30 *J. Law, Medicine & Ethics* 560 (2002).

That broad declaration now asserted, I confess at the outset that there is no grand theory of life and death in the conclusion; no law-times-alpha-equals-joy equation awaits in an appendix. Instead, because I am only trying to set forth the parameters of the puzzle, not solve it, my task is largely descriptive. After setting forth the relevant background information, I simply report the results of statistical tests and interviews.

My data suggest a causal relation between insolvency law and suicide in Japan. The relation is indirect; law is seldom if ever a dominant factor in an individual's decision to commit suicide. But the data, much of which relate to the creation of an efficient and relatively socially acceptable insolvency regime in 2001, show that law plays a role both in controlling debt and in mitigating the social stigma of indebtedness. The exact causal process is more the domain of psychologists than lawyers, but the evidence that I have gathered tentatively suggests that because each of these two factors may lead to stress and depression for some people, and each of *those* is in turn a major cause of suicide, legal change affects suicide rates. Of course, the relation is by no means simple; human responses to debt, debt-related law, and depression are varied and ambiguous, the framework for both debt and suicide decisions has a sociocultural context, and separating issues of social stigma from issues of economic efficiency when examining the effect of legal reform is difficult if not impossible. I merely propose here that for some people, some of the time, in some circumstances, law is a relevant part of the mix.

I attempt to avoid three dangers of trivialization. First, I do not want to present suicide as a cold, mechanical, emotionless process driven solely by legal institutions. Many suicide victims are psychologically ill, many are tragically isolated from society, and the calculus of genetic, historical, environmental, personal, and psychological factors that might lead a person to suicide is imprecise. I do not profess to "understand" suicide in Japan or elsewhere as a formal decision

tree; I am merely investigating one factor cited by the victims themselves as a cause and reporting their responses. Although I cite formal studies from psychology and related fields, I am more interested in relating the perceptions of people who are intimately involved in the decision making process than in formal theory and decision trees.

But a second danger of trivialization arises from the opposite direction; I do not want to trivialize suicide in Japan by presenting it as a romantic, mysterious, purely culturally driven phenomenon. *Of course* culture matters. Elementary notions of sociology suggest that social factors are relevant (Durkheim argued more than a century ago for the importance of societal characteristics in individual suicide decisions¹⁰), and basic law-and-society scholarship teaches that social factors underlie the relevant legal rules (if bankruptcy is difficult, one reason that it might be so is because of the stigma against it). Suicide in Japan is engrained historically as noble and even now seen as honorable by some; one of the more intriguing elements of the debt-suicide inquiry is that Japan appears to attach relative stigma to bankruptcy and suicide in a pattern opposite from that of the United States. Given this background, to pretend that a few institutions can explain it all would be foolish, and, for that matter, uninteresting. In this Article, then, I merely want to make an initial effort toward understanding what factors might be involved for some people in the suicide process, and to examine the evidence regarding whether societal solutions that manifest as law might help reduce the number of tragedies.

Finally, I have attempted to avoid the temptation to derive clear answers from muddy data. Although the evidence suggests that law matters, the linkages among law, debt, suicide, and mental health are obviously not going to be explored fully in these pages. Thus, while some readers may prefer strong normative conclusions, I offer no tips on suicide-prevention-through-

¹⁰ Emile Durkheim, *Suicide* (1897).

law-reform. That exercise would trivialize the complex issues that I discuss, and in any event insolvency law reform is desirable even if the connections to suicide reduction cannot be fully understood.

Part I discusses suicide in the Japanese context, both generally and in the more specific context of debt. Part II analyzes Japanese legal remedies for consumer debt. Part III attempts to determine the relation between the two by exploring the quantitative and interview evidence. Part IV discusses the implications of the relation.

I. SUICIDE

Even casual observers of Japan usually know something, or will claim to know something, about Japanese suicide. Kamikaze pilots are well known, movies like Shogun and The Last Samurai popularized the image of suicidal soldiers and servants, and popular media (recall Belushi's samurai on *Saturday Night Live*) sometimes portray Japan as a country that regards taking one's own life as a decision on par with choosing an appropriate breakfast cereal. This part takes a closer look by examining suicide data, suicide theory, and links to the economy.

A. Data

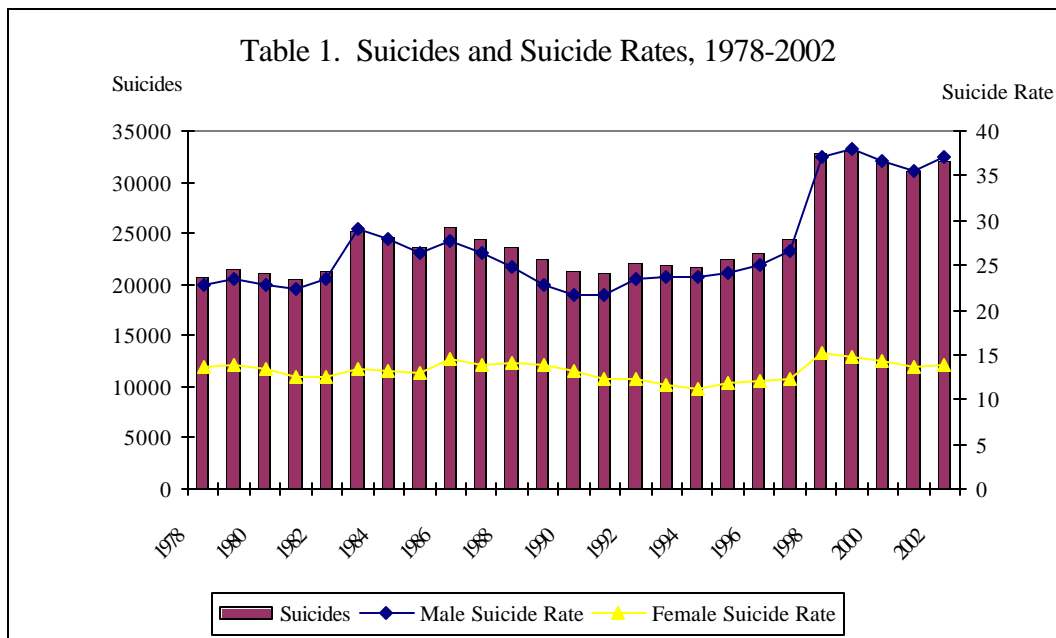
Suicide data are available from two primary sources, the police and the Ministry of Health, Labor, and Welfare. Police statistics are higher. Police gather data on deaths specifically for the purpose of classifying deaths as homicides, suicides, illness-related deaths, or accidents; Ministry of Health data come from death certificates filed by physicians and medical examiners. The Ministry of Health process, as one psychologist explains, is problematic:

A large number of death certificates are filed by attending physicians, who, when they know the family, do everything they can to avoid writing "suicide." If a person

commits suicide by leaping from a tall building, the death certificate might list the cause of death as a head injury, and the number of cases in which suicide by overdose is listed as “accidental poisoning” is large.¹¹

Police data are likewise imperfect; it is difficult to know when an automobile accident is actually a suicide. But they appear to be more reliable than health ministry data.

Table 1 presents police data for the period 1978-2002 on suicide in Japan. As the figure shows, suicides rose slightly in the early 1980s, fell slightly during the late 1980s and early 1990s, and rose again at the end of the 1990s and the beginning of the twenty-first century. Male suicide rates, now in the high 30s (per 100,000), are far higher than female suicide rates for any period.



¹¹ Yoshitomo Takahashi, *Jisatsu no Risku Manejimento [Suicide Risk Management]* 5 (2002).

To place these figures in context, consider suicide rates for the United States. In 2001, 30,022 persons committed suicide, a number roughly equal to the Japanese figures but based on a national population base roughly twice Japan's. The suicide rate in 2001 was 10.8; males were 17.6, females 4.1. The highest rate was among white males, at 19.5, still far lower than Japanese male rates. In contrast to Japanese trends, U.S. rates decreased during the 1990s from 12.4 steadily to 10.7.¹²

Placed in broader comparative context, Japan's male suicide figures are among the highest in the industrialized world, despite the fact that Japanese life expectancy is also among the highest.¹³ Extreme caution is warranted in examining comparative suicide data, as different systems may have different notions of what constitutes suicide. That caveat stated, the Canadian male rate is 19.6, the German 20.2, the French 27.1 (only Finland, at 37.9, equals Japan's 1999 peak). Transition economies are far higher – the 1996 rate in Lithuania was 79.3 – but those countries have different macroeconomic characteristics, and research suggests that those characteristics matter.¹⁴ The data show no regional patterns with respect to Japan; the Chinese rate is 13.4, the Korean 18.8.¹⁵ In short, there appears to be quantitative evidence to support the myth: Japanese figures are quite high.

Japanese suicide rates also demonstrate age-specific patterns. Table 1 shows the ranking of suicide among the leading causes of death for different male age groups as recorded by the Ministry of Health, Labor, and Welfare.

¹² Elizabeth Arias et al., Deaths: Final Data for 2001, National Vital Statistics Reports, Vol. 52, No. 3, at 8, 52 (Sept. 18, 2003), available at http://www.cdc.gov/nchs/data/nvsr/nvsr52/nvsr52_03.pdf.

¹³ Lower life expectancy might be expected to increase the suicide rate. See Elizabeth Brainerd, Economic Reform and Mortality in the Former Soviet Union: A Study of the Suicide Epidemic in the 1990s, 45 *European Econ. Rev.* 995-1006 (2001).

¹⁴ Brainerd, *supra* note 13.

¹⁵ All data from the World Health Organization at http://www5.who.int/mental_health/main.cfm?p=0000000149.

| Age Group | Suicide Rank (as % of all deaths) |
|-----------|-----------------------------------|
| 10-14 | 3 (8.4%) |
| 15-19 | 2 (19%) |
| 20-24 | 2 (33.5%) |
| 25-29 | 1 (37.3%) |
| 30-34 | 1 (33.8%) |
| 35-39 | 1 (29.1%) |
| 40-44 | 2 (21.2%) |
| 45-49 | 2 (16.4%) |
| 50-54 | 2 (12.9%) |
| 55-59 | 3 (9.7%) |
| 60-64 | 4 (4.9%) |

SOURCE: Ministry of Health, Labor, and Welfare, Jinko Dotai Nenpo, 1999, available at http://www1.mhlw.go.jp/toukei-i/toukeihp/11nenpo_8/deth8.html

Japan also maintains data on suicides by age group. Police data show that juvenile (19 and under) suicide, often as a result of school factors like bullying (22.6%) and rarely as a result of economic factors (2.6%), is problematic, but accounts for only two percent of total suicides. Suicides of persons under age 40 have declined or remained constant over the past quarter-century; twentysomethings account for ten percent of total suicide, thirtysomethings for twelve percent. But suicides of 40-to-49-year-olds have increased from 3,641 in 1968 to 4,813 (15%) in 2002, 50-to-59-year-olds have increased from 2,753 to 8,462 (25%), and suicides of persons over sixty years old from 6,024 to 11,119 (35%).¹⁶

B. Explanations

If Japanese suicide rates are peculiarly high, might those rates be high for peculiarly Japanese reasons? Consider Jack Seward's popular work Hara-Kiri: Japanese Ritual Suicide (1968). Seward traces the Japanese method, if not the practice itself, of self-destruction to 285 A.D., with the advent of Buddhism. Buddhism's "fatalistic acceptance of death" combined with Shinto's "simple primitive animism" to form a moral code institutionalized as *bushido*, or the

Way of the Warrior. *Bushido* raised *hari-kiri*, or more formally *seppuku*, as an honorable death sentence that demonstrated and emphasized “resistance, remonstrance, loyalty, and affirmation of the correctness of one’s position.”¹⁷ Seward claims that *Bushido* died at the end of the War. But it may be that the method for demonstrating such qualities continued in some more subtle sense.

Two scholarly studies may be more helpful. Maurice Pinguet, Professor of French Literature at the University of Tokyo, has written a more complete account of Japanese suicide. Like Seward, Pinguet contrasts the Japanese historical warrior ethic and a “tradition of sacrifice” with that of Christianity, which forbade suicide.¹⁸ Unlike Seward, Pinguet suggests that *Bushido* did not die; rather, it continues postwar through such tragic personae as author Yukio Mishima, who dramatically took his life in 1970. Sociologist Mamoru Iga reaches similar conclusions, finding differing “value orientations” between Japanese and Americans. Iga argues that Japanese value orientations – monism, groupism, accomodationsim, and authoritarian familism – produce unrealistically high aspirations. When people in Japan cannot reach their goals, they feel that “there is no way out.” Add to this despair social constraints on “outwardly-directed aggression” and romanticization, and suicide may become a popular solution.¹⁹

Both Pinguet and Iga offer plausible hypotheses, and I am inclined to believe they hold an element of truth, at least in explaining the apparent pervasiveness of suicide in Japanese culture. But their propositions are difficult both to test and to apply. Their focus on the suicides of Japanese writers – Mishima, Kawabata, Arishima, Akutagawa, Dazai --²⁰ as “highly

¹⁶ Keisatsucho Seikatu Anzenkyoku Chiikuka, supra note 1; see also Takahashi, supra note 11, at 4-8.

¹⁷ Jack Seward, *Hara -Kiri: Japanese Ritual Suicide* 12 (1968).

¹⁸ Maurice Pinguet, *Voluntary Death in Japan* 100 (1993).

¹⁹ Mamoru Iga, *The Sword in the Chrysanthemum* 114-86 (1986).

²⁰ Iga, supra note 19, at 69-113; Pinguet, supra note 18, at 243-85.

representative of Japanese culture”²¹ is a bit of a stretch, unless one considers national culture to revolve around the famous, the eccentric, and the long-dead (the youngest was born in 1925; most were born in the 19th Century). Pinguet and Iga’s reliance on cultural categories to explain suicide, and subsequent reliance on suicide to illustrate the categories, are rather unhelpful. Their hypothesis also may explain too much; they aid little in discovering why some people in Japan commit suicide, while the vast majority do not.

Many scholars writing in Japanese, who at least seem less inclined to focus on Japanese differences for an English-language audience, offer what might be called a less romantic view. Psychologist Yoshitomo Takahashi, for instance, the most prolific Japanese authority on suicide, explicitly disputes three hallmarks of stereotypical Japanese suicide: *seppuku* (*hara-kiri*) as a characteristic, multiple suicides as common, and suicide as a means of taking responsibility. First, as for *seppuku*, Takahashi notes the common perception by non-Japanese that Japanese suicide victims are systematically taking the knife to their bowels, then notes that he has never seen such a thing in twenty years of practice.²² (The data support his experience; only about two percent of suicides are done with sharp objects.²³) Second, despite romanticized stories of “*shinju*” joint suicide pacts (murder-suicide included), Takahashi finds that the actual rates of *shinju* as a percentage of suicides is the same in the United States as in Japan.²⁴ Finally, Takahashi strongly disputes the notion that many Japanese use suicide as a method of taking responsibility for a group. Media accounts to the contrary, Takahashi finds that such suicides are

²¹ Iga, *supra* note 19, at 70.

²² Takahashi, *supra* note 2, at 65-66; see also Yoshitomo Takahashi, *Jisatsu no Shinrigaku* [The Psychology of Suicide] 107-8 (1997).

²³ Ministry of Health, Labor, and Welfare, *Jinko Dotai Chosa* [Vital Statistics], available at http://www.dbtk.mhlw.go.jp/toukei/data/010/2001/toukeihyou/0003844/t0065997/mc360_001.html.

²⁴ Takahashi, *supra* note 2, at 80-81.

almost always about failure and shame, not responsibility, and that depression is often a contributing factor.²⁵

Of course, Takahashi's analysis does not preclude a theory of suicide based on cultural differences. Whatever the incidence of *seppuku*, *shinju*, and group-responsibility suicide, in Japan more so than in the United States, the *concepts* are more pervasive, seem more relevant, and may have different social meanings. Moreover, Takahashi finds real differences in suicide-related factors; for instance, he notes that people in Japan have no understanding of the concept of "mid-life crisis." While the term is used by professionals, most non-experts would not be confident of the meaning of the term either in Japanese English (*middoraifu kuraihisu*) or in Japanese (*chunen kiki*).²⁶ The lack of such a concept might affect a person's ability to recognize the need for help and so seek it when needed, which could result in increased suicides. Takahashi's implicit point thus would appear not to be that Japanese suicide does not differ from suicide elsewhere, but that the *ways* that it differs are not neither unique nor monolithic and do not preclude in-depth analysis.

Other Japanese scholars in various disciplines also avoid the stereotypes, and accordingly reach varied conclusions. Attorney Hiroshi Kawamoto has forcefully argued that whatever the background social causes, stressful working conditions in Japan lead to a high number of suicides.²⁷ Other Japanese experts cite psychological factors, economics, age, sex, age, marital status, available suicide methods, and suicide-related costs.²⁸

²⁵ Takahashi, *supra* note 2, at 86-87.

²⁶ Takahashi, *supra* note 2, at 21.

²⁷ Hiroshi Kawamoto, *Karo Jisatsu [Death by Overwork]* (1998). The Supreme Court has ruled that death by overwork gives rise to an actionable tort claim. *Kono v. Dentsu K.K.*, Supreme Court, 1707 Hanji 87 (Mar. 24, 2000).

²⁸ See Karin Amamiya, *Jisatu no Kosuto [The Costs of Suicide]* (2002); Ayanori Okazaki, *Jisatsu no Kuni [Suicide Nation]* (1958).

Suicide, then, is different in Japan and in the United States. The broad cultural theories that highlight that difference are perhaps informative from a comparative perspective, but they do little to answer the key question of why certain people in Japan commit suicide while most people don't. By contrast, studies that focus on differences in the scale of causes rather than differences in the causes themselves address that question precisely and raise issues that warrant additional exploration. Accordingly, following those studies, I now turn to one factor raised by Japanese experts in explaining patterns and trends in Japanese suicide data: in many cases, it's the economy.

C. The Economy

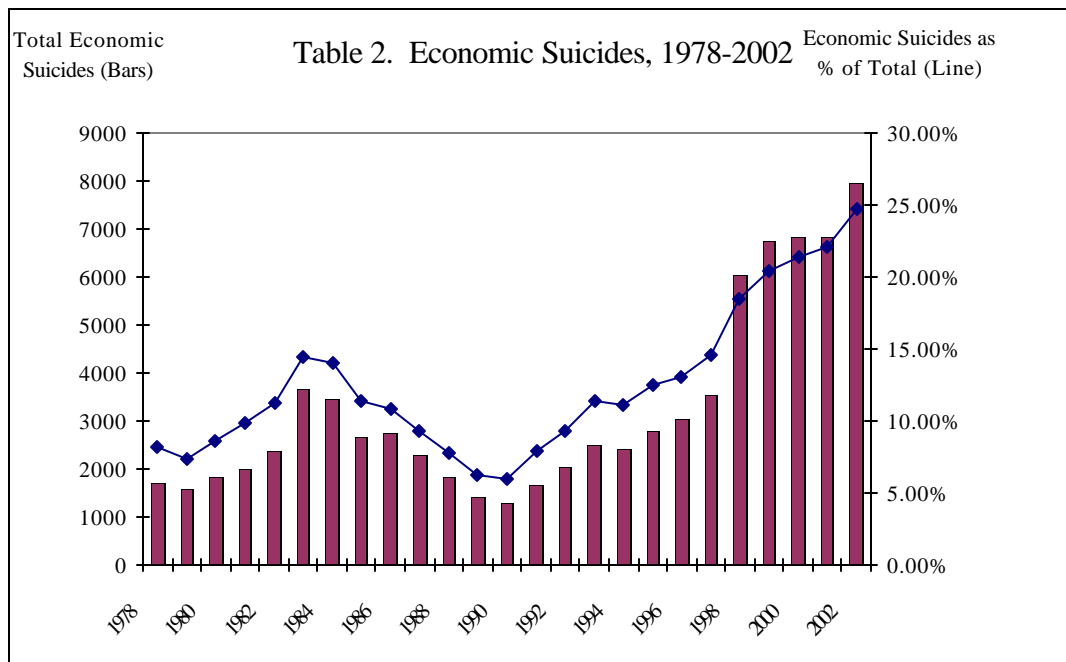
In summer 2003, three Osaka residents – a 61-year-old cleaning company worker, his 69-year-old wife, and her 81-year-old brother – leapt in front of an oncoming train on the Japan Railways Kansai Line to their deaths. The suicide note sent by the wife to a friend explained why. According to the four-page letter, the husband had borrowed 20,000 yen from various sources; the amount to be repaid now totaled 150,000 yen. Debt collectors called the house every night, and when the couple said that they could not pay, the less savory ones threatened to “get it from their neighbors.” “We have decided,” she concluded, “to apologize with our lives.”²⁹

Such stories abound, and, following a media concentration on the issue as a “trend” beginning in 2003, frequent. The accounts also leave little doubt that many people commit suicide over reasons that include financial distress. Studies from Japanese psychology of suicide motivation likewise show that while interpersonal relations are often a primary motive, economic

²⁹ Munen no Tegami [A Regretful Letter], Mainichi Shinbun, June 15, 2003, at 13.

hardship also plays a significant role at a rate of about 10 to 15 percent, roughly equivalent to the numbers cited in the introduction and detailed below.³⁰

Is the relation widespread enough to be seen in the macroeconomy? Consider first the data on motive of suicide victims (Japan is one of the few countries to maintain such data). As I detail later, since 1978, the National Police Agency has classified suicide as either family problem-related, health-related, economic hardship, job stress, male/female relationships, school, alcoholism and mental illness, and “other.”³¹ For reasons that I also detail later, these data are imperfect, but they provide a useful baseline for analysis. Figure 2 shows the total number of economic suicides as well as the number of economic suicides as a percentage of total suicides from 1978 to 2002.



³⁰ Hiroko Suzuki, *Kyumei Kyukyu Senta- ni Okeru Jisatsu Kitosha no Jittai* [An Empirical Analysis of Suicide Attempts at an Emergency Lifesaving Center], in *Jisatsu Kito* [Suicide Pact]146, 149-52 (Teruhiko Higuchi ed. 2002).

³¹ See David Lester & Yukio Saito, *The Reasons for Suicide in Japan*, 38 *Omega* 65, 66, (1998-1999).

As the figure shows, economic suicide has risen dramatically in recent years, both in raw numbers and as a percentage of total suicides. Economic suicide is age-specific; despite recent bleak job forecasts, young people seldom do it. Among note-leavers in 2002, 43% of male economic suicides are committed by persons in his or her fifties, 22% by persons in their 40s, and 20% by persons in their sixties.³² But the data cluster differently by type of employment; the same data show that one-third are self-employed, another one-third are unemployed, and another third are company employees.³³

Compare these data with the data for macroeconomic performance in Figure 3.

³² Keisatsucho Seikatu Anzenkyoku Chiikuka, *supra* note 1.

³³ The upward trend in economic suicide can also be seen in a separate type of data: the number of petitions filed in Family Court to renounce inheritance. Following a death, each heir may, within three months of knowledge of the death, petition the court to renounce the inheritance. Minpo art. 915. (The court may extend the time period. *Id.* Renunciation does not result in a forfeit of life insurance proceeds. *Hino v. Asahi Life Insurance Co.*, Supreme Court, 19 Minshu 1 (Feb. 2, 1965); *Yamada v. Kuraishi*, Supreme Court, 27 Minshu 737 (June 29, 1973).) Should a successor not renounce, he or she is liable for the net debts of the decedent. Minpo art. 896. (Of course, renunciation only relieves successors of legal debts; loan sharks might still demand repayment from successors. In some extreme cases, debtors have taken out life insurance policies and committed suicide in order that their families may be debt-free from loan sharks. *Amamiya*, *supra* note 28, at 47-49.) In 1992, 50,946 such petitions were filed. Saiko Saibansho Jimusokyoku, 2001 Shiho Tokei Nenpo, Kasaihen [Annual Report of Judicial Statistics, Family Law Edition] 4-5 (2002). In the same year, 22,104 suicides (of which 2,062 were economic suicides) were recorded. The number of petitions rose steadily every year through 2001, when the figure reached 109,730 petitions, just as suicides rose to 31,042 (of which 6,845 were said to be economic). Many factors can explain the increase in petitions; it might, for instance, simply be the result of an increased average number of heirs per decedent or increased deaths of net debtors. But another possibility is that the number of decedents, and the number of suicide victims, who have large debts, has increased dramatically over the period. Given that the number of economic suicides rose by 4,783 over the decade, if each such suicide victim had five filing heirs, economic suicides alone could account for about half of the increase in petitions.

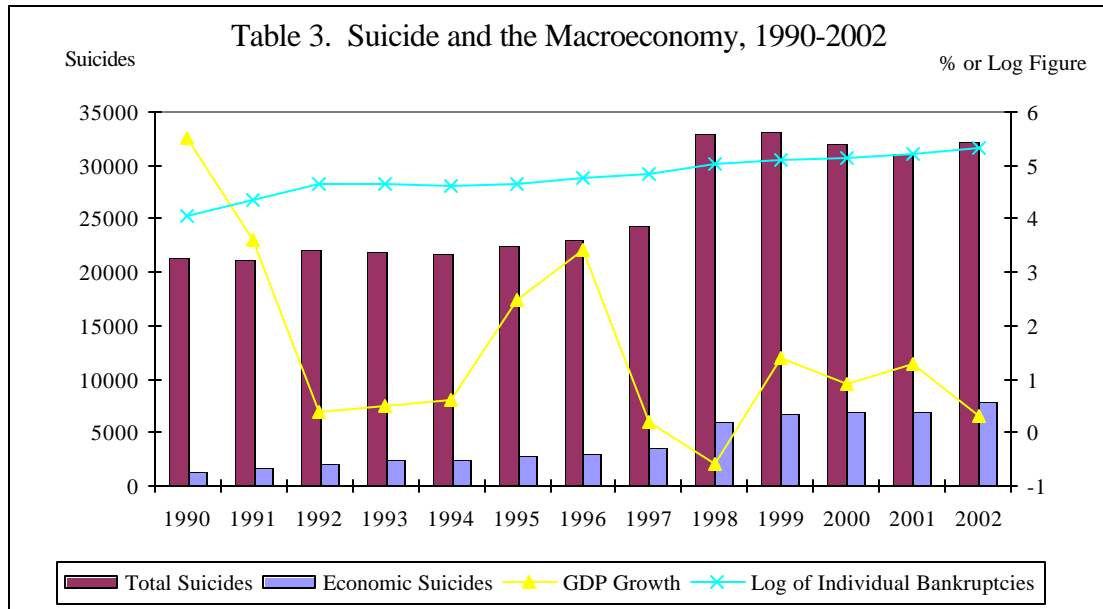


Figure 3 shows the total number of suicides, the number of economic suicides, and two macroeconomic measures: bankruptcy and GDP growth. Little is clear; bankruptcies and suicides have both risen, so the data do not show a clear substitution effect, but other connections are difficult to determine with any precision. In short, while we know that some people kill themselves over financial matters, that relation is not particularly clear in the macrodata, and more detailed inquiry is required to unravel any potential relation among debt, law, and suicide.

PART II. DEBT AND INSOLVENCY

When the Japanese economy was booming in the 1980s, individual debt was not a widespread problem. In 1980, consumer debt, at approximately 1.5 trillion yen, was only 11.73% of household expenses. By 1990, however, as the economic bubble burst, consumer debt rose to 6.3 trillion yen, accounting for 27.37% of household expenses. Debt levels

increased throughout the 1990s, but subsided to 1990 levels by 2000.³⁴ These amounts – and the bankruptcies that accompany them – are lower than in the United States, but many observers believe that they suggest a Japanese debt epidemic nonetheless.

Regardless of macro-comparisons, it is difficult to determine when debt levels are excessive for legal and economic purposes, much less the emotional purposes that might drive debt-ridden persons to suicide. Kenji Utsunomiya, a prominent bankruptcy attorney, estimates that 1.5 million to 2 million people are effectively bankrupt but have not yet filed.³⁵ If so, then many others must be in debt trouble but not “effectively bankrupt.”

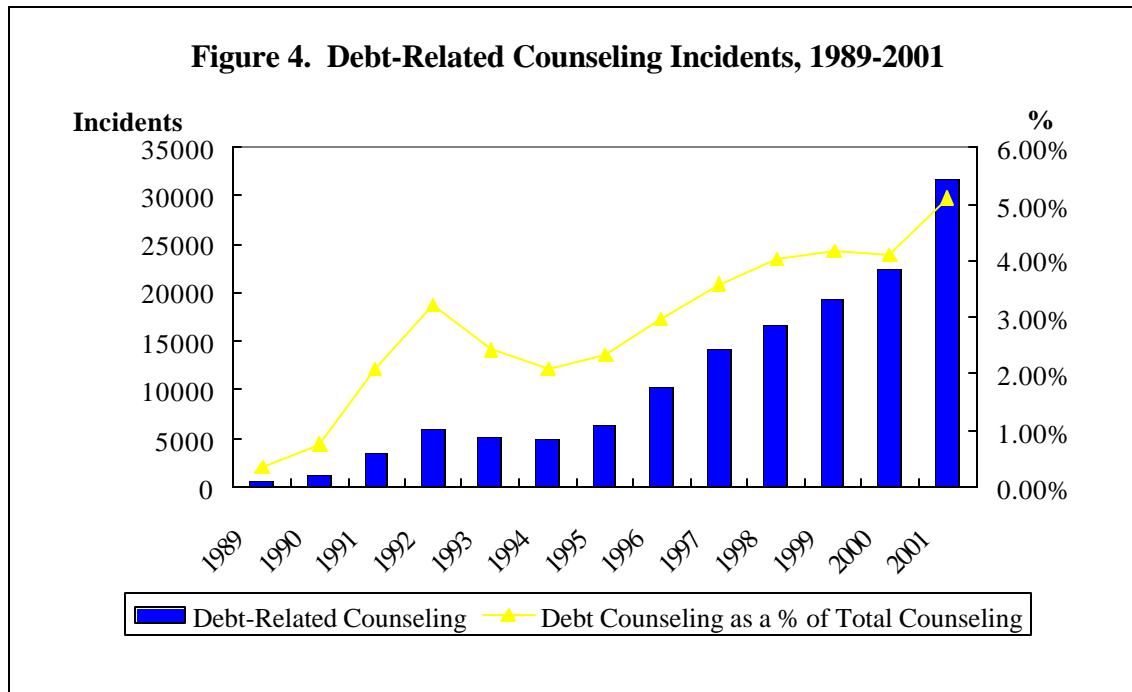
Data collected by the National Consumer Affairs Center offer additional clues. The Center, a special-status corporation organized by the government that counsels about half a million people each year on such issues as tainted beef, fraudulent sales tactics, and cancellation of foreign travel post-9/11, keeps data on incidents of such counseling at its local offices. As Figure 4 shows, the incidence of debt-related counseling has increased steadily over the past decade.³⁶ During the same period, the total number of counseling incidents also rose, from 165,697 in 1989 to 624,762 in 2001.³⁷ But as the figure shows, the number of debt-related counseling incidents also steadily rose as a percentage of all counseling incidents, from less than

³⁴ Ken'ichi Nakamura, *Shohisha Shin'yo Shijo no Kyoso to Koritsusei* [Efficiency and Competition in the Consumer Debt Market] 5 (Dec. 2002), available at http://www.esri.cao.go.jp/jp/archive/e_dis/e_dis030/e_dis022a.pdf.

³⁵ Kenji Utsunomiya, *Shohisha Kin'yu* [Consumer Finance] 3 (2002). The same may be true in the United States; Michelle White estimates that at least 15% of American households could benefit from filing, about ten times Utsunomiya's figure; see Michelle J. White, *Why Don't More Households File for Bankruptcy?*, 14 *J. L. Econ. & Org.* 205 (1998),

³⁶ Kokumin Seikatsu Senta-, “Taju Saimusha Mondai” Chosa Kekka Ni Tsuite [Regarding the “Multiple-Debt Problem” Survey], June 21, 1999, available at http://www.kokusen.go.jp/cgi-bin/byteserver.pl/pdf/n-19990621_1.pdf; updated with data from Kokumin Seikatsu Senta-, *Shohi Seikatsu Sodan ni Miru 2001 no 10dai Komoku* [10 Topics in 2001 Consumer Counseling], Dec. 5, 2001, available at http://www.kokusen.go.jp/pdf/n-20011205_3.pdf and Kokumin Seikatsu Senta-, *Shohi Seikatsu Sodan ni Miru 2002 no 10dai Komoku* [10 Topics in 2002 Consumer Counseling], Dec. 6, 2002, available at http://www.kokusen.go.jp/cgi-bin/byteserver.pl/pdf/n-20021206_2.pdf.

one percent in 1989, to two to three percent in 1997, to more than five percent in 2001. Because the Center advertised debt counseling services equally with other services, it is unlikely that the rise comes merely from increased awareness.



The typical debtor seeking counseling, according to the Center, is 37.2 years old, male (56% are), and employed in a salaried profession.³⁷ A more detailed portrait is created by my interviews (presented later) and in a profile of five “rich debtors,” all “salarymen” in their twenties and thirties in a popular weekly magazine. Four had a debt balance of approximately 30 million yen (\$30,000) each. Of these four, one had a take-home monthly salary of 1.5 million yen (\$15,000), but each of the others had take-home salaries of 290,000, 220,000, and 170,000 yen, none of which left much room for debt repayment after expenses. Their experiences were varied; one borrowed to buy brand-name goods, a second just couldn’t make ends meet, a third

³⁷ Kokumin Seikatsu Senta-, Shohi Seikatsu Nenpo 2002 [Consumer Affairs Yearbook 2002], available at http://www.kokusen.go.jp/pdf/n-20021007_3.pdf.

³⁸ Kokumin Seikatsu Senta-, “Taju Saimusha Mondai” Chosa Kekka Ni Tsuite, supra note 36.

debtor had a gambling problem, and a fourth invested the funds in his business. The fifth was a combination of virtue and vice; half of his debt came from paying for his parents' medical expenses; the other half was incurred when he was "cheated" by a female high-school student ("I thought I was answering a survey to win a brand-name necklace, but before I knew what was happening, I bought it") that he met on a mobile-phone dating network (he used the network so often that his fees reached 370,000 yen (\$3,700) in three months).³⁹

High interest and erratically enforced usury laws mean that many such debtors face interest rates of up to 40 percent from formal lenders. The average consumer lending company charges 33.1% for short-term loans. Historically, loan agreements between private individuals have virtually no interest limits.⁴⁰

Most debtors have multiple loans from multiple sources, which can range from legitimate to very questionable.⁴¹ The Japan Consumer Credit Industry Corporation maintains data on the more legitimate sources; they found consumer credit in 2001 to have reached a record 74 trillion yen, or about \$ 740 billion. Of this amount, about 35 trillion is sales on credit, including 23 trillion yen in credit card sales and 12 trillion in sales contract credit. The remaining 39 trillion yen is consumer finance, of which 14 trillion is loans secured by bank or postal accounts, 10 trillion is cash advances on credit cards and similar transactions, and 4 trillion is bank loans. The 11 trillion yen remainder is loans from consumer finance companies.⁴² As Table 2 shows, consumer finance companies are ubiquitous and have a large client base with mostly unsecured

³⁹ Koshaku Kanemoti Hakusho, Spa!, June 10, 2003, at 50.

⁴⁰ Kokumin Seikatsu Senta-, "Taju Saimusha Mondai" Chosa Kekka Ni Tsuite, supra note 36, at 9; see also Financial Services Agency, Karisugini Iho na Kin'yu Gyosha ni Gochui [Exercise Caution Around Illegal Finance Companies], available at www.fsa.go.jp/notice/noticej/karisugia.html (detailing maximum legal interest rates of 109.5%).

⁴¹ Kokumin Seikatsu Senta-, "Taju Saimusha Mondai" Chosa Kekka Ni Tsuite, supra note 36, at 11.

⁴² Nihon Kurejitto Sangyo Kyokai, Nihon no Shohisha Shin'yo Tokei [Consumer Credit Statistics of Japan] 30 (2003).

loans. Industry reports show that the total number of branches for has tripled in five years with the addition of ATMs.⁴³

| Table 2: Data on Top 5 Consumer Finance Companies | | | | | |
|--|----------------|----------------|----------------|----------------|----------------------|
| | Fujitsu | Acom | Promise | Aiful | Sanyo Shinpan |
| Number of Branches | 1,710 | 1,741 | 1,507 | 1,529 | 958 |
| Number of Employees | 3,433 | 4,321 | 3,844 | 3,477 | 1,085 |
| Annual Advertising Expenses | ¥16 billion | ¥20 billion | ¥21 billion | ¥17 billion | ¥3 billion |
| Loan Balance | ¥1.65 trillion | ¥1.5 trillion | ¥1.23 trillion | ¥1.16 trillion | ¥285 billion |
| Unsecured Loan Balance | ¥1.65 trillion | ¥1.42 trillion | ¥1.22 trillion | ¥921 billion | ¥285 billion |

SOURCE: Kenji Utsunomiya, *Shohisha Kin'yu* 5, 53 (2002).

While most activities of the big five consumer finance companies are legitimate, the industry as a whole, which has about 30,000 registered lenders, has a questionable reputation. Some observers consider some sectors of the consumer finance industry to differ little from organized crime; their designation as *sarakin* (salaryman financing) “conjure[s] up images of loan sharks, gamblers in need of quick cash and burly men with punch perms demanding payments – or else.”⁴⁴ Stories – and subsequent extortion convictions based on those stories – of employees of such *legitimate* firms, often backed up by organized crime, instructing borrowers to sell a kidney or an eyeball to repay debts do little to help their image.⁴⁵

Below legal *sarakin*, and sometimes working in concert with them, is a fascinatingly greasy, well-functioning underground loan market. The terms of loans from these lenders vary, but representative terms include 10-day interest rates of 300 percent and annual rates of 10,000

⁴³ TAPALS Hakusho 2002 3 (2003), available at <http://www.tapals.com/archive/pdf/hakusho-2.pdf>.

⁴⁴ Philip Brasor, Credit companies target the debt-ridden poor, *Japan Times*, May 19, 2002, at 1.

⁴⁵ Kathryn Tolbert, Unwitting Japanese Find Loans a Bad Bargain, *Washington Post*, Nov. 5, 1999, at A29; see also Kenji Murayama, *Sarakin Aku no Manyaru* [Manual of Bad *Sarakin*] (1998). Randy Edwards pointed out to me that in Qing China, a creditor who puts pressure on a debtor that leads the debtor to commit suicide could be punished with 100 strokes of heavy bamboo. See *The Great Qing Code* 282-82 (art. 299)(William C. Jones trans. 1994).

percent.⁴⁶ In addition to true loan sharks, market players include bankruptcy fixers (*seiriya*), introducers (*shokaiya*; brokers who receive a fee of 25 to 50 percent for introducing debtors to new loan sources), cooperating lawyers (*teikei bengoshi*; lawyers who work with fixers and brokers), repo men (*toritateya*), and goods brokers (*kaitoriya*; brokers who give debtors quick cash by purchasing goods – usually electronics and tickets -- with debtors’ credit cards, paying them 30 to 40 percent of the goods’ value, and selling the goods at specialty resale shops).⁴⁷ This activity spawns other sub-industries; brokers gather information from *sarakin* on repeat debtors and sell it to other *sarakin* for further exploitation.⁴⁸

To get a sense of the scope of illegal *sarakin* operations, consider the two relevant types of data maintained by police. First, police record the number of “underground finance incidents” (*yami kin’yu jiken*), defined as incidents involving illegal interest rates and unlicensed lenders. In 2002, police in Japan recorded 222 such “incidents” involving 12,000 victims and a gross damage amount of approximately \$158 million, which works out to about \$13,000 per victim.⁴⁹ Second, in the early 1980s, police maintained specific data on “*sarakin* suicides,” which could include both legal and illegal *sarakin*. In 1984, police recorded 1,164 suicides that they deemed to be related to *sarakin* debt repayment, or about one-third of total economic suicides (as reflected in Figure 2 above). According to their data, 90% of such suicides were male, 56% were company employees, and 67.8% were married. A small percentage, 8.6%, committed suicide simultaneously with another person. Most (89.9%) *sarakin* suicides were of debtors, but a few were spouses (5.1%) or children (2.2%) of debtors. Police somehow also determined that

⁴⁶ See Yami Kin’yu Bokumetsu Kirifudani [Killing the Underground Loan Market], Yomiuri Shinbun, July 18, 2003, at 3.

⁴⁷ See generally Utsunomiya, *supra* note 35, at 34-49.

⁴⁸ Yami Kin’yu Bokumetsu Kirifudani, *supra* note 46.

⁴⁹ Yami Kin’yu Bokumetsu Kirifudani, *supra* note 46.

12.1% of victims were harassed by creditors, 48.2% were not, and 39.7% were unknown.

Sarakin debt collection methods used on eventual victims included personal contact (13.6%), phone calls (29.7%), and mailings (9.2%), and usually happened at the debtor's home (45%).

While this level of detail is interesting, it is speculative, the large number of unknowns is troublesome, and police no longer categorize so strictly.⁵⁰

What legal options are available for debtors with multiple debts from multiple sources? Japanese corporations historically have had a plethora of legal options for dealing with excessive debt, including bankruptcy, litigation, and four kinds of reorganization.⁵¹ For individuals, however, only one feasible legal choice existed before April 2001: bankruptcy.⁵²

Individual bankruptcy in Japan roughly parallels Chapter 7 filings in the United States. At the commencement of the bankruptcy, a trustee (almost always a lawyer) takes control of the debtor's assets to liquidate them for creditors, in much the same way that a U.S. Trustee does.⁵³ The trustee arranges meetings of creditors much like a "section 341 meeting" in the United

⁵⁰ See Kenji Kiyonaga, *Iwayuru Sarari-man Kin'yu Saikensha no Jisatsu no Bunseki* [An Analysis of *Sarakin* Suicides], 27:2 *Kagaku Keisatsu Kenkyujo Hokoku*, Dec. 1986, at 70. Another type of data comes from the National Consumer Affairs Center, which recorded 97,120 counseling incidents related to *sarakin* in 2002, a figure that represents 11.7% of all counseling incidents, and an increase over the previous year's record of 7.3%. See Kokumin Seikatsu Senta-, *Shohi Seikatsu Nenpo 2003* [Consumer Affairs Yearbook 2003], available at http://www.kokusen.go.jp/pdf/n-20031003_3.pdf.

⁵¹ See Curtis J. Milhaupt & Mark D. West, *The Dark Side of Private Ordering: An Institutional and Empirical Analysis of Organized Crime*, 67 *U. Chi. L. Rev.* 41, 53-56 (2000).

⁵² Individuals could choose composition instead of bankruptcy, but historically they have not. See Theodore Eisenberg & Shoichi Tagashira, *Should We Abolish Chapter 11? The Evidence from Japan*, 23 *J. Legal Stud.* 111, 116 & n. 18. One reason why may be that composition does not stay the enforcement by debtors of secured claims. *Id.* at 119-20. The use of other options, including informal compromise and formal conciliation, has increased in recent years. See Kent Anderson & Stacey Steele, *Insolvency*, in *Japan Business Law Guide* ¶¶19-601 to 19-644 (Veronica Taylor ed. 2003)

⁵³ *Hasan ho* [Bankruptcy Act], Law No. 71 of 1922, arts. 6, 142; see also Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America* 26-33 (1989)(describing typical U.S. Chapter 7 case).

States.⁵⁴ Creditors submit proof of claims that are subject to approval of the trustee and of the court.⁵⁵ Ultimately, the judge issues a discharge.⁵⁶

Although the system is facially similar, many differences arise – and most of them point to a more onerous Japanese system. Consider the following four differences. First, unlike the U.S. system in which bankruptcy proceedings commence upon filings, the process does not start in Japan until “two weeks to six months later, when the court finds that the debtor has met the indicia of bankruptcy.”⁵⁷ Second, in the U.S. system, an automatic stay is issued at commencement. But in Japan, as Kent Anderson explains:

debtor’s assets are only protected upon application for and granting of a “preservation measure.” Preservation measures are generally directed at specific assets or proceedings rather than blanket protection Related to the lack of an automatic stay, all secured creditors have the right to proceed against assets outside of the insolvency proceedings. Further, those with rights of setoff and title ownership of property held by the debtor are similarly free to control the relevant assets without specific permission from the court.⁵⁸

Third, unlike the U.S. system in which discharge is automatic (and often done by mail),⁵⁹ the Japanese system requires a judicial order.⁶⁰ Finally, unlike the nondiscriminatory U.S. system, the Japanese bankruptcy regime limits the activities of persons discharged from bankruptcy, prohibiting them from becoming, among other things, a lawyer, a guardian of a minor, a

⁵⁴ Bankruptcy Act arts. 157-69.

⁵⁵ Bankruptcy Act arts. 228-29.

⁵⁶ Bankruptcy Act arts. 87-98.

⁵⁷ Kent Anderson, *The Cross-Border Insolvency Paradigm: A Defense of the Modified Universal Approach Considering the Japanese Experience*, 21 *U. Penn. J. Int’l Econ. L.* 679, 704 (2000).

⁵⁸ Anderson, *supra* note 57, at 705-06.

⁵⁹ Sullivan et al. (1989), *supra* note 7, at 30.

⁶⁰ Bankruptcy Act, art. 366.

custodian, a supervisor of a guardian, a will executor, a trustee, a notary, a patent agent, a certified public accountant, and a corporate director.⁶¹

Since the late 1990s, courts have eased the burdens of Japanese consumer bankruptcy law. For instance, pursuant to a Tokyo District Court rule implemented in April 1998 (and copied in Kawasaki and Yokohama courts), commencement is officially granted in simple cases when a lawyer files the case; the debtor need not show up to court.⁶² Courts have also experimented with collective discharge procedures that greatly expedite cases.⁶³

The biggest boost to consumer insolvency was not judicial: the Japanese legislature in November 2000 (effective April 2001) with great fanfare created a second option for individual debtors: civil rehabilitation.⁶⁴ Civil rehabilitation parallels American Chapter 13 proceedings. The debtor may choose either “small-scale” or “salaried income” proceedings. The Ministry of Justice explains that small-scale is designed for farmers and the self-employed, while “salaried income” is for the “salaryman”; the primary difference is income regularity.⁶⁵ Debtors in either category may file if they have less than 30 million yen (about \$300,000) in unsecured debt.⁶⁶ In

⁶¹ See Anderson, *supra* note 57, at 706 & n. 109.

⁶² Takashi Sonoo, Tokyo Chisai ni Okeru Hasan Jiken no Jiho to Kadai [News and Topics Regarding Tokyo District Court Bankruptcy Cases], 1644 *Kin'yu Homu Jiho* 6, 10 (2002); see also Kent Anderson & Makoto Ito, *Insolvency Law for a New Century: Japan's Revised Framework for Economic Failures*, at 15, in *Law in Japan: A Turning Point* (Daniel Foote ed., forthcoming 2003); Teresa A. Sullivan et al., *The Persistence of Local Legal Culture: Evidence from the Federal Bankruptcy Courts*, 17 *Harv. J. L. & Pub. Pol'y* 801 (1994).

⁶³ *Id.*

⁶⁴ Civil rehabilitation technically became an option for individuals with the passage of *Minji Saisei Ho* [Civil Rehabilitation Act], Law No. 226 of 1999, effective April 2000, as that law makes eligible all persons, both natural and artificial. Few individuals used the provisions. See Kent Anderson, *Small Business Reorganizations: An Examination of Japan's Civil Rehabilitation Act Considering U.S. Policy Implications and Foreign Creditors' Practical Interests*, 75 *Am. Bankr. L.J.* 355, 366 & n. 60 (2001). It was not until the individual framework was set up by an amendment to that law, *Minji Saisei Ho Nado wo Ichibu wo Kaisei suru Horitsu*, Law no. 225 of 2000, that individual civil rehabilitation became truly feasible, as the amendment provided for home mortgage exampleions, summary proceedings

⁶⁵ See Ministry of Justice, *Dai 150kai ni oite Seiritsu shita "Minji Saisei ho nado no ichibu wo Kaisei suru Horitsu" ni Tsuite* [Regarding the Civil Rehabilitation Law Passed in the 150th Diet Session], <http://www.moj.go.jp/HOUAN/houan08.html>

⁶⁶ Civil Rehabilitation Act, art. 221.

principle, the debtor continues to control her assets,⁶⁷ subject to an affirmative duty to act fairly and faithfully.⁶⁸ The court may appoint a supervisor, and no formal judicial proceeding is required.⁶⁹

Civil rehabilitation allows a debtor to negotiate a rehabilitation plan with creditors. In general, the plan must provide for repayment in three years to unsecured creditors of the larger of (a) a percentage of the debt, usually one-fifth, or (b) an amount equal to two years' disposable income (for salaried income proceedings).⁷⁰ In most cases, home mortgages are excluded from the total amount of allowable debt, are extended for up to ten years, and are not subject to creditor vote.⁷¹ Creditors approve the plan with a majority vote (summary approval procedures are often available with creditors' consent). The court confirms the rehabilitation plan, it is executed, and the remaining debt is discharged.⁷²

Japanese Supreme Court survey data of 30 court districts at the end of one year of the statute's operation illuminate individual civil rehabilitation patterns. Contrary to initial estimates that farmers would be the most likely users of the law, over seventy percent of filings were "salaried income."⁷³ Nearly half of filers had income of 2 million to 4 million yen (\$20,000 to \$40,000). Less than one percent exceeded 10 million yen, fewer than 3.5 percent had income of less than 1 million yen, and average income was 3.6 million yen,⁷⁴ putting most filers squarely in

⁶⁷ Civil Rehabilitation Act, art. 38(1).

⁶⁸ Civil Rehabilitation Act, art. 38(2).

⁶⁹ Civil Rehabilitation Act, art. 54.

⁷⁰ Civil Rehabilitation Act, arts. 221-245.

⁷¹ Civil Rehabilitation Act, arts. 196-206.

⁷² Civil Rehabilitation Act, arts. 221-245.

⁷³ Takeshi Hatano & Hideaki Iwanami, *Kojin Saisei Jiken no Gaikyo* [Outline of Individual Rehabilitations], 741 NBL 17, 20 (2002).

⁷⁴ Hatano & Iwanami, *supra* note 73, at 20.

the Japanese middle class.⁷⁵ Average debt was 8.46 million yen, and more than half of filers had debts of 3 million to 9 million;⁷⁶ the average number of creditors was 11, and more than two-thirds of filers had between 5 and 15.⁷⁷ Average time from filing to execution was 152 days, with a minimum in 583 surveyed cases of 68 days and a maximum of 289 days.⁷⁸

In general, bankruptcy in Japan, like U.S. Chapter 17 gives a fresh (mostly) start to people willing to make substantial sacrifices by eliminating some debts, while civil rehabilitation, like U.S. Chapter 13, offers an opportunity for people to pay their debts. But “fresh starts” aside, the actual workings of the bankruptcy and civil rehabilitation systems do not differ dramatically; length and costs of proceedings are roughly the same. Nor do future lenders differentiate between former bankruptcy filers and former civil rehabilitation filers; deadbeats are deadbeats. Instead, the primary difference lies in its *perceived* difference. Again Kent Anderson, discussing the corporate context, is instructive:

[W]ith the [Civil Rehabilitation Act’s] passage there was a renewed interest in and commitment to proactively reforming, merging, and liquidating troubled businesses. This enthusiasm was captured by the courts which have promised to expedite cases, debtors who have initiated more reorganizations than ever before, creditors who have promised to be more active and cooperative, academics who have sung the praises of the act and its intended purpose, the bureaucrats who have promoted use of the [Act], and even the media which has publicized it in, among other ways, a prime-time television special on its use. In short, the enactment of the [Act] was a symbolic gesture to a more expedient, user-friendly, and affirmative reorganization scheme.⁷⁹

As the bankruptcy system is liberalized through reforms scheduled to be enforced in 2004, substantive differences between the two systems may decrease further.

⁷⁵ As is true in the United States. See Teresa A. Sullivan, Elizabeth Warren, & Jay Lawrence Westbrook, *The Fragile Middle Class: Americans in Debt* (2000).

⁷⁶ Hatano & Iwanami, *supra* note 73, at 20.

⁷⁷ Hatano & Iwanami, *supra* note 73, at 22.

⁷⁸ Hatano & Iwanami, *supra* note 73, at 27.

⁷⁹ Anderson, *supra* note 64, at 363.

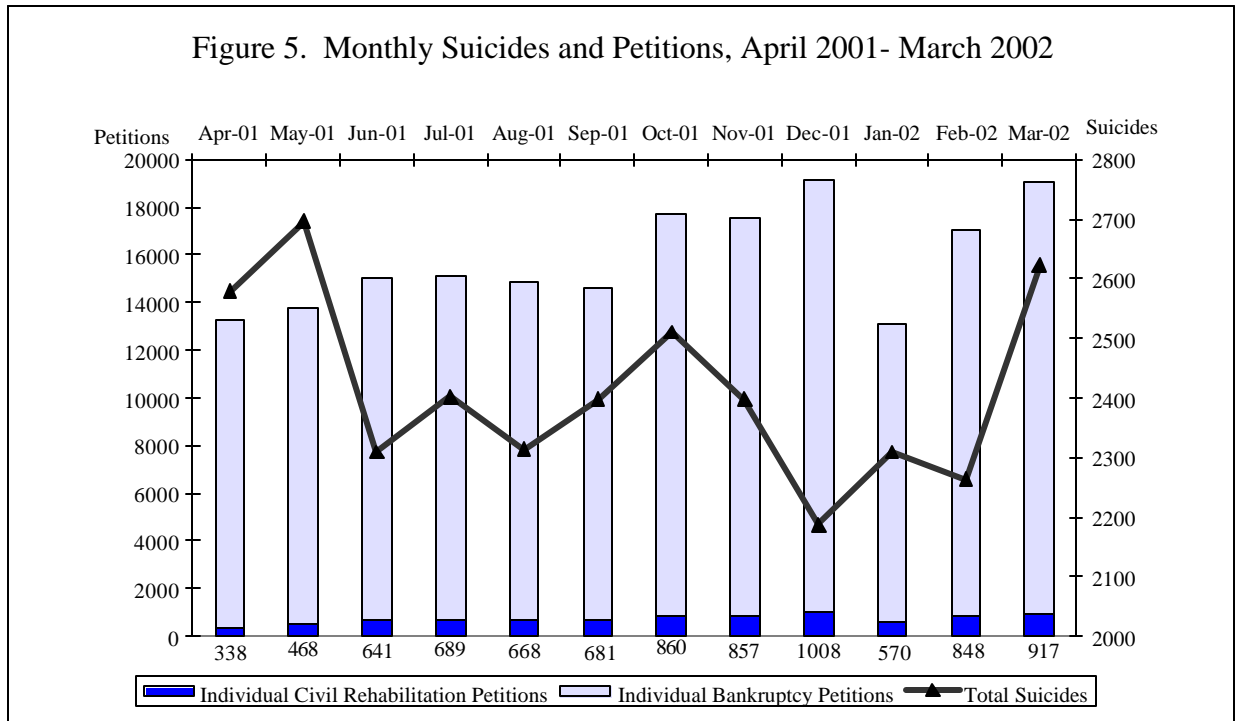
In the United States, Chapter 13 is considered “less stigmatizing” than Chapter 7,⁸⁰ and, as orchestrated perceptions have taken root, the same appears to be true in Japan. As one company employee told a Japan Economic Newswire reporter, “I thought of (filing papers with the court) for personal bankruptcy, but I could not do that because my family was concerned about keeping up appearances. I opted for the ‘individual version’ of the civil rehabilitation process, questioning myself about the morality of paying back the money I borrowed.”⁸¹ I address the issues of stigma and ease of filing in more detail in Part IV.

In Part I, I charted macroeconomic indicators and individual bankruptcy and found an equivocal relation. Now that the outlines of consumer insolvency options have been sketched, we can examine another potential relation: civil rehabilitation petitions and suicide. Figure 5 shows the monthly data for the first year of the civil rehabilitation scheme’s existence and compares it with bankruptcy and suicide data.⁸²

⁸⁰ Sullivan et al. (1989), *supra* note 7, at 34.

⁸¹ New law makes declaring personal bankruptcy easier, Japan Economic Newswire, July 7, 2002, available on LEXIS.

⁸² Looking at the first year of data requires caution, as special circumstances that may have led to the law’s enactment are difficult to quantify. Monthly data require additional caution; filings may increase at the end of the year for tax-related reasons, and studies in Japan have shown an increase in suicides in the spring (and for that matter, on average, on Fridays and between six p.m. and midnight). Ayanori Okazaki, *Jisatsu no Kuni* 51-58 (1958), *supra* note 28.



Both types of petition filings have increased in recent years; individual bankruptcy from 160,741 in 2001 to 214,996 in 2002; individual civil rehabilitation from 6,210 to 13,498.⁸³ As the figure shows, rehabilitation petitions are roughly correlated with individual bankruptcy petitions, suggesting a bifurcated market and not a substitution effect. While this finding might be merely an early year effect, as norms of filing have not yet settled, it is potentially important. One possible interpretation is that potential petitioners are not choosing between civil rehabilitation and bankruptcy, but between civil rehabilitation and some other option, perhaps not filing at all, or perhaps suicide. But once again, forming firm conclusions, especially on the relation between suicide and petitions, is difficult.

⁸³ Takeshi Hatano & Noriaki Kitazawa, *Kinnen no Tosan Jiken Moshitate no Gaikyo* [Outline of Recent Bankruptcy Petitions], 760 NBL 32, 33-34 (2003).

PART III. UNRAVELING THE RELATION

In this Part, I attempt to unpack the relation between insolvency law and suicide. I first attempt to do so at a macro-level, by examining the results of regression analysis. I then turn to the micro-level, looking primarily at data gathered from interviews. The two approaches produce complementary results.

A. *Quantitative Data*

I construct a multiple regression model to estimate the effects of bankruptcy and related laws on suicide rates. Two caveats are in order. First, this is not a study of how individuals make suicide decisions; it is an examination of average characteristics. Second, because I recognize that the complexity of the decision to take one's own life encompasses factors for which statistics and economic calculations cannot possibly account, I make no grand claims about the data based solely on these regressions. Still, if the regressions suggest some correlation that does not conflict with other available evidence, I am inclined to regard them as useful and perhaps important. They also raise some interesting lines of inquiry for field research (which can help determine whether any observed correlations might be spurious), and for that reason I present them first.

A previous study of time-series data for the period 1953 to 1982 found that the overall suicide rate was correlated to some economic factors (the unemployment rate and the female labor force participation rate) but not others (annual change in GDP or divorce).⁸⁴ In part because of the inherent problems of time-series analysis, in part because of the different

⁸⁴ David Lester, Motohashi Yutaka, & Yang Bijou, The impact of the economy on suicide and homicide rates in Japan and the United States, 38 Int'l J. of Social Psychiatry 314 (1992).

questions that I am pursuing, and in part because I want to examine differences in a more limited period, I employed a different methodological approach.

1. *Variables.* I hand-collected data from each of Japan's 47 prefectures. For reasons that I discuss below, the primary dependent variable is the annual suicide rate,⁸⁵ which I subdivided into male and female suicides. As discussed in Part I, male and female suicide rates differ dramatically. For economic suicides, the discrepancy is quite stark. In 2002, of the suicide victims who left notes, forty-two percent of the men blamed economic problems, while only twelve percent of the women did. Of the note-leaving victims who blamed the economy, only eight percent were female.⁸⁶

The independent variables, which largely follow other established studies of suicide, attempt to control for various other potentially relevant social and economic phenomena and are as follows:

Law. I include measures of the number of bankruptcies and civil rehabilitation petitions filed in district court. The correlations are difficult to predict. Both might be positively correlated with suicide, as each measures social distress to some degree. But both might also be negatively correlated, as some accounts suggest that suicide in fact substitutes for formal legal actions. Or the two measures might differ, as less stigma may be attached to rehabilitation than to bankruptcy, which could mean a negative correlation for rehabilitation and an uncertain result for bankruptcy.

Balance Sheet. I control here for income, savings, and liabilities. Income is a well-studied variable in suicide studies. Results are mixed in part because of methodological issues

⁸⁵ From Ministry of Health, Labor and Welfare, Jinko Dotai Chosa [Vital Statistics], at http://www.dbtk.mhlw.go.jp/toukei/data/010/2001/toukeihyou/0003840/t0065823/mc190_001.html.

⁸⁶ Keisatsucho Seikatsu Anzenkyoku Chiikuka, *supra* note 1.

that are beyond the scope of this Article,⁸⁷ but generally studies find suicide to be lower for higher-income groups.⁸⁸ I also control for both savings and liabilities, but am unsure of the outcome, as each is dependent on the other (and for that reason I separately ran regressions making a ratio variable of the two, with no significantly differing results), and the effect of one in isolation is ambiguous, as high liabilities could indicate unrepayable debt or leveraged Ferraris, each of which might have a different effect on suicide. In any event, controlling for debt levels is, among other things, an admittedly imperfect attempt to control for the number of persons in a prefecture under financial strain.

Social Factors. Finally, I control for divorce, unemployment, and mental health care.⁸⁹ The divorce rate has often been used in quantitative suicide studies. A significantly positive correlation is often observed, perhaps because divorce is a “primary source of individual trauma that might precipitate suicidal behavior.”⁹⁰ Still, the direction of correlation is not necessarily a foregone conclusion in Japan, where social and economic forces are said to trap women in bad marriages with some frequency. Studies that have shown unemployment to be negatively correlated to mortality (perhaps because smokers and obese persons modify their lifestyles) find

⁸⁷ See e.g., Mitch Kuncz & April L. Anderson, *The Impact of Socioeconomic Factors on State Suicide Rates: A Methodological Note*, 39:1 *Urban Studies* 155-62 (2002); Julian L. Simon, *The Effect of Income on the Suicide Rates: A Paradox Resolved*, 74:3 *Am. J. Soc.* 302-03 (1968).

⁸⁸ Hwei-Lin Chuang & Wei-Chiao Huang, *Economic and Social Correlates of Regional Suicide Rates: A Pooled Cross-Section and Time-Series Analysis*, 26:3 *J. Socio-Economics* 277089 (1997); Daniel S. Hammermesh & Neal M. Soss, *An Economic Theory of Suicide*, 82:1 *J. Pol. Econ.* 83-98 (1974). In Japan, consumer spending tracks income, not asset prices. See Richard Katz, *Japanese Phoenix: The Long Road to Economic Revival* 60 (2003).

⁸⁹ Of course, I do not assume to have included all relevant social factors. A recent study, for instance, shows reduced suicide rates in Kobe following the 1995 earthquake, see Toshiki Shiori et al., *The Kobe Earthquake and Reduced Suicide Rate in Japanese Males*, 56(2) *Archives of Gen. Psychiatry* 282 (Mar. 1999). One possible explanation offered by the authors is that in post-earthquake Kobe, fewer high buildings from which to jump existed.

⁹⁰ See e.g., Bijou Yang, *The Economy and Suicide: A Time-Series Study of the U.S.A.*, 51:1 *Am J. Econ. & Soc.* 87-99, 89 (1992); see generally Bruno S. Frey & Alois Stutzer, *Happiness and Economics: How the Economy and Institutions Affect Well-Being* 57-58, 62-65 (2002)(marital status and happiness in Switzerland and elsewhere).

nonetheless that unemployment is positively correlated to suicide,⁹¹ and I expect to find a similar correlation.

Mental health care is widely available in Japan, but it generally takes place in mental institutions, which are largely devoted to for elderly patients (many with Alzheimer's), people with obvious brain disorders, and people who have already attempted suicide.⁹² While the number of outpatients has increased over the past four decades (and the number of admitted patients has decreased), outpatient care is still not widely practiced or sought out by potential suicide victims or their loved ones.⁹³ Most suicide counseling in the professional psychology sector, if it occurs at all, occurs on an outpatient basis, so I use the number of mental health outpatients as an independent variable.

Still, readers are cautioned not to compare this number directly to U.S. numbers. Mental health care in Japan comes with significant stigmas attached, treatment for depression is rare, antidepressant drugs are not widely accessible,⁹⁴ and the process by which "Japanese psychiatrists in private practice see patients for five to 10 minutes for just medication management after the patients wait for one to two hours" is said to typify the "mechanical non-human communication between Japanese mental health professionals and their patients."⁹⁵ The situation appears to be changing gradually; popular books on depression abound, and television commercials ("My doctor said, 'it's depression. You must have been in a lot of pain'") that

⁹¹ Christopher J. Ruhm, *Are Recessions Good For Your Health?*, 115:2 Q. J. Econ. 617-650, 633 (2000)

⁹² Gohei Yagi & Akira Tanabe, *Nihon Seishinsho Chiryō Shi* [History of Japanese Mental Health Care] (2002)

⁹³ Yagi & Tanabe, *supra* note 92, at 288-310.

⁹⁴ Peter Landers, *Drug Companies Push Japan To Change View of Depression*, Wall St. J., Oct. 9, 2002, at A1. As of 2003, Zoloft and Prozac were still unavailable in Japan except through an exception to the drug laws which allows importation of prescription drugs from outside of Japan for personal use. The Japanese drug luvox, a proxac-class drug, became available in 1993, see *id.*, but the drugs of choice are fluvoxamine and milnacipran. Takahashi, Risk, *supra* note 11, at 70-74.

⁹⁵ Kari Huus, *Japan's Chilling Internet Suicide Pacts*, available at <http://www.msnbc.com/news/922190.asp>.

appear to be public service announcements but are sponsored by pharmaceutical companies inform viewers that depression is a treatable malady. But mental health nonetheless continues to have a different contextual nuance in Japan.

Table 3: CORRELATES OF SUICIDE IN JAPAN, 2001-2002

Bankruptcy is the total number of individual bankruptcies filed in district court per 1,000 persons. *Civil Rehabilitation* is the total number of individual civil rehabilitation petitions filed in district court per 1,000 persons. *Divorce* is the divorce rate. *Income* is average disposable income per worker's household. *Liabilities* is average liabilities per household. *Mental Health Outpatients* is the total number of outpatients in mental hospitals per 1,000 persons. *Savings* is average savings per household. *Unemployment* is the employment rate.

| <i>Explanatory Variables</i> | <i>Total Suicide Rates</i> | | <i>Female Suicide Rates</i> | | <i>Male Suicide Rates</i> | |
|------------------------------|---------------------------------|---------------|---------------------------------|---------------|---------------------------------|---------------|
| | <i>Standardized Coefficient</i> | <i>t-stat</i> | <i>Standardized Coefficient</i> | <i>t-stat</i> | <i>Standardized Coefficient</i> | <i>t-stat</i> |
| Bankruptcy | .263 | 1.438 | .202 | .950 | .260 | 1.542 |
| Civil Rehabilitation | -.214 | -1.567 | .078 | .496 | -.346 | -2.756*** |
| Divorce | -.638 | -3.134*** | -.637 | -2.697*** | -.527 | -2.813*** |
| Income | -.010 | -.074 | .040 | .241 | -.044 | -.336 |
| Liabilities | -.311 | -1.701* | -.261 | -1.229 | -.269 | -1.599 |
| Mental Health Outpatients | .255 | 1.522 | -.047 | -.244 | .394 | 2.560** |
| Savings | -.055 | -.443 | -.046 | -.316 | -.056 | -.488 |
| Unemployment | .543 | 2.976*** | .359 | 1.695* | .575 | 3.425*** |
| Intercept | | 3.808*** | | 2.806*** | | 3.773*** |
| Adjusted R ² | .291 | | .046 | | .400 | |
| Observations | 47 | | 47 | | 47 | |

*, **, and *** indicate significance at the 90 per cent, 95 per cent, and 99 per cent levels, respectively.

SOURCES: *Bankruptcy* is 2001 from Shiho Tokei Geppo, available at www.courts.go.jp. *Civil Rehabilitation* is fiscal 2001 (April 2001 to March 2002) from Takeshi Hatano & Hideaki Iwanami, *Kokin Saisei Jiken no Gaikyo*, 741 NBL 17, 18-19 (2002). *Divorce* is 2001 from Koseisho ed., *Jinko Dotai Tokei*. *Income* is 2000 from Somucho Tokeikyoku, *Kakei Chosa Nenpo*. *Liabilities* is 1999 from Somusho Tokeikyoku, *Shakai Seikatsu Kihon Chosa Hokoku*, available in Somusho Tokeikyoku, *Shakai Seikatsu Tokei Shihyo 209* (2002). *Mental Health Outpatients* is 1999 from Kosei Rodosho Daijin Kanbo Sokei Johobu, *Iryu Shisetsu Chosa/Byoin Hokoku*, available in Somusho Tokeikyoku, *Shakai Seikatsu Tokei Shihyo 383* (2002). *Savings* is 1999 from Somusho Tokeikyoku, *Shakai Seikatsu Kihon Chosa Hokoku*, available in Somusho Tokeikyoku, *Shakai Seikatsu Tokei Shihyo 209* (2002). *Unemployment* is 2001 from Ministry of Health, Labor and Welfare, available at <http://www.dbtk.mhlw.go.jp/toukei/data> and at Kosei Rodosho, *Rodo Keizai Hakusho* at reference page 29 (2002).

2. *Results.* The results of the regressions are in Table 3, and may be interpreted as follows.⁹⁶ For total suicide rates, the only significant relations were a negative correlation to divorce and a positive correlation to unemployment. The latter was predicted, but I was unsure about the former, and the relation merits further study in the sex-specific panels. Liabilities were negative and marginally significant.

⁹⁶ Regressions are ordinary least squares. I also experimented with, but do not report, time-series analysis and lagged variables as well as two-stage least squares, with results that differed little from the above.

Female suicide rates exhibited only one significant relation; a negative relation to divorce. This finding contrasts with findings in the United States for all adults, in the former Soviet Union for males, and in one specification of the time-series analysis of Japan, each of which found significantly positive correlations,⁹⁷ but correlates to a previous finding of a significantly negative correlation in Japan for females.⁹⁸ Multiple interpretations are possible, but the strong correlation may indicate many unhappy marriages in which spouses feel trapped (and thus divorce, rather than causing stress, relieves it).⁹⁹ More broadly, the correlation might suggest that prefectures in which the stigma against divorce is strong have less stigma against suicide; prefectural variation might result from differing demographics, norms, or histories. Unemployment was marginally significant, and perhaps the correlation was merely marginal because women's non-market work is valued more highly than men's in Japan.

Male suicide rates were significantly correlated to four variables. First, civil rehabilitation was negatively correlated, at least tentatively suggesting that the new law saves lives -- perhaps by providing an alternative to bankruptcy. Second, divorce was negatively correlated, perhaps for reasons discussed above. Third, mental health outpatients was positively correlated. Finally, I found a highly significant positive relation to unemployment.

⁹⁷ Brainerd, *supra* note 13; David M. Cutler, Edward Glaeser, & Karen Norberg, Explaining the Rise in Youth Suicide, NBER Working Paper w7713 (2000), available at <http://papers.nber.org/papers/W7713>; David Lester & Yukio Saito, Predicting the Time-Series Suicide Rate in Japan by Motive: A Brief Note, 45 *Omega* 149, 151 (2002). The Japanese study divided suicide into three categorical motives: relationships, finances, and health. The relationship and health categories of suicide were negatively and significantly correlated to divorce, for which the authors found "no immediately apparent rationale." The financial specification was positively and negatively correlated to divorce. *Id.*

⁹⁸ Lester, Motohashi, & Yang, *supra* note 84, at 315-317. Lester, Motohashi, and Yang posit that "divorce rates may have a different social meaning as a social indicator in Japan than in the USA." *Id.* at 317.

⁹⁹ Japanese divorce law provides for easy consensual divorce, but gaining consent of a reluctant spouse may be difficult and costly. Courts historically avoid divorce when one party does not consent. See Taimie L. Bryant, Marital Dissolution in Japan: Legal Obstacles and Their Impact, 17 *Law in Japan* 73 (1984).

Interestingly, in no specification was a significant correlation to bankruptcy observed. While that finding is ambiguous, it does suggest at some level that the substitution relation between bankruptcy and suicide may be exaggerated, and that suicide may be more dependent on other social and economic factors.

Finally, I also ran regressions using 1997 variables to examine the relations before the passage of the civil rehabilitation law, and found similar results. In those regressions, the direction of correlation was the same as the 2001 regressions for income, liabilities, and savings. Bankruptcy was never statistically significant, mental health was positive but significant only for males, and unemployment was positively correlated but only marginally significant.

3. *Two Alternative Measures.* I used the annual suicide rate above rather than the economic suicide rate for a simple reason: I do not trust police data categorization in a system in which police, who usually have no formal psychological training are *required* to choose one motive, even if several motives exist.

As other scholars have noted, there are no studies of the reliability of the categorization,¹⁰⁰ so I conducted my own investigation. I reviewed suicide notes in two locations; one urban, one rural. In the urban location, I was allowed to review sixty-two suicide notes in one prefecture. The notes that I read were gloomy as I expected, and, most relevant for judging the reliability of the data, tended to contain multiple explanations.¹⁰¹ I categorized the notes by motive as police do. But when I checked my categorizations against that of the police administrator in charge of categorizing the letters, I found that we differed on more than one-third of the cases. I detected no particular police bias in favor of one explanation over another.

¹⁰⁰ Lester & Saito, *supra* note 97, at 150.

¹⁰¹ Some of the best published examples of letters can be found in Kenshiro Ohara, *Isho no Kenkyu* [A Study of Suicide Notes] (1963). Though the letters are 40 years old, and Ohara includes few economic hardship examples, those letters are quite similar in tone to those that I reviewed.

The administrator made principled (but to me, unconvincing) arguments for his categorization, and of course our disagreement does not mean that I am correct. But perhaps because neither of us truly had expertise in interpretation, we were unable reach a satisfactory resolution.

I then examined twenty-one letters at a rural location in Kyushu. At this location, in addition to finding categorization to differ from that explained to me in the urban location, I detected what I believe to be a systemic bias: in cases of ambiguity, police tended to choose explanations that did not shame the decedent or the family. Recall the classifications: family problem-related, health-related, economic hardship, job stress, male/female relationships, school, alcoholism and mental illness, and “other.”¹⁰² Police seemed to eschew explanations of alcoholism and mental illness and family problems in favor of economic and health-based explanations. This is troubling; the primary reason cited by other experts for using police data instead of cause-of-death data gathered from medical examiners by the Ministry of Health is that the former avoids such problems, while the latter does not.¹⁰³ When I asked the officer about this classification, he responded that my claim had some merit, but that such biases would only occur in cases with notes when the classification was ambiguous, and in cases without notes, police take the age, sex, and occupation of the victim into account when determining the reason for suicide – hardly encouraging comments for serious data analysis.

Moreover, suicide-note data may be biased in several systematic ways independent of classification errors. Older victims tend to leave notes more often than younger victims, and men tend to leave notes more often than women.¹⁰⁴ One Japanese study has found that unsuccessful

¹⁰² See Lester & Saito, *supra* note 31, at 66.

¹⁰³ Takahashi, *supra* note 11, at 5

¹⁰⁴ Keisatsucho Seikatu Anzenkyoku Chiikuka, *supra* note 1.

suicide attempts leave notes more often than successful victims.¹⁰⁵ While this finding could be based on the “cry for help” nature of unsuccessful attempts, another interpretation might be that suicide notes are simply biased by the relative difficulty of completing the act in a gunless society (most choose asphyxiation by hanging¹⁰⁶). Some notes are also addressed specifically to the police, and it is not inconceivable that some victims would modify their notes for that audience or strive to create explanations that would make sense to that audience.¹⁰⁷

Accordingly, I chose not to rely on the economic-suicide data, but I ran the regressions separately using those data nonetheless. The results were remarkably similar; the small differences from the gross suicide annual rate regressions – stronger correlations for civil rehabilitation and unemployment for males -- do not merit reproduction of the results here.

Of course, the gross annual suicide rate that I use also might be problematic. It is possible that police inaccurately categorize accidents and suicides. For instance, if a body is found at the base of a tall building and there are no witnesses, it might be difficult for police to determine if the victim fell or jumped. Police officers to whom I spoke at least seemed confident in their ability to classify such events, perhaps because hanging is a common method of suicide and accidental asphyxiation by hanging is unlikely.¹⁰⁸ I also have little reason to suspect a

¹⁰⁵ Kenshiro Ohara, Isho [Suicide Notes], in *1 Jisatusgaku* 175, 184-86 (Kenshiro Ohara ed.1974).

¹⁰⁶ Nearly three-fourths of male victims die of asphyxiation by hanging. The other popular male methods are, in order of popularity, jumping off tall buildings, carbon monoxide poisoning, overdose, self-injury with a sharp object, jumping in front of a train, and drowning. Nearly two-thirds of women also choose hanging, up from a little over half five years ago, followed by jumping off tall buildings, overdose, carbon monoxide poisoning, jumping in front of a train, and self-injury with a sharp object. Ministry of Health, Labor, and Welfare, Jinko Dotai Chosa [Vital Statistics], available at http://www.dbtk.mhlw.go.jp/toukei/data/010/2001/toukeihyou/0003844/t0065997/mc360_001.html.

¹⁰⁷ I have even less confidence in the ability of officers to make judgments in cases that do not contain notes. In noteless cases, police tend to rely on statements of family, friends, and coworkers.

¹⁰⁸ But not impossible. The DSM-IV estimates deaths of 2 per million population per year from all kinds of hypoxiphilia (sexual arousal by oxygen deprivation), of which autoerotic asphyxiation by hanging is a subset. *Diagnostic and Statistical Manual of the American Psychiatric Association* § 302.83, at 529 (Fourth ed. 1994). The estimate for Japan for all hypoxiphilia would thus be 125 persons per year, less than one-half of one percent of the annual suicide total.

systematic bias in favor of accidents over suicides in rural locations, as suicide rates in Japan are *higher* in rural than in urban areas.¹⁰⁹ Still, there is a potential issue here, as well as a potential solution. Police have a separate data category for deaths that cannot be explained. As table 4 shows, these “unexplained deaths” are roughly correlated to suicide rates.

| Year | Unexplained Deaths | Suicides |
|-------------|---------------------------|-----------------|
| 1991 | 75,224 | 21,302 |
| 1992 | 78,803 | 22,372 |
| 1993 | 81,580 | 22,171 |
| 1994 | 83,749 | 22,472 |
| 1995 | 90,747 | 23,198 |
| 1996 | 91,452 | 24,051 |
| 1997 | 94,232 | 26,006 |
| 1998 | 107,173 | 33,925 |
| 1999 | 114,267 | 33,664 |
| 2000 | 116,164 | 32,674 |
| 2001 | 119,396 | 31,768 |

Source: Koichi Hiraiwa & Sumiko Abe, *Jisatsu Yosoku to Sono Hantei Kijun* [Forecasting Suicide and the Decisionmaking Standard], in *Jisatsu Kito* [Suicide Pact] 207, 208 (Teruhiko Higuchi ed. 2002).

Accordingly, in addition to running the regressions with the annual suicide rate, sex-based categories, and economic suicides as the dependent variable, I also ran regressions using the unexplained death rate as the dependent variable. Once again, I found no significant differences (all the potential dependent variables are correlated).

4. *Summary.* To be sure, the data here are far from perfect. But taken together, these results suggest three tentative conclusions. First, many non-law factors, such as unemployment appear to matter. Second, in no category was a statistically significant relation observed between suicide and bankruptcy. Suicide thus does not appear to substitute directly for bankruptcy (if anything, more bankruptcies means more suicides). Finally, the regressions suggest that the Civil Rehabilitation Law may nevertheless be helpful in controlling suicide, at least for men,

¹⁰⁹ See Takahashi, *supra* note 2, at 39; Tsutomu Yamamoto, *Contemporary Social Problems in Japan: A Study of the Suicide and Depopulation Problems*, 1 *Int'l J. Japan. Soc.* 19 (1992). In another regression I controlled for urban

who are most likely to use it. The Law's impact appears to be small, perhaps because the system is so new, but it is statistically significant nonetheless.

B. Field Research

While the data are imperfect, the regression results are intriguing evidence of a correlation between male suicide rates and insolvency law. To gain further evidence for or against such a relation, and to explore the reasons why such a relation might exist, I interviewed people with information about suicide victims.

Relevant interviews were did not come easily. Obviously I was unable to interview the exact group of people with whom interviews might have been most probative: suicide victims. Instead, I interviewed a total of nearly 90 persons, as categorized in Table 5, in rough order of distance from the victim (and coincidentally or otherwise, also in rough order of willingness to talk). As the table shows, the closest I got to suicide victims was victims of failed suicides.

| Interview Group | | Number |
|---------------------------------|---|---------------|
| Police who investigate suicides | | 4 |
| Counselors | Bankruptcy lawyers and lawyer substitutes | 8 |
| | Debt counselors | 12 |
| | Social workers | 9 |
| | Mental health professionals (psychologists) | 9 |
| | Suicide counselors | 4 |
| Families of suicide victims | | 15 |
| Debtors | Debtors who told me they considered suicide | 18 |
| | Debtors who did not tell me they considered suicide | 4 |
| | Debtor-victims of failed suicide attempts | 3 |
| Total | | 86 |

versus rural differences using several different measures. The correlation was negative but insignificant, and did not result in significant differences in the other variables.

Most categories are self-explanatory, but three deserve elaboration. Lawyers are not specifically licensed to do bankruptcy work; “bankruptcy lawyer” refers to a practitioner who professes to have a specialty. A “lawyer substitute” is a judicial scrivener, licensed by the state to perform simple legal tasks, including simple bankruptcies. “Debt counselors” normally work for non-profit organizations that refer (and filter) debtors to attorneys, some of whom take cases on a pro bono basis. “Suicide counselors” are mostly volunteers; suicide counseling is relatively new; the first hotline opened in Tokyo in 1971, but about 7,500 counselors now work for 47 24-hour centers throughout the country.¹¹⁰

I conducted about half of the interviews in person, did about half over the phone and over email, and had several (occasionally lengthy) follow-up exchanges with suicide victim families and debtors over email. I conducted most of the professional interviews in offices, and conducted the victim and debtor interviews in a combination of homes, parks, restaurants, bars, and in one case, a conference room.

In addition to the interviews, I also attended bankruptcy and civil rehabilitation hearings, observed debt-counseling sessions, suicide-counseling hotlines, and counseling sessions with attempted suicide patients. I also was permitted to observe a group therapy session (a rarity in Japan) for families of victims of suicide, several of whom I later interviewed. To this evidence I also add news accounts and the relevant empirical work of other scholars, primarily by Japanese psychologists. I primarily rely on these works, rather than discussions of suicide by non-Japanese scholars or of non-Japanese subjects, both because Japanese experts are closer to the problem and because the perception of the problem in Japan is important for understanding stigma.

¹¹⁰ Yukio Saito, *Sodan no Genba kara – Yobo e no Mondai Teiki* [From the Counseling Front: Problems of Prevention, in *Sarari-man no Jisatsu* [Salaryman Suicide] 37, 37 (Yoshitomo Takahasi & Hiroshi Kawahito eds.

I first consider the evidence regarding suicide as an option for debtors. I then examine evidence regarding the potential efficacy of legal change. Finally, I examine evidence that pertains to potential explanations.

1. *Suicide as a Way Out of Debt*. Interviewees uniformly stated that suicide, like bankruptcy, often is perceived by people with serious debt problems as an acceptable and serious option. According to a psychologist, Takahiro Horibe, who has worked with many debt-ridden patients:

Some people become very desperate after taking on large debts. When they sit down to compute the amount of time that it will take to repay their debts, they often realize that they will never be able to do so. Moreover, many excessive debtors have more problems than debt alone; they typically find themselves in these situations when they lose their job and must borrow to make mortgage payments or rent payments. It's not the debt per se that's the problem, it's the enormous stress that the debt creates. Once a person arrives at that hopeless state, they can either suck it up and go into bankruptcy, or they can say "why bother? It won't make any difference. I'm a failure." For these people, suicide is the easiest answer.

For Horibe, then, the process seems quite natural; debt leads to stress, stress leads to suicide. A case study in a textbook for psychologists who deal with suicide issues puts a more human face on Horibe's general analysis, and for that reason merits lengthy quotation:

50-year-old male.

Has chronic diabetes, and has injected himself with insulin for several years. He runs a small printing firm, but business has been poor, leaving him with multiple debts. He became difficult to deal with and irritable, marital problems occurred, and he divorced two years ago. His wife left the house. Six months ago, his business went under, and he took on the debts as an individual. To pay them, he borrowed money from friends and *sarakin*. His health worsened, and he began to eat and bathe irregularly. Debt collecting efforts became intense, he thought "I want to get out of this," and he overdosed on insulin. A few hours later, he was discovered unconscious and admitted to the hospital. He regained consciousness and was detained in the hospital to control his diabetes. He was referred to a psychologist for depression. His depression was

severe, but he responded relatively well to medication, and he returned to a level of normalcy. But his debt situation never changed, and he began to become self-destructive.

As for his debt problem, because it was a cause of his depression, he was referred to a social worker to fix his problems of environment. The social worker recommended personal bankruptcy and a plan to protect his wages, and the patient agreed. He returned to his normal insulin routine, and was released from the hospital.¹¹¹

In both Horibe's analysis and the 50-year-old's case study, then, debt played an important role in the onset of psychological conditions that lead to suicide and suicide attempts. Note also that in the textbook case study, bankruptcy was considered an element of treatment.

The psychologists that I interviewed agreed on the basic reasons why suicide is seen as a way out of debt; they said that the road from debt to suicide meanders through stress, depression, and occasionally irrationality. Some debtor-victims voiced agreement. Consider this email that I received after an interview with Inoue, a 47-year-old office worker who found himself deep in debt but eventually chose bankruptcy:

There was no way that I could have paid my debts unless I won the lottery. So I used to play the lottery quite a bit, and I borrowed even more to do it. . . . My debt got so high that I realized I only had two choices: go bankrupt or "end it." So I looked into bankruptcy and a friend of mine told me that it took him 4 years and his lawyer was a shady guy and he wound up poor as dirt and I thought "why would I want such a thing? I need an answer *now*, not four years from now." . . . So I started reading [suicide manuals] and so on to try and figure out some painless way of ending things; hanging seems so violent so I started importing drugs from Thailand to mix into a death potion. . . . I became really lonely and depressed about the whole thing even though I had read that people who decide to commit suicide usually get happy at the end because they've reached a decision, so I thought that maybe I wasn't really ready yet because all I felt was pain, just extreme emotional pain. .. [After seeing a telephone number on a television program,] I then called a suicide hotline, and they referred me to a debt specialist who convinced me that maybe bankruptcy wouldn't be so bad and that I could start over and that a lawyer could get me out of my high-interest loans because the interest charged was too high under the law. . . . Looking back on it now, I think

¹¹¹ Kentoku Cho, *Sonenki no Jisatsu* [Suicide in the Prime of Life], in *Jisatsu Kito* [Suicide Pact] 34, 44-5 (Teruhiko Higuchi ed. 2002).

that the whole suicide thing was kind of stupid, but that's how I thought back then; it was all really really gloomy.

But while psychologists spoke in terms of depression and stress, other interviewees spoke of a different path. Consider the following words from a debt counselor:

To be honest, I get really frustrated with some of the [debtors] with whom I work. I do this job because I want to help people work through their problems. But by the time that some people finally get around to coming in to seek practical answers, they already have a very fatalistic attitude toward the whole process. They hate themselves for taking on so much debt, their families, if they have told them the problem, have told them that they're failures and so on, and they believe it. They believe that they're worthless people simply because they borrowed a lot of money. . . . In some cases, they are subject to harassment from their creditors Part of my job is trying to convince these people that legal solutions like bankruptcy are better solutions than suicide, and that suicide destroys anything positive that remains in their lives.

Like the psychological studies, the debt counselor also saw an indirect relation between debt and suicide. But for the debt counselor, debt leads to a lack of self-worth, and a lack of self-worth leads to suicide. While these concepts might be related, they are not necessarily so, and the different ways in which different people discuss them might be reflected in the different ways that people treat or respond to debt.

Not all interviewees focused on the internal emotional relation of debt to death. Consider the words of a police officer who has studied and investigated many suicides:

Officer: You read the same suicide note over and over again. Guy loses job. Guy can't pay the bills. Guy borrows from loan sharks at some crazy interest rate that he can't possibly repay. He thinks about bankruptcy but decides that would be too much of an inconvenience (*meiwaku*) for his family and friends, so he hangs himself.

West: What do you think about such things?

Officer: Hmmm . . . I sympathize with these guys. I wish for their families' sakes that they'd swallow a little pride and just go to a lawyer or something to take care of it, but it's not like I don't understand what they're going through, and not everybody

can pay a lawyer. Most people just figure hey my time is up. . . . Sometimes I respect them for doing it; I wouldn't have the guts.

The police officer offers two important additions to the mix of emotional factors. First, he notes that some victims consider the impact of their decision on family and friends. This concept of “burdening” (*meiwaku*) people in one's social circle was raised by many interviewees; many people seem to believe that killing oneself creates less of a burden, or perhaps less of a lasting burden, than living with a debtor. Of course, this motivation need not be exclusive (people can be depressed and think of family members simultaneously), rational, or even wholly altruistic, but it was widely expressed. As one failed suicide attempter told me:

I wasn't thinking clearly at all, of course. But I still thought of my family and how embarrassed they would be to find out how much I owed, and how I got myself into this situation in the first place. . . . They knew nothing about it. But the lenders were threatening to tell them – to tell my neighbors too. My mother was too proud for all of that; it would be such a burden [to put her through it]. I thought that if I committed suicide, those problems would go away and they would never find out about it.

Second, the officer says that he respects the victims, and that their actions take courage. Although not a dominant theme of my interviewees, several people (coincidentally or not, all of whom were over the age of 50 or were talking about such persons) expressed the idea that suicide was some combination of “traditional,” “honorable,” “selfless,” and “courageous.” If so, then suicide as a debt-reduction option might be more easily understood, and if such beliefs are widespread, the process by which individuals go from debt to death might be as much about social norms as internal emotional processes. Either motivation, of course, suggests that law needs to address responses to debt, and not debt alone.

2. *Law's Response* These data thus suggest that many debtors consider both bankruptcy and suicide. But they do not *necessarily* suggest that the two are substitutes. People who think that bankruptcy is “easy” might choose bankruptcy without ever seriously considering suicide,

while some people might commit suicide no matter what. Other people might not ever consider bankruptcy or even trace their psychological problems to their financial ones. In all cases, initial perceptions and predispositions may guide the set of choices.

This ambiguity prompted a second line of inquiry regarding whether making bankruptcy rules more debtor-friendly, either through civil rehabilitation (as has been done) or some other means, might impact the suicide rate. Some of the above responses already hint at such claims. Moreover, debt counselors uniformly stated that such changes would make major differences, as reflected in policies such as that of the “Network to Eliminate Debt Suicides,” which explicitly advocates bankruptcy and civil rehabilitation as alternatives to suicide.¹¹² Other interview responses varied from yes to maybe to no; I consider each in turn/

a. *Yes.* Some interviewees, like this wife of a suicide victim, thought that a different kind of bankruptcy system would make a substantive difference:

I am angry at my husband for having killed himself, but I’m also angry at him for being too proud to be bankrupt. So you have to go to court and get a lawyer or whatever . . . who cares about such things? . . . [The problem is the] politicians who run this country for corporations and not people . . . they don’t think about how difficult it is to be an ordinary person who owes lots of money . . . instead of helping people with debts they try to help [consumer finance companies] be more successful and kill us all. . . . If there had been some easy alternative to bankruptcy, some way that he could have gotten a break just for a little while, he’d still be alive.

Other debtors and victims’ family members made similar statements. An adult daughter of a suicide victim told me that “better law would have kept my father from losing his life” and pleaded with me both to press for bankruptcy reform and to publicize the system in Japan. The president of a small printing company told me that he agonized over whether to chose

¹¹² Shakkin Kunosha no Jisatsu wo Nakusu Nettowa-ku, <http://www.s-net2.org/hd/index.htm>.

bankruptcy or death (eventually choosing the former), but that making bankruptcy “more simple” would have made the choice much easier.

Still, many interviewees offered vague answers as to how precisely the bankruptcy regime should be, or should have been, improved. They wanted bankruptcy to be “easier” but were not sure exactly what that meant. Some were not even sure what was so difficult about the existing system, though they knew it to be expensive and time-consuming. As I suggest in the next subsection, I suspect that some of the ambiguity might be attributable to the fact that some of the perceived difficulty of the bankruptcy regime is related to social, and not legal or monetary factors.

Not all interviewees were so vague; some, in fact, pointed explicitly to civil rehabilitation as a solution. According to one bankruptcy lawyer:

The civil rehabilitation system has probably saved thousands of lives. And I have evidence. Before civil rehabilitation, clients would come in, I would tell them about bankruptcy options, and often they wouldn't come back. Some of them went to other lawyers, some of them just borrowed more and more, and some of them just ran away in the middle of the night (*yonige*). But I know for sure what happened to at least two of them; they killed themselves. That must sound stupid to an American, but that's what Japanese people do; they just give up. . . . But after civil rehabilitation [was promulgated], the clients stay with me. They hear the solution, they hire me, and we take care of it. . . . Now I can convince them that it's not worth dying over.

And according to Hasegawa, a 28-year-old company worker with credit card debt equal to a year's salary:

I was really depressed because of all the debt and because of the prospect of having to declare bankruptcy. How could I face my family and friends? I thought about killing myself; at least that way cremation would be the only real expense. But I got some advice [from a debt counseling center] and decided to do civil rehabilitation. It's not such a big deal.

Responses such as these that explicitly pointed to civil rehabilitation as a source of change were by no means the norm; only eleven interviewees – but all of the lawyers (who might have an interest in promoting the system) -- raised the issue without prompting. Because the rehabilitation option has been available for such short period of time, the dearth of volunteered responses is not surprising, but it is noteworthy that all those who raised the issue made similarly positive statements.

b. Maybe. The above interviewees are concrete examples of how legal change can affect life-or-death decisions for some people. But opinions differed, and many interviewees stated that debtor problems went beyond mere debt. According to a psychologist:

Psychologist: Bankruptcy law cannot fix mental health. People who commit suicide need treatment, not lawyers. . . . People who want to commit suicide will commit suicide, and people who want to erase their debts will erase their debts. They are two different categories.

West: Are you saying that the only solution for patients considering suicide is medical treatment?

Psychologist: No, no, some people will kill themselves because they're lonely; a friend could be all the treatment they need. Others will kill themselves when they hear that they have cancer or some other horrible disease just so they don't have to go through it. And yes, some people might be persuaded to spare themselves if something could be done about their financial problems, so maybe some kind of law that easily did so could actually have an effect, but the law would matter not because it solved the debt, but because it changed their outlook. But if a person has resigned himself to suicide, I wouldn't think that law would have a huge effect. The law would have to have an effect before that stage.

This mental health professional, then, like others whom I interviewed, reflects the indirect causal philosophy that seems to underlie the treatment plan for the 50-year-old in the case study above. While bankruptcy is not a solution per se, it may have an indirect effect on psychological factors such as depression and stress, and through that mechanism might reduce suicides. It also may simply imply, as the treatment in the 50-year-old case study above suggests, that some people

need both mental health care *and* bankruptcy reform, and that either alone is only a partial solution.

c. *No*. Some interviewees were even more cautious about the relation. According to a suicide counselor:

Changing the law might help some people find a way out. But many people that I talk with have more problems than just debt. They feel completely isolated from society, have real problems talking about their fears, and don't have close friends. The debt is only part of the problem, so solving that would only be a partial solution

For these persons, then, legal change might be insufficient. In a similar vein, a debt counselor added:

You could fix the rules on bankruptcy all you want and some people would still kill themselves over debt. Some would do it because they just get really desperate. Some are ashamed and don't want to bother anybody (*meiwaku wo kaketakunai*). And lots of them have debts to *sarakin* (loan sharks) that bankruptcy law can't fix. You can't go to a loan shark and say "the law says this, the law says that, you have to follow it." . . . Lawyers could play a much stronger role in dealing with the loan sharks, but people who go to *sarakin* are unlikely to go to lawyers; they aren't looking for legal solutions. . . . So some people are committing suicide to avoid having their throats cut, not to avoid bankruptcy. Maybe some are avoiding bankruptcy, though; it's not something we can say for sure for the entire group of people.

This debt counselor makes one insightful point and one questionable one. The insight comes in the third sentence, as he discusses the shame of bankruptcy. For some people, the problem might not be the insolvency mechanism itself, but *any* mechanism that brings shame by publicly announcing the debt. For those people, it is unlikely that any amount of tinkering with insolvency institutions that does not involve extensive privacy protections would be insufficient. In small and close-knit communities, there might be no sufficient protection.

But the counselor's statement about *sarakin* is open to question. While it is true that insolvency law might not pose a threat to most *sarakin* who function outside of private law, other

interviewees strongly stated that people who seek insolvency-related legal help, whether from attorneys, debt counselors, or the courts, also received aid from those actors, police, and other enforcers in handling *sarakin*. The insolvency data used in the regressions above might thus be correlated not only because insolvency correlates with suicide, but because seeking help for insolvency reduces *sarakin* influence, which in turn reduces suicide.

Other interviewees offered other non-bankruptcy explanations for suicide that suggest causal variation. Interviewees stated that the “real” problem in debt-related suicide is not an inefficient bankruptcy system, but depression, loneliness, gambling, liquor, the sex industry, creditor harassment, or illegal loan markets. Many family members said that their suicide-victim relatives did not want to burden the family with their problems, and chose the “private” solution of suicide instead, a characterization that implies that some people would avoid “public” insolvency at any cost. Some debtors said that when they were considering suicide, they realized that bankruptcy was complex, but had no idea what it actually entailed. One debtor told me that he did not even realize that the root of his problem was money, and an attempted suicide victim told me that bankruptcy never crossed his mind as a possibility; both cases in which even the most procedurally efficient or debtor-friendly insolvency law reform would appear to have little effect.

Quantitative data support such non-debt co-explanations. Leading U.S. studies commonly cite depression as a primary cause (between 30 and 80 percent, depending on the study),¹¹³ and Japanese data are similar. A study of 93 suicides at a Tokyo hospital from 1991 to 1993 showed that among young people (under 39), 45% were schizophrenic and 33% were clinically depressed. Among people aged 40 to 59, 45% were depressed, 16% were

¹¹³ Summary available in Takahashi, *supra* note 11, at 9.

schizophrenic, and another 10% were suspected depression cases.¹¹⁴ Another study, based on surveys of 420 family members related to suicide victims in Fukushima prefecture in 1997, found that the broader problems were loneliness and stress from a variety of sources that included economic hardship, but that also included many other factors.¹¹⁵ The indirect approach – economic and social institutions that lead to psychological problems that lead to suicide – is common among Japanese mental health professionals for a wide range of issues that include unemployment and other workplace-based problems.¹¹⁶

This evidence suggests two possible relations. On one hand, if non-debt reasons are the “true” explanations behind many debt-induced suicides, mere tinkering with insolvency law without broader institutional overhaul might not generate large positive effects; only small ones for a few people. On the other hand, much of the interview data tend to support, or at least do not contradict, the quantitative evidence, which suggests that insolvency reform could affect potential suicide victims positively by reducing one factor in debt-related suicides; namely, debt, which could in turn reduce the non-debt factors. This analysis dovetails nicely with evidence from the United States, in which Melissa Jacoby insightfully notes potential adverse health-related consequences from the law’s approach to debt enforceability, debt collection, and debt encouragement.¹¹⁷

In short, the interviews and regressions appear consistent with a claim that bankruptcy and suicide are not necessarily substitutes. Though the two may be substitutes for some people,

¹¹⁴ Kantoku Hara, *Chunen no Jisatsu no Byori* [Pathology of Middle-Aged Suicide] 505-08 (2000).

¹¹⁵ Koichi Hiraiwa & Sumiko Abe, *Jisatsu Yosoku to Sono Hantei Kijun* [Forecasting Suicide and the Decisionmaking Standard], in *Jisatsu Kito* [Suicide Pact] 207, 210-6 (Teruhiko Higuchi ed. 2002).

¹¹⁶ See, e.g., Nobuo Kuroki, *Jisatsu no Rosai Hoshō no Genjō* [The Current State of Suicide and Workers’ Compensation], in *Jisatsu Kito* [Suicide Pact] 170 (Teruhiko Higuchi ed. 2002); Mayumi Sugawara, *Jisatsu Kitosha wo Torimaku Kankyō – Shokuba ni Okeru Mentaru Herusu* [Environmental Issues for Suicide Victims: Mental Health in the Workplace], in *Jisatsu Kito* [Suicide Pact] 217 (Teruhiko Higuchi ed. 2002),

¹¹⁷ Jacoby, *supra* note 9, at 564-67.

they appear to be two separate decisions for others; some people might choose between bankruptcy and non-bankruptcy, and again between life and suicide. But easing the rules for eliminating debt through a mechanism such as civil rehabilitation might have a significant effect on the suicide decision making process for some people.

3. *Explanations.* The quantitative and interview data suggest a relation between certain kinds of law and some suicides. But without an understanding of what is so bad about insolvency that it has a connection to life and death, formulating solutions is difficult. My research and interviews suggest two primary explanations for why law might be related to suicide: inefficiency of the bankruptcy system and stigma regarding bankruptcy. For many people in Japan whom I interviewed, the explanations are inseparable; about half expressed both concepts, and systemic inefficiency might simply be a reflection of the social stigma. Still, I separate the two here for analytical purposes.

a. *Efficiency.* About half of the interviewees stated that bankruptcy was problematic because it is inefficient. Some interviewees offered only general assessments (“it is difficult”), which might pose more of a psychological barrier than known inefficiencies. But many interviewees explicitly named various systemic problems: bankruptcy was said to involve high attorney fees, to favor creditors, and to be time-consuming, difficult to understand, and unhelpful to debtors.

Reliable numbers are available for the first factor, attorney fees. A typical bankruptcy in Tokyo is said to cost approximately 400,000 yen (\$4000) if done by a lawyer, and 200,000 (\$2000) if done by a judicial scrivener. Subject to income and other restrictions, the Japan Legal

Aid Association offers assistance for a reduced price; a completed bankruptcy runs 205,000 yen for an attorney and 104,000 yen for a judicial scrivener.¹¹⁸

The other systemic factors are more difficult to quantify in all but broad relative terms, and civil rehabilitation may in fact differ little. But the perception is common, and anecdotal evidence abounds. Kensuke Suzuki published an account of his bankruptcy that echoes sentiments raised by my interviewees and illustrates these systemic inefficiencies.¹¹⁹ According to Suzuki's book, the Kobe Earthquake turned his \$17 million cigarette import business to rubble, leaving him with personal debts of about 2 million yen (\$20,000) to banks and 850,000 yen (\$8,500) to a credit card company, in addition to company debts. He liquidated his company, but specifically rejected personal bankruptcy, as he thought it too time-consuming and expensive. Instead, he "constantly" considered suicide as a solution, especially while behind the wheel of his car, as he could see no other way out. But he found a newspaper article about a new kind of "summary" bankruptcy. The year was 2001, before the introduction of civil rehabilitation, and the system was little more than the relaxation of bankruptcy rules in the Tokyo District Court discussed above, but, as the process could be completed in three months, this "was a kind of bankruptcy I had never heard of." Even this simplified process was not easy; it could only be done in the Tokyo court and not the Tokyo branch court near his home, and he soon learned that he could not apply pro se. He consulted several lawyers, each of whom refused his case because of his inability to pay their fees. He then consulted to a non-lawyer who billed himself as a "professor of law" for representation. The professor demanded an up-front fee to be wired to his bank account, announced that the case would be handled by a student, and admonished Suzuki

¹¹⁸ See, e.g., Yutaka Shozui, Kojin no "Hasan" ha, Kazoku no "Hasan" de aru! [Personal Bankruptcy Equals Family Bankruptcy], in Yami Kin'yu [Underground Finance] 42, 60 (Manabu Inoue ed. 2002).

¹¹⁹ Kensuke Suzuki, Hasan Kara no Saiki [Return from Bankruptcy] (2002).

not to discuss the fee arrangements publicly because they violated fee rules. Thinking this a bit shady, Suzuki refused.

Eventually, with the help of a local non-profit organization, Suzuki found a lawyer who agreed to take his case pro bono. He applied for summary bankruptcy in 2002 and claims to have emerged a new man, now running a \$400,000-a-year international shipping business. His story is clearly one of success, but each step of this process required substantial initiative to battle systemic inefficiencies, and many troubled debtors who consider suicide simply do not have Suzuki's resolve.

Although the system is still new and unknown to many, civil rehabilitation is said to be more efficient than bankruptcy. One debt counselor explained:

Many people who come in for counseling have no idea what bankruptcy is like, or hear only the horror stories and worst-case scenarios. So when they come in, they automatically are opposed to bankruptcy. "Just give me anything but bankruptcy," they'll say. "Bankruptcy will be worse than the loan sharks, I'll have even less financial freedom (*kubi ga motto mawaranakunaru*, literally, my neck will turn even less), and I'll be dead before it ends." I spent a lot of time [in my job] telling such persons that bankruptcy really isn't so bad, when in fact I know that it really is time consuming, costly, and sometimes unfair. . . . Civil rehabilitation makes my job much easier. When people come in to see me now, they don't have such a negative view of the process. They know that civil rehabilitation is supposed to be easier, quicker, and they won't lose everything. So from the beginning, they seem to have a much healthier attitude.

Returning to Hasegawa, the 28-year-old debtor who chose civil rehabilitation instead of suicide, claiming that civil rehabilitation is "not such a big deal":

West: Why is not such a big deal?

Hasegawa : It's so much easier. You just fill out a few forms and you're basically done. I knew it wouldn't take a long time and that I eventually would be free of debt.

West: And that differs from bankruptcy?

Hasegawa : Bankruptcy is completely different; it's all about who gets what and how much blood they can suck out of you. And it takes forever, like pulling a bandage off your arm one millimeter at a time. That was the process that I dreaded; I needed to get out *now*.

West: So much that you considered suicide?

Hasegawa : Yes. I thought that bankruptcy and suicide were my only options. I didn't really want to commit suicide, and maybe I really wouldn't have had the guts to go through with it. Maybe I would have just run away or something instead. But I just really didn't want to go through bankruptcy.

A bankruptcy lawyer offered a similar perspective:

Some people would do anything to avoid bankruptcy; it's like going to the dentist, you put it off and put it off until you're in so much pain that going to the dentist is much worse than if you had just gone in their early. . . . Bankruptcy is painful like that; people don't want to lose their homes and they don't want to go to court and they don't want to live as a bankrupt person for several years while the court decides their fate. . . . For people who are nervous or depressed or just kind of crazy, these bankruptcy costs are so high that suicide becomes more and more realistic. . . . Civil rehabilitation is much cheaper easier [than bankruptcy], and that makes the choice [between life and death] easier as well.

As these three opinions suggest, bankruptcy for some people is such a costly option that suicide becomes realistic. These persons might not be thinking clearly; at this stage many are suffering from severe stress and depression. But several interviewees expressed the idea that it is the economic cost of bankruptcy that makes it so undesirable. If so, a less costly mechanism such as civil rehabilitation seems much more appealing.

b. *Stigma*. Other interviewees cited the social stigma that accompanies bankruptcy. Measuring social stigma is extraordinarily difficult.¹²⁰ Still, my interviews suggest that many people avoid bankruptcy, whether through civil rehabilitation or through suicide, not because of cost-related issues, but because of the stigma of being adjudicated bankrupt. About three-

¹²⁰ The law is somewhat ambiguous on the point, as attempted suicide is legal but assisted suicide is not. Penal Code art. 202.

fourths of interviewees mentioned stigma and related social factors attaching to bankruptcy. Several stated that civil rehabilitation has less stigma, suggesting, at a minimum, that the large amount of publicity surrounding the enactment of the system made many conscious of its existence.

Consider first the words of Osaka lawyer Tatsuya Kimura, a specialist in solving debt problems. In an interview published in a book about underground debt, Kimura responded to questions about the demerits of filing for personal bankruptcy:

Regular employees of the government or of a large corporation must be careful; if the news comes out that an employee has filed for bankruptcy, he is in danger of being fired or relegated to lower assignments. But because there are other methods besides personal bankruptcy, there is no need to worry. Still, if you think about it, even with these limits to the bankruptcy system, after the debts are paid, at least a debtor can live a normal human life. Delaying bankruptcy for one year delays normal life for five.¹²¹

Kimura's description of the social sanctions of bankruptcy is stark: file, and lose your job. Interviewees told me of such events, and explained that employers considered debtors to be bad decision makers and potential troublemakers. Although some debtors agreed that bankruptcy should be filed even with great cost, many postponed or avoided it for precisely the stigma-related consequences that Kimura encourages them to overlook. Consider Suzuki, a 52-year-old debtor:

Suzuki: The reason that I chose civil rehabilitation over bankruptcy is simple: I didn't want to be branded as someone who was bankrupt. I can't imagine anything more embarrassing than that; it's like admitting to the entire world that you're a complete and total failure. I might as well have AIDS or leprosy.

West: But some people might think that you were solving your problems through bankruptcy, right? They might say "oh it's a shame that he got into such problems. But isn't it wonderful that he is being so manly (*otokomae*) in solving them?"

¹²¹ Noriyuki Imanishi, *Minna Tatakaisugirunya!* [Stop Resisting!], in Yami Kin'yu, supra note 118, at 108, 113.

Suzuki: Nobody would say that. Or at least nobody I know. Maybe that's what rich people do, or foreigners or something, but nobody I know. Bankruptcy means you're a loser for life. My wife would have divorced me for sure.

West: But civil rehabilitation was OK?

Suzuki: Oh civil rehabilitation is completely different. I wouldn't say that it's honorable, but people don't despise you for it . . . Even the word is better; bankruptcy means that I am broken [it uses the character for "broken" or "losing"], but civil rehabilitation means that I am reborn.

The adult son of a man who committed suicide before the Civil Rehabilitation Law's enactment expressed similar sentiments in the following sad terms:

My father was a very proud man. He thought that if he declared bankruptcy, everyone would think of him as a failure; our neighbors, his co-workers, even me. . . . He claimed in his note that he was [killing himself] so that my family wouldn't be shamed. . . . Now [my 17-year-old brother] now will have to try and find a wife whose parents don't mind that his father committed suicide . . . but maybe [the future wife's father] will share my father's old way of thinking and think that his death was honorable. . . . I guess that with either [suicide or bankruptcy], he would be a failure to some people, and in his mind, bankruptcy was worse.

And as a debt counselor lamented:

Japanese society has the line between shameful and not shameful completely reversed. How can it be so shameful to go to court and try to things better? But yet that is what's shameful, and suicide is not as shameful. . . . Either way, people will know that you did something to get yourself into debt, and now the creditors are not getting paid. Making the choice to kill oneself instead of filing a few papers is such a tragic waste of human life.

Finally, consider this sad excerpt from a suicide note of the president of a small company:

My financial debts are simply more than I can bear. To those whom I hurt by borrowing more and more even when I knew it was impossible to pay it back, I'm sorry (*moshiwakenai*). I wish I could pay it back but I cannot, and I do not want to shame my family . . . a man does not live in shame. Bankruptcy is a cowardly act . . . I will do no such thing. . . . I will end my life with dignity, and I will remember all those who were kind to me. I will never forget my family and I

thank you for all you have done for me over the years. . . .[Son,] take care of your mother . . .

These statements leave little doubt that some people believe bankruptcy to entail significant social sanctions both to themselves and their families, so significant that the sacrificial act of suicide is more attractive. Even those interviewees who, like the debt counselor and the family member, decried the stigma, recognized it nonetheless.

To speculate a bit, I suspect that the stigma reflects the general relative lack of second chances in Japan. In historically immobile Japanese society, social scars are lasting, and opportunities for redemption are often few. Japanese law codifies this “no second chances” idea by disenfranchising filers for life; as discussed above, bankruptcy law prohibits discharged debtors from assuming certain jobs and responsibilities.¹²²

In Japan, then, there is no true “fresh start” after bankruptcy. The fresh start doctrine, as Thomas Jackson has argued, may be justified by basic points of human nature such as protection from the regret of impulsive behavior or flawed decision making.¹²³ Assuming *arguendo* that Jackson is correct, Japan’s bankruptcy regime either ignores these characteristics or actively refuses to recognize them. Either approach might reflect severe social penalties; the underlying message could be that impulsive behavior or bad decisions are unacceptable. If this message accurately reflects social mores, it would not be surprising to find that bankruptcy in Japan entails significant stigma.

¹²² See *supra* text at note 61. The propensity of a system to give a fresh start is a separate question from the degree to which debt relief is available. On the latter question, see Stijn Claessens & Leora F. Klapper, *Bankruptcy around the World: Explanation of its Relative Use*, April 30, 2003, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=405240; Rafael Efrat, *Global Trends in Personal Bankruptcy*, 76 *Am. Bankr. L.J.* 81 (2002).

¹²³ Thomas H. Jackson, *The Fresh Start Policy in Bankruptcy Law*, 98 *Harv. L. Rev.* 1393 (1985); see also Adam J. Hirsch, *Inheritance and Bankruptcy: The Meaning of the “Fresh Start,”* 45 *Hastings L.J.* 175 (1994).

Just as the “no second chances” concept may add to the cost side of a person considering bankruptcy, other social factors, as discussed earlier in the context of why debt may lead to suicide, may add to the benefit side for a debtor considering suicide. Suicide is often romanticized in Japan, the abundance of suicide manuals available in bookstores indicates a certain level of social acceptance, Buddhism may provide a justification through reincarnation, and survey data indicate that many Japanese people consider suicide an acceptable solution to difficult problems.¹²⁴ If bankruptcy entails social stigma and suicide does not, perhaps it is little surprise that some people choose suicide.

Reduction of insolvency’s social stigma might be one of the primary benefits of civil rehabilitation. True, some interviewees were unfamiliar with the new regime, and, while the regressions show a correlation to suicide, widespread change has not yet occurred, and may not occur soon. But among those who knew of the system, civil rehabilitation was seen as much less stigmatizing than bankruptcy, and accordingly it might be less taxing. The formal sanctions that attach to bankruptcy in the form of disenfranchisement do not exist, and many interviewees stated that social sanctions also are lower – despite the fact that stigma reduction was never a stated goal of law reform. Lower social sanctions may thus help explain why some of even the most troubled debtors – those who would commit suicide over their situation – might choose it in order to avoid taking their own lives in situation in which bankruptcy might not have had the same effect.

IV. IMPLICATIONS

A. *Evaluating the Civil Rehabilitation Law*

¹²⁴ See Iga, *supra* note 19, at 149-58.

The variety and ambiguity of interviewees' responses implies that formulating responses (legal or otherwise) to debt-suicide is no simple task. In some cases, the Civil Rehabilitation Law provides debtors with an option other than bankruptcy and suicide. Accordingly, regardless of the overall efficiency or fairness of the law, the quantitative and interview evidence presented in this article suggests that this particular insolvency law reform has saved lives. While bankruptcy costs more in terms of both institutional strain and social sanctions than suicide, civil rehabilitation costs less.

Still, the varied and ambiguous responses given by my interviewees regarding their wants in an insolvency law system and the way in which a system might affect their behavior suggests that civil rehabilitation might be effective because it coexists with bankruptcy to provide varied options for varied people. If so, then the key to institutional design is not reaching a single equilibrium, but providing multiple solutions for persons who have different needs.¹²⁵

The multiplicity of responses also suggests a potential pitfall of insolvency law reform: we might *want* insolvency to be difficult and stigmatize, for at least three reasons. First, easier insolvency would lead to increased filings, and increased filings hurt creditors and increase costs for other borrowers.¹²⁶ Second, as an insolvency law regime is relaxed, individuals might take on more debt, increasing the overall number of persons in financial distress. Finally, creditors might make loans more difficult to obtain. Recent empirical evidence suggests that lenders will respond to lax insolvency laws by reducing amounts that they lend, a process that imposes costs

¹²⁵ See generally Robert K. Rasmussen, *Debtor's Choice: A Menu Approach to Corporate Bankruptcy*, 71 *Tex. L. Rev.* 51 (1992); Robert K. Rasmussen & David A. Skeel, Jr., *The Economic Analysis of Corporate Bankruptcy Law*, 3 *Am. Bankr. Inst. L.J.* 85 (1995). While Rasmussen's menu approach is for corporate debtors and entails an initial commitment at incorporation that individuals cannot perfectly duplicate, heterogeneous people, like heterogeneous corporations, might need heterogeneous insolvency mechanisms.

¹²⁶ See generally Michelle J. White, *Why it Pays to File for Bankruptcy: A Critical Look at the Incentives Under U.S. Personal Bankruptcy Law and a Proposal for Change*, 65 *U. Chi. L. Rev.* 685 (1998).

on borrowers at the time of loan origination.¹²⁷ While some consumers might be willing to pay these costs to obtain the insurance of bankruptcy availability, those costs might also increase emotional distress. Similarly, creditors might charge higher interest rates, which could again trouble borrowers. Any combination of these processes could conceivably lead to increased, rather than decreased, suicides.

Some commentators feared these moral hazard problems in Japan.¹²⁸ What little evidence exists – marginally increased filings after both Tokyo bankruptcy court rule relaxation and legislative reform – merely suggests that more filers will emerge, not that systemic abuse will occur. My interviews suggest that for many if not most people in the Japanese regime, absent substantial and unlikely systemic overhaul, the formal and informal costs of insolvency are so high that moral hazard issues of a liberal regime are not likely to be significant. And while bankruptcy rates have increased in recent years in Japan, they still are comparatively quite low, suggesting that modest changes would be unlikely to have large effects on rational lenders. Still, it is important for policymakers to recognize the potential perverse danger of insolvency law liberalization, and, through small steps, to create a menu of options for a variety of debtors.

Perhaps more significantly, nothing in this article is intended to suggest that a primary purpose of insolvency law is suicide prevention. Though the deaths are undoubtedly tragic, bankruptcy's linkages to suicide are much less clear than its linkages to debt reduction. There can be no doubt that bankruptcy can reduce debt, and the focus of bankruptcy law in Japan and elsewhere should not be on preventing suicides. What this article has attempted to show is the extent to which law can affect behavior – the worst consequences of bad law. Designing a

¹²⁷ Karen M. Pence, *Foreclosing on Opportunity: State Laws and Mortgage Credit*, May 13, 2003, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=410768.

¹²⁸ Debt-saddled Japanese get a break, *Nikkei Weekly*, Apr. 9, 2001, at 1.

bankruptcy law to reduce suicide would be foolhardy, but improving bankruptcy law is laudable even if it does not necessarily control suicide rates.

B. *Japanese Responses to Legal Change*

As discussed in Part III, cost and social stigma are two primary explanations for why people turn to suicide instead of insolvency. Consider first the cost explanation. If people are choosing life over death because the legislature has altered the transaction cost calculus, that cause-and-effect pattern provides still further evidence for the premise that Japanese actors respond to legal change. Writing with Curtis Milhaupt, I have argued that Japanese corporate actors respond to such changes.¹²⁹ Our claim was directed primarily against nay-saying observers of the Japanese economy who claim that institutional reform will be insufficient to pull Japan out of its economic rut. But in legal scholarship about Japan, individuals, not corporations, historically have been the subject of arguments regarding nonresponsiveness to legal change in Japan. Individuals are often said to base their relations on and conduct their affairs according to social factors, not legal ones.¹³⁰ The evidence presented in this Article suggests that relatively small legal changes – tinkering with the insolvency regime – in some cases will have profound effects, indeed, life-and-death effects, on individuals.

Now consider the social explanation. If people are choosing life over bankruptcy because civil rehabilitation has altered the social calculus of insolvency, that cause-and-effect pattern implies that small legal changes can have enormous consequences for a few people, and probably also has consequences of a lesser magnitude for many others. Altering the formal

¹²⁹ Curtis J. Milhaupt & Mark D. West, *Institutions for Deals: Takeovers and Diversity in Japanese Corporate Governance*, in *Global Markets, Domestic Institutions: Corporate Law and Governance in a New Era of Cross-Border Deals* 295 (Curtis J. Milhaupt ed., 2003).

¹³⁰ See, e.g., Takeyoshi Kawashima, *Nihonjin no Hoishiki [Japanese Legal Consciousness]* (1967).

institutional regime appears to either have diminished the social sanctions that accompany insolvency or to have created a new kind of insolvency system that is not subject to social sanctions in the same way as bankruptcy. Either description of the change implies a strong role for law in the shaping of social norms, a particularly important finding in Japan, where social norms are often said to have strong, rigid, and perhaps ancient, historical roots.

Of course, improvement of the insolvency regime alone is unlikely to be sufficient. Japan's problems with consumer finance, both legal and illegal, run so deep that more broad-scale institutional changes are likely to be necessary. One rather obvious place to start would be reform and enforcement of rules that could curtail Japan's vast underground debt regime. Some minor relevant revisions will be enacted in 2004, including giving administrators the ability to refuse applications for registration as legal lenders from persons with organized crime ties, a voiding of contracts with annual interest over 109.5%, and increased penalties for usury and unregistered operations.¹³¹ While on the surface such changes might sound like a step in the right direction, and the public recognition of the problem may very well generate positive effects, each of these steps could potentially generate perverse results. Legal interference with lending markets will prevent debtors who could and would willingly pay more than 109.5% from entering into legal contracts to do so, or will simply drive them to clearly illegal options. If people cannot receive loans at all, or are forced to seek them from clearly illegal sources that have no legal, but only private, recourse (such as breaking one's legs), a large decrease in suicides is unlikely. A more complete solution would entail, at a minimum, massive enforcement policy shifts and substantial deregulation of legal loan markets, neither of which is

¹³¹ Yukihiro Tanaka, Iwauru "Yamikin'yu Taisakuho" no Seiritu no Jitsumu Taio no Hitsuyosei [The Passage and Need for the So-Called Black-Market Finance Law," 767 NBL 4 (2003).

likely to occur any time soon. In the meantime, altering the calculus of insolvency costs would seem to be an acceptable alternative.

CONCLUSION

Recall the story with which this article began; that of Kazuyoshi Saito explicitly choosing courts over death. The speed and drama with which Saito reached his decision might be unique, and I suspect that his retelling of that story to me might be slightly exaggerated. The absolute reliance on the Civil Rehabilitation Law is probably also rare, as the law is still quite new. But Saito's incentive structure might not be unique at all. True, some people are destined for suicide; others may be destined for bankruptcy. But the evidence presented in this Article has shown that sometimes insolvency law can be a matter of life or death. The relation is complex, and many people need mental health care, drugs to treat depression, and the love of friends and family much more than they need bankruptcy reform. But even in Japan, where suicide stigma is low and insolvency system is high, for some people, some of the time, and for reasons that are often varied and ambiguous, law appears to make a difference in the ultimate decision.