The Fiction of the Voluntary Debtor: Coerced Debt, Bankruptcy Neutrality, and the Case for Reform

** Question 5:** *Assess the policy and civil rights implications of treating coerced debt the same as voluntary debt in bankruptcy. Does the current regime perpetuate inequalities? Propose meaningful statutory or rule-based reforms.*

I. Introduction

The Bankruptcy Code rests on a behavioral premise so deeply embedded that it is rarely articulated: the debtor chose to borrow. The "honest but unfortunate debtor" whom the Supreme Court promised a fresh start in *Local Loan Co. v. Hunt*, 292 U.S. 234 (1934), is imagined as someone who incurred obligations voluntarily and was later overtaken by misfortune. Every major architectural feature of the Code, from the dischargeability exceptions of § 523 to the good-faith requirements of Chapter 13 and the means test of § 707(b), presupposes an autonomous economic actor whose signature on a credit agreement reflects her will.

For survivors of intimate partner violence, that premise is often false. A substantial body of research documents that economic abuse accompanies the overwhelming majority of abusive relationships, and that a signature feature of such abuse is what Professor Angela Littwin has termed "coerced debt": non-consensual, credit-related transactions in which an abuser incurs debt in the victim's name through fraud, force, or intimidation. The abuser opens credit cards in the survivor's name, forces her to sign loan documents under threat, takes out utilities and leases she never sees, or drains joint accounts and leaves her holding the deficiency. When the relationship ends, the debt does not. It follows the survivor into the credit reporting system, into collection litigation, and, with grim frequency, into bankruptcy court.

Once there, the Code treats her coerced obligations exactly as it would treat a shopping spree. This essay argues that this formal neutrality is not neutrality at all. Because coerced debt is concentrated among women, and disproportionately among low-income women and women of color, a facially neutral regime that ignores coercion systematically distributes bankruptcy's burdens along lines of gender, race, and class. Part II describes the phenomenon of coerced debt and its structural features. Part III examines how the Code's doctrines treat coerced debt as voluntary and thereby compound abuse, with particular attention to the § 523 dischargeability exceptions after *Bartenwerfer v. Buckley*, 598 U.S. 69 (2023), the good-faith and disposable-income machinery of Chapter 13, and the procedural demands of the bankruptcy process itself. Part IV assesses the civil rights implications of that treatment. Part V proposes reforms: a statutory definition of coerced debt modeled on recent state legislation, an affirmative-defense and reclassification mechanism within § 523, identity-theft-parity treatment for fraudulently incurred obligations, and procedural protections addressing safety and proof. Part VI answers the strongest objections. The conclusion is straightforward: a Code built for the honest but unfortunate debtor should not punish the honest and *coerced* one.

II. Coerced Debt as a Category

Coerced debt is analytically distinct from ordinary marital or cohabitant debt in three respects.

First, it is non-consensual at formation. Littwin's foundational account distinguishes debt incurred through *fraud* (the abuser uses the survivor's identifying information without her knowledge, which is functionally identity theft by an intimate) from debt incurred through *coercion* (the survivor signs, but under threat of violence, or because refusal was not a live option within the relationship's structure of control). Both differ categorically from debt a survivor incurs voluntarily to survive, for instance borrowing to fund an escape. The category is defined by the absence or vitiation of consent, the same defect that voids contracts under duress doctrine at common law.

Second, it is an instrument of control, not merely a byproduct of a bad relationship. Abusers use debt strategically: ruined credit makes it harder to rent an apartment, pass an employment screen, buy a car, or post a security deposit. In short, it becomes harder to leave. Coerced debt thus operates as a tether. Survivors report remaining in or returning to abusive relationships because their financial profile, sabotaged by the abuser, forecloses independent housing and employment. Debt is here doing the work that physical confinement cannot lawfully do.

Third, it is epistemically asymmetric. The survivor frequently does not know the debt exists until collectors call or a credit report is pulled. She lacks the account statements, the application records, and often the mailing address history (abusers commonly redirect statements). The party with the best evidence of how the debt arose is the abuser, who is also the last person a survivor can safely subpoena.

These features matter because bankruptcy doctrine allocates burdens and benefits based on knowledge, intent, and choice. A debtor who did not know, did not intend, and did not choose fits none of the Code's templates.

III. How the Code Treats Coerced Debt as Voluntary

A. Discharge doctrine and the *Bartenwerfer* problem

Section 523(a)(2)(A) excepts from discharge debts "obtained by false pretenses, a false representation, or actual fraud." The provision was designed to protect creditors from dishonest debtors, consistent with *Grogan v. Garner*, 498 U.S. 279 (1991), which reserved the fresh start for the "honest but unfortunate." But the provision's passive-voice drafting (debts *obtained by* fraud, without specifying whose) produced *Bartenwerfer v. Buckley*. There, the Supreme Court unanimously held that a debt obtained by fraud is nondischargeable even when the debtor herself did not commit, and did not know of, the fraud; it was enough that her business partner (and husband) committed it and that partnership law imputed liability to her. Justice Barrett's opinion reasoned that § 523(a)(2)(A) turns on "how the money was obtained, not who committed fraud to obtain it."

For survivors, *Bartenwerfer* is a doctrinal trap with a bitter irony. The same fraud framework that *should* help a survivor (her abuser defrauded the creditor using her identity; she was the fraud's instrument, not its author) instead threatens her: if a court imputes the abuser's fraud to the survivor through agency, partnership, or joint-venture principles (theories creditors routinely plead against spouses), the coerced debt becomes *nondischargeable*. The victim of the fraud is treated as its beneficiary. Justice Sotomayor's concurrence emphasized that imputation still requires a genuine agency or partnership relationship, and lower courts retain room to find that a coerced spouse was no true partner. But the structural point stands: § 523(a)(2) sorts debts by the creditor's injury, not the debtor's culpability, and that sorting principle is exactly backwards for coerced debt.

Other exceptions compound the problem. Section 523(a)(6) (willful and malicious injury) and § 523(a)(2)(B) (false written statements) can attach to loan applications the abuser completed or forced the survivor to sign. Section 523(a)(15) renders non-support divorce obligations nondischargeable in Chapter 7, including hold-harmless provisions assigning the abuser's debts to the survivor as leverage in a coerced settlement. And because dischargeability litigation proceeds by adversary proceeding, a survivor must litigate, at her own expense, against a creditor holding all the documentary evidence, sometimes with the abuser as the creditor's star witness.

B. Chapter 13's good-faith and repayment machinery

Chapter 13 offers a broader discharge (§ 1328(a) discharges § 523(a)(15) divorce debts and, historically, some fraud-adjacent obligations), which is why practitioners often steer survivors there. But Chapter 13 assumes a stable income stream over three to five years, an assumption at war with the realities of post-separation life: relocation, job loss caused by abuser interference or stalking, litigation abuse in family court, and the income volatility of single parenthood. Plan failure rates are high generally; for survivors they are predictably higher, and a failed plan yields no discharge at all absent the demanding hardship standard of § 1328(b).

The confirmation requirements of § 1325 likewise ignore coercion. The "good faith" inquiry under § 1325(a)(3) and (a)(7) invites courts to scrutinize how debts arose; a record of large cash advances or luxury charges, made in fact by the abuser on cards in the survivor's name, reads on paper as bad faith. The disposable-income test treats the survivor's budget as if her expenses were freely chosen, with no accommodation for safety-driven costs (security deposits after flight, therapy, relocation, protective-order litigation). And the means test of § 707(b), applicable in Chapter 7, calculates ability to pay from historical household income that may include the abuser's earnings the survivor never controlled.

C. Procedure as a safety hazard

Bankruptcy's transparency norms, including public filings under § 107, schedules listing addresses and employers, and § 341 meetings any creditor may attend, were built for arm's-length creditors. When the "creditor" is the abuser (holding a domestic support obligation, a property-settlement claim, or a co-signed note), the process hands him the survivor's new address, workplace, bank, and courtroom appearance schedule. Protective mechanisms exist (§ 107(c) permits redaction where disclosure creates risk of unlawful injury; Rule 9037 allows protective orders), but they are discretionary, little known, and require the survivor to identify the risk in advance and litigate for protection.

IV. The Civil Rights Dimension

Treating coerced debt as voluntary debt is not merely doctrinally awkward; it has distributive consequences that sound in civil rights.

Gender. Intimate partner violence, and economic abuse specifically, is overwhelmingly directed at women. A regime that denies relief for coerced debt therefore imposes its costs almost entirely on one sex. This is disparate impact in its plainest form: a facially neutral rule (all debts are presumed voluntary) interacting with a gendered social practice (economic abuse) to produce systematically gendered outcomes. Congress has recognized the principle elsewhere: the Violence Against Women Act reauthorizations, the Fair Credit Reporting Act's identity-theft blocking provisions, and the Debt Bondage Repair Act of 2021 (which blocks adverse credit reporting of debts incurred through trafficking) all acknowledge that coerced obligations deserve different legal treatment. Bankruptcy law remains the conspicuous holdout.

Race and class. Coerced debt's harms fall hardest on survivors without wealth buffers. A survivor with savings absorbs the abuser's fraud; a survivor living paycheck to paycheck defaults, is sued, and files. Because wealth in the United States is racially stratified, and because women of color face both elevated rates of intimate partner violence and diminished access to credit-repair resources and counsel, the neutral rule concentrates its harshest outcomes (nondischargeability, plan failure, denial of discharge) among the least advantaged. Bankruptcy scholarship has already documented racial disparities in chapter selection and outcomes; coerced-debt blindness deepens the same gradient.

Liberty. Most fundamentally, coerced debt implicates the interest that discharge doctrine exists to protect: economic self-determination. *Local Loan* described the fresh start as giving the debtor "a new opportunity in life... unhampered by the pressure and discouragement of preexisting debt." When the preexisting debt was itself a mechanism of domination, imposed to prevent escape, denying discharge does not merely fail to liberate; it completes the abuser's project with the state's imprimatur. A legal system that voids contracts signed at gunpoint but enforces credit-card balances incurred under sustained intimate coercion has drawn its consent line in a place no coherent theory of voluntariness can defend.

Does the current regime *perpetuate* inequality? Yes, in the precise sense that it converts private subordination into durable legal disability. The abuser inflicts the harm; the Code ratifies it by attaching the ordinary consequences of voluntary borrowing (nondischargeability exposure, good-faith suspicion, credit stigma) to obligations the survivor never chose. Formal equality among "debtors" produces substantive inequality among people.

V. Reform Proposals

A. A statutory definition: § 101 amendment

Congress should add to § 101 a definition of **"coerced debt"**: a debt incurred in the debtor's name (1) without the debtor's knowledge or effective consent, or (2) through duress, threat, intimidation, fraud, or exploitation by a person who is or was in a family, household, intimate, or caretaking relationship with the debtor. This tracks the pioneering state statutes, namely Texas's 2019 family-violence coerced-debt provisions and California's SB 975 (2022), which created procedures for survivors to challenge coerced debt against creditors, and it borrows the relationship-based framing already present in § 101(14A)'s definition of "domestic support obligation." A federal definition matters because it gives courts a hook that does not depend on the happenstance of state law.

B. Dischargeability reform: fixing § 523 after *Bartenwerfer*

Two surgical amendments follow. First, add a subsection providing that **no debt shall be excepted from discharge under § 523(a)(2), (a)(4), or (a)(6) based on fraud or misconduct imputed to the debtor from a person whose coercion, fraud, or abuse gave rise to the debt**. This overrules *Bartenwerfer*'s application to survivors without disturbing its core holding for genuine business partners. Second, amend § 523(a)(15) to permit discharge, even in Chapter 7, of divorce-assigned debts where the underlying obligation is a coerced debt or the assignment itself was procured through abuse, with a carve-out preserving § 523(a)(5) support obligations so that reform cannot be weaponized *by* abusers against legitimate support claims. The asymmetry is deliberate: the definition's relationship-plus-coercion elements, and a requirement of corroborating indicia (protective orders, police reports, medical or shelter records, sworn declarations under penalty of perjury, or a pattern of accounts opened without notice), keep the defense from becoming a general-purpose fraud shield.

C. Identity-theft parity

Where coerced debt was incurred entirely without the survivor's knowledge, it is identity theft, and the law should say so regardless of the perpetrator's relationship to the victim. The FCRA already entitles identity-theft victims to block fraudulent tradelines, but creditors and courts often treat "familiar fraud" skeptically because the perpetrator had apparent access. A Code amendment should provide that a coerced debt, once established in bankruptcy, is treated for all purposes (claim allowance under § 502, dischargeability, and post-discharge credit reporting) as a debt of the perpetrator, with the estate subrogated to claims against him. Pairing this with a directive that discharge or reclassification orders are furnishable to credit bureaus would address the survivor's real-world problem: the credit report, not just the judgment.

D. Chapter 13 and procedural reforms

Within Chapter 13, courts should be directed (by statute or interim rule) to treat documented abuse as: (i) relevant to good faith under § 1325(a) *in the debtor's favor*, so coerced charges cannot evidence bad faith; (ii) a basis for plan modification under § 1329 when abuser interference (stalking-related job loss, litigation abuse, support nonpayment) disrupts income; and (iii) a circumstance supporting hardship discharge under § 1328(b), for which the survivor should not be "justly accountable." Procedurally, Rule 9037 and § 107(c) should be amended to make address and employer redaction *presumptive* upon a debtor's attestation of abuse risk, to permit remote § 341 appearances, and to authorize protective orders limiting an abuser-creditor's discovery into the survivor's location. Finally, courts should exercise existing § 105(a) equitable powers, and their power over claim objections under § 502(b)(1) (a coerced debt is unenforceable against the survivor under nonbankruptcy duress and identity-theft law), without waiting for Congress; several of these tools are available today and merely underused.

VI. Objections

Evidentiary abuse and moral hazard. The strongest objection is that intimate relationships are evidentially opaque: any debtor could claim an ex coerced the spending, and creditors cannot see inside a household. The answer is calibration, not paralysis. The proposals above require relationship-plus-coercion elements and corroborating indicia, and they preserve the creditor's right to contest in an adversary proceeding where the debtor bears the burden by a preponderance, the same standard *Grogan* prescribes for creditors under § 523. Fraud doctrine already asks courts to reconstruct intent from circumstantial evidence; asking them to recognize duress is no harder. And the moral-hazard concern inverts the incentives at stake: the marginal deterrent effect on hypothetical opportunistic debtors is trivial next to the demonstrated in-terrorem effect coerced debt has on survivors' ability to leave.

Creditor reliance and credit pricing. Creditors argue they extended value and someone must bear the loss. True, but bankruptcy is precisely the field of law that allocates losses between innocent creditors and honest debtors, and it has always allocated them against creditors when the debtor lacked culpability. Between a lending industry that can diversify, price, and (crucially) improve identity-verification practices, and an individual survivor who can do none of those things, the least-cost-avoider analysis is not close. Subrogating claims against the abuser preserves the creditor's remedy against the truly responsible party.

Federalism and line-drawing. Some contend consent defects belong to state contract law, not the Code. But Congress has never accepted that division: § 523 itself federalizes fraud standards, and § 101(14A) federalizes support definitions. Uniformity is a virtue here; a survivor's fresh start should not depend on whether she fled to Texas or Tennessee.

VII. Conclusion

The Bankruptcy Code's silence on coercion is a policy choice masquerading as neutrality. By presuming every debt voluntary, the current regime denies the fresh start to precisely the debtors whose need for it is most acute, ratifies economic abuse as a durable legal status, and distributes those consequences along lines of gender, race, and wealth. The reforms proposed here are modest in mechanics and conservative in spirit: a statutory definition of coerced debt, targeted § 523 amendments reversing *Bartenwerfer*'s application to survivors, identity-theft parity, and safety-conscious Chapter 13 and procedural rules. They ask only that bankruptcy law honor its own founding premise. The fresh start belongs to the honest but unfortunate debtor, and no debtor is more plainly both than one whose debts were never hers to choose.

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