

INTRODUCTION: FEMALE PERSPECTIVES IN COMMERCIAL AND CONSUMER LAW

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Over the past several decades, female perspectives on commercial and consumer law have played an increasingly important role in the legal literature on credit, debt, and commerce. On the one hand, now that women are permitted a place in legal academia, many more women have made contributions to these scholarly fields.¹ But also, the literature has increasingly engaged feminist thought, highlighting the challenges women face interacting with credit.² As one prominent example of the special risks that women experience, consider fringe consumer credit markets. The majority of people taking out

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1 See Nathalie Martin, *Right Scholarship and the Goddesses of Commercial Law*, 34 COLUM. J. GENDER & L. 124, 138 (2016) (“The giants in the fields included people like Grant Gilmore, Vern Countryman, Lawrence Friedman, Stewart Macaulay, and William Whitford. Their rising protégés included [Jean Braucher and Elizabeth Warren]. From an all-male revue, we began to hear female voices speak out.”).

2 See, e.g., Angela Littwin, *Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence*, 161 U. PA. L. REV. 363, 365 (2013) (“Coerced debt occurs when the abuser in a violent relationship obtains credit in the victim’s name via fraud or duress. This is a new problem, one enabled by the tremendous growth of consumer credit markets in recent decades and by the corresponding depersonalization of the credit system.”); Christine Kim, *Credit Cards: Weapons for Domestic Violence*, 22 DUKE J. GENDER L. & POL’Y 281, 294–95 (2015) (finding that credit card companies’ representatives often stated that no policies were in place to help victims of coerced debt); Gwendolyn Griffith, *The Evolution of Women’s Wealth: Implications for Wealth Planners*, ESTATE PLANNING CLIENT STRATEGIES (2014), 2014 WL 4160088, at *14 (“A woman’s net worth is her total assets reduced by her debts. In this arena, too, women’s wealth suffers. Women carry slightly less debt, on average, than men. But because their incomes are typically lower, they have a higher debt-to-income ratio than men.”); Kristin Brandser Kalsem, *Bankruptcy Reform and the Financial Well-Being of Women: How Intersectionality Matters in Money Matters*, 71 BROOK. L. REV. 1181, 1185–86 (2006) (arguing that scholars should address bankruptcy reform issues as “‘women’s issues’ in an anti-essentialist way and through an intersectional lens”).

payday loans—those short-term loans for small amounts with high costs³—are women.⁴ Other fringe credit products are the same. Women make up a majority of pawn shop customers,⁵ title lending customers,⁶ and rent-to-own customers.⁷ The legal literature on the fringe economy has recognized this phenomenon. In just the past few years, articles have argued that payday lenders target women on welfare and single women;⁸ criticized payday lenders for targeting economically disadvantaged groups like women;⁹ found that payday loan advertisements contained more pictures of women than one would predict based on the percentage of women in the general population or in the payday loan market;¹⁰ suggested that financial stress pushes more women into payday loans than men;¹¹ posited that the spread of payday lenders is symbolic of the “status-contingent inequalities” that

3 Jim Hawkins, *Using Advertisements to Diagnose Behavioral Market Failure in the Payday Lending Market*, 51 WAKE FOREST L. REV. 57, 58 (2016).

4 Nathalie Martin & Ernesto Longa, *High-Interest Loans and Class: Do Payday and Title Loans Really Serve the Middle Class?*, 24 LOY. CONSUMER L. REV. 524, 535 (2012) (summarizing studies consistently finding that a majority of payday borrowers are women).

5 Marieke Bos et al., *The Pawn Industry and Its Customers: The United States and Europe* 5 n.3 (Vanderbilt Univ. Law Sch. Law & Econ. Working Paper No. 12-26, 2012).

6 Kathryn Fritzdixon et al., *Dude, Where's My Car Title?: The Law, Behavior, and Economics of Title Lending Markets*, 2014 U. ILL. L. REV. 1013, 1028 (2014).

7 JAMES M. LACKO ET AL., FED. TRADE COMM'N BUREAU OF ECON., SURVEY OF RENT-TO-OWN CUSTOMERS 38 (2000), <https://www.ftc.gov/sites/default/files/documents/reports/survey-rent-own-customers/renttoownr.pdf> [<https://perma.cc/HG27-T32J>].

8 Katherine Houren, *Achieving the American Dream in Debt? Why the USA Patriot Act Puts Undocumented Immigrants at Risk for Abuse by the Payday Loan Industry*, 15 WASH. & LEE J. C.R. & SOC. JUST. 561, 570 (2009).

9 See Linda R. Crane, *Checking Out of the Exception to 3-104: Why Parties Should Be Able to Negotiate Whether Checks Should Be Payable on Demand*, 3 COLUM. J. RACE & L. 73, 88 (2013) (“Even more troubling is the fact that payday loan customers are disproportionately drawn from politically and economically disadvantaged groups: racial minorities, women and military families who are deliberately targeted by payday loan operators.”).

10 Jim Hawkins, *Are Bigger Companies Better for Low-Income Borrowers?: Evidence from Payday and Title Loan Advertisements*, 11 J.L. ECON. & POL'Y 303, 324 (2015).

11 Amy J. Schmitz, *Sex Matters: Considering Gender in Consumer Contracting*, 19 CARDOZO J.L. & GENDER 437, 445–46 (2013).

subordinate women;¹² and argued that payday lending policy needs to address the fact that so many payday loan borrowers are women.¹³

While this example only comes from one market, it offers a vivid illustration of the concerns women face using credit and the scholarship that has unmasked these concerns. Without scholarly attention to the “women’s issues” endemic across the consumer credit market, such concerns may remain hidden today.

In January 2016, the Section on Commercial and Related Consumer Law, along with the Women in Legal Education Section, of the American Association of Law Schools convened a symposium on the topic of “Female Perspectives in Commercial and Consumer Law.” The symposium published here draws from three important female voices in commercial and consumer law and exemplifies the way female scholars and commercial and consumer law scholarship have confronted women’s concerns in these areas.

In *Creditors’ Use of Consumer Debt Criminalization Practices and Their Financial Abuse of Women*, Creola Johnson argues that lenders have used the coercive power of the state to enforce debt obligations through criminal laws.¹⁴ Focusing on rent-to-own companies and payday lenders, she describes how this debt collection strategy likely disproportionately affects female borrowers.¹⁵ In line with the general theme of the symposium, she highlights reasons women in particular might face demands that make them more susceptible than men to the criminalization of their debt.¹⁶

Hila Keren takes up the popular show *Shark Tank* in her article *Women in the Shark Tank: Entrepreneurship and Feminism in a Neoliberal Age*. Keren views *Shark Tank* as a method for disseminating neoliberalism to the masses through the “idealization of entrepreneurship.”¹⁷ She uncovers ways in which the show’s interaction with female

12 Emily M.S. Houh & Kristin Kalsem, *It’s Critical: Legal Participatory Action Research*, 19 MICH. J. RACE & L. 287, 292 (2014).

13 Amy J. Schmitz, *Females on the Fringe: Considering Gender in Payday Lending Policy*, 89 CHI. KENT L. REV. 65, 74–80 (2014).

14 Creola Johnson, *Creditors’ Use of Consumer Debt Criminalization Practices and Their Financial Abuse of Women*, 34 COLUM. J. GENDER & L. 5 (2016).

15 *Id.* at 29–43.

16 *Id.*

17 Hila Keren, *Women in the Shark Tank: Entrepreneurship and Feminism in a Neoliberal Age*, 34 COLUM.

entrepreneurs undermines feminist values by, for instance, associating the products of female entrepreneurs with domestic labor.¹⁸ In response to these two aspects of the show, she argues that feminists ought to reject neoliberalism's dependency on entrepreneurship while at the same time creating legal support for women engaged in entrepreneurial pursuits.¹⁹

Nathalie Martin's *Right Scholarship and the Goddesses of Commercial Law* describes the idea of "right scholarship," or scholarship with purpose and passion, by relying on yoga and various religious traditions.²⁰ In honor of the substantial and important work the late Professor Jean Braucher and Senator Elizabeth Warren added to the commercial and consumer law literature, Martin highlights their academic contributions as examples of right scholarship.²¹ Moreover, she draws one "recipe" out for producing right scholarship from these two exemplary female scholars—focusing on empiricism and writing with passion—in hopes of inspiring more scholarship that protects the underdog and makes real differences in the world.²²

These three Articles are impressive examples of the sort of the scholarship this symposium tried to highlight—scholarship on the distinctive issues women using credit must confront. If this work is any indicator, academics and policymakers have much to look forward to as scholars continue to explore female perspectives on commercial and consumer law and advocate for legal and social change.

J. GENDER & L. 75, 76 (2016).

18 *Id.* at 97–103.

19 *Id.* at 103–19.

20 Martin, *supra* note 1.

21 *Id.*

22 *Id.* at 125.