When Information Wields Power: The Inequalities of Credit Reporting in Abusive Relationships

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Angela Littwin, Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence, 161 **U. of Pa. L. Rev.** 363 (2013).

Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence expands and develops Angela Littwin's pioneering work on "coerced debt" within violent and abusive relationships. Littwin's first study on this topic, Coerced Debt: The Role of Consumer Credit in Domestic Violence, offers a preliminary account of various ways in which "coerced debt" occurs, how it is experienced and its potentially devastating consequences for abused women. *Escaping Battered Credit* considers potential legal responses to the problem in the context of abusive relationships, and takes on the challenge of crafting a partial remedy that fits within the institutional structure of US consumer credit markets.

Littwin describes coerced debt as occurring "when the abuser in a violent relationship obtains credit in the victim's name via fraud or duress" (P. 365), and defaults on the debt. Typical practices range from basic identity theft, as when the abuser applies for a credit in his partner's name without telling her, through resort to physical and psychological violence to coerce abused women to apply for credit or release equity in their homes, to abusers structuring loan transactions to ensure that they enjoy the benefits of credit and the women they have abused are left with the debt liabilities. Coerced debt is related to the well-documented problems of "sexually transmitted debt" in which so-called "surety wives" guarantee loans to their businessmen spouses under circumstances of duress, fraud, or misinformation; and coercive microcredit which occurs when gender specific peer-lending programs expose poor women to the risks of being coerced into borrowing on behalf of their spouses. All three instances subject abused women to risks of liabilities to creditors to which they did not freely consent and against which law offers little protection, illustrating how market relations of credit and debt may constitute specific instruments of oppression within familial and intimate relationships, particularly, although by no means only, as those relationships fail.

The distinctive aspect of Littwin's work, and the importance of her contribution, is its departure from the conventional focus on (the limits of the) law's capacity to protect coerced debtors against creditors' claims. *Escaping Battered Credit* instead examines the implications for coerced debtors of the role of credit reporting intermediaries in consumer finance markets. The paper shows that how the interaction of the familial and market relations that constitute coerced debt has pernicious consequences for abused women because of the range of service providers and market actors who make use of the information held by credit reporting agencies. Because access to the most basic and essential sites of social provisioning, including tenancies, utilities, and in the United States apparently jobs, are now mediated by credit reporting agencies, an abused woman saddled with a credit record damaged by coerced debt may be unable to secure shelter or work and as such lack the means to establish a household independently of the abuser.

This problem is not easy to address because of how consumer credit markets are currently constituted. Credit reporting has become integral to the mass delivery of consumer credit because it appears to respond to what is perceived to be the definitive failure in consumer finance, that is, an information asymmetry that potentially enables borrowers strategically to take advantage of lenders limited information about borrowers' capacities and inclinations to repay loans. Information theory holds that by providing creditors with low cost access to information about borrowers' past performance on credit transactions, credit reporting agencies help lenders to screen out unreliable borrowers, deter opportunistic debtors from defaulting on loans and enable responsible lenders to see when a borrower may not be able to service a requested loan.[1]

These purported benefits of screening and sanctioning are based on an assumption that the information held about each individual accurately reflects her conduct and propensity to repay. But Littwin's study shows that this assumption does not hold true in cases of battered credit when the debtor may not even have known about the loan or may have been coerced into assuming it. Even though information about default on a coerced debt may not contribute meaningful information to the market it will nonetheless be recorded on a credit record and from there affect future access to credit and credit-based services. Despite the circumstances of the creation of coerced debt there is little chance of a coerced debtor securing removal of the loan from her records because the coercion of an intimate partner will rarely operate as a defence to the claims of an "innocent" creditor. In the odd cases where removal from a record should be possible because the debt is unenforceable the coerced debtor will encounter error-correction processes that are arduous and seldom able to rectify records even in the simplest cases of mistakes within the reporting system. (Pp. 379-89.) Finding little reason to believe that credit-reporting intermediaries respond to situations of coerced debt in ways that respect equality interests, Littwin proposes instead a remedy based on selective blocking of access to information about debts that a family court has certified are coerced.

The proposed remedy is pragmatic because it concerns information about payment records rather than complex questions of substantive responsibilities for coerced debt and and as the author herself acknowledges the remedy is partial because it responds only to the subset of battered credit cases in which courts play a formal role in dissolution of the family as an economic unit. Although *Escaping Battered Credit* does not purport to provide a definitive legal solution to the harms of coerced debt, the article is nonetheless important to equality scholarship for its insights into the ways in which market institutions associated with debt and debt default, such as credit reporting, may be wielded as a threat or instrument of control within abusive relationships.

1. RonaTas, Akos. "The Role of Credit Bureaus in Globalised Economies: Why They Matter Less Than We Think and How They Can Matter More." Consumer Debt and Social Exclusion in Europe (2015).

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