polish 4(208)'19
sociological
review
ISSN 1231 – 1413
DOI:10.26412/psr208.05

Economic Sociology

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Economic Exclusion as a Predictor of Cascade Exclusion: A Case Study of Loan Companies in Poland

Abstract: This paper discusses the results of two empirical research projects on consumer micro-loans in Poland recently conducted at the Institute of Applied Social Sciences (University of Warsaw) and the Institute of Justice. The text summarizes the main findings of both studies and focuses on their main common thread: the various dimensions of social exclusion among average consumers who enter the loan market. The text argues that individuals who take consumer loans usually experience financial exclusion, which in turn prevents them from obtaining the cheaper credit available from banks. At the same time, by entering the loan market individuals de facto exclude themselves from effective legal protection (from courts and administrative bodies), which should be provided as an element of the rule of law in a democratic state. Building on these premises, the concept of "cascade exclusion" is proposed as an analytical framework for theses on interrelated dimensions of exclusion.

Keywords: social exclusion, inequality, consumers, credit, law.

Introduction

The purpose of this paper is to discuss the social, economic, and legal situation of the clients of loan companies in Poland. We will present the results of two studies and the conclusions that can be drawn from them. The topic is of high social importance as statistical data for 2017 show that approximately 3.2 million clients used the services of loan companies: approximately 2 million online and around 1.2 million offline. By value, loan companies comprise approximately 4% of the consumer loan market, yet by number of loans granted they constitute over 20% of the market, that is, one fifth of the consumer credit, including all loans, granted by banks and non-banking companies. According to information provided by the Credit Information Bureau, loan companies dominate in the segment of loans of up to 1,000 PLN. Loan companies and banks share the 1,000–4,000 PLN segment almost fifty-fifty, but from a loan value of 4,000 PLN and up, banks begin to dominate. It is highly likely that loan companies will gain an increasingly stronger position on the loan market due to the technological revolution, which has led to the development of FinTech and the ability to obtain loans via the Internet. But technology is not the only factor involved. Loan companies complement rather than compete with the banking sector for two reasons: first, loan companies are prepared to serve clients who do not have credit standing, which is usually associated with a much higher cost of loan; second, loan companies usually do not require their clients to present documents indicating that they are able to repay the loan, that is, documents confirming stable employment, income level, and so forth. Consequently, the services of loan companies are most often used by clients who are excluded from the official banking sector for such reasons. These are the poorest clients, who agree to a much higher costing loan because they have no other option than such companies for obtaining credit.

First, we will discuss the results of a study conducted as part of a research project entitled “Why Paraformality Works: The Diffusion of Short Term Loans in Poland” (Jakubowska-Branicka 2016). Then we will present the findings of a study entitled “Loan Contracts in the Case Law of Common Courts” conducted at the Institute of Justice by a team led by Mateusz Grochowski (Grochowski 2018).

Loan Company Client Profile

The survey was commissioned by Poczta Polska S.A., as an omnibus survey (2016/03) and conducted by CBOS (Fundacja Centrum Badania Opinii Społecznej—[Public Opinion Research Center Foundation]). The survey was carried out between January 21 and January 28, 2016 on a random sample of 992 adult Poles, representative of the entire country, drawn from the PESEL (Polish Resident Record System) register. The respondents were questioned by qualified CBOS interviewers in computer-assisted personal (face-to-face) interviews. The sample-selection method accounts for the response-rate difference in classes of localities and response-rate difference in groups of selected socio-demographic variables, such as gender, age group, education, socio-professional group, country, and region.

The analysis contained in this part of the paper concerns responses to questions about how often the respondent used financial services, including the services of loan companies, and the respondent’s financial standing.

We asked the respondents what other financial products they had used over the last five years. This was a multiple-choice question.

The majority of respondents, 58.0%, had not used any of the listed financial products. 25.2% of respondents had taken bank credit or a loan, and 16.3% had made instalment purchases. Only 6.7% had taken payday loans, and 3.9% had borrowed money from friends or family.

Bank credit/loans are most frequently taken by respondents aged 35–44—39.8%, more often by persons residing in urban than rural areas (rural residents—21.2%, large city residents—30.4%), most often by respondents with university-level education—35.9% (elementary and secondary school education: 18.3%), the self-employed—46.2%, administrative and office employees—43.2%, disability pensioners—33.6%, persons in families with an income ranging from 1,000 to 1,399 PLN per person—30.6%. Bank credit and loans were taken least frequently by respondents who perceived their financial situation as bad—20.9%, and by the unemployed—9.9%, as well as by students—1.3%, which is most likely caused by the fact that representatives of these social groups do not have the necessary credit capacity.

Payday loans from loan companies are most frequently taken by respondents who perceive their financial situation as bad—21.2%, persons in families with income up to 649 PLN per person, persons working on private agricultural farms—20.5%, farmers—13.8%, disability pensioners—13.1%, and respondents with elementary or junior high school education—8.9%, or with basic vocational education—8.3%. Payday loans are most frequently used by older respondents, aged 55–64—9.6%, and by residents of cities with populations of 500,000 and over.

Loans from family and friends are most often taken by respondents aged 25–44—7.2%, the unemployed—9.3%, unskilled laborers—6.9%, people in the lowest income bracket (up to 649 PLN per person in a household)—7.0%, and those who perceived their financial situation as bad—8.1%.

Pawn shop services were most frequently used by residents of the largest cities—7.9%, and by respondents who perceived their financial situation as bad—6.0%.

Instalment purchases were popular among all respondent groups, but they were most frequently made by young people (aged 25–34) and middle-aged people (35–44)—20.7% and 21.8% respectively. Instalment purchases were made least frequently by the unemployed—2.7%, by respondents in the lowest income bracket (up to 649 PLN per person in the household)—9.7, and by respondents with an elementary or junior high school education—8.4%.

The next question directly concerned the respondents' financial difficulties. We asked whether the respondents had ever been caught in a debt spiral or been listed in the National Debt Register, and whether they had been subject to court proceedings for unpaid debts.

Assuming that the survey sample is representative, the data provides the basis for rather optimistic conclusions about the financial condition of Polish society. Only 6.4% of respondents had ever been caught in a debt spiral or listed in the National Debt Register, and 4.2% had been subject to court proceedings for unpaid debts.

The survey results indicate that about 7% of respondents are in serious financial trouble. They are usually persons without permanent employment, in a long-term difficult financial situation, with an elementary education or just above. They are often unskilled laborers. Given the sample size, this group seems relatively small. Assuming the sample is representative of Poland's population and given that according to the Central Statistical Office the adult population in 2016 was 31,537,114 people, the point estimator for the 7% is 2,207,598 people. Since this is a survey, the result must be given within a range, which in these cases is between 2,172,546 and 2,242,650 people (for a confidence level of 95%). Our final conclusion is that around 2,200,000 Poles face serious financial trouble.

Let us take a closer look at which respondents had financial difficulties. The respondents who had been caught in a debt spiral were most often respondents who had taken payday loans from loan companies—35.5%, or who had taken bank credit or loans—30.8%. In addition, those who made instalment purchases had a greater tendency to fall into a debt spiral—19.7%, as did those who borrowed from family and friends—15.5%, and those who had taken pawn-shop loans—8.8%.

The respondents who had been listed in the National Debt Register were most frequently those who had taken bank credit or loans—38.3%, or had taken payday loans from loan companies—34.4%, or had made instalment purchases—17.8%, or had taken pawn-shop loans—10.5%, or had borrowed money from friends or family—8.5%.

Court proceedings for unpaid debts affected 36.3% of respondents who had taken payday loans from loan companies, 32.4% who had made instalment purchases, 20.6% of those who had taken bank credit or loans, 15.9% of pawn-shop clients and 10.5% of respondents who had borrowed money from friends or family.

To summarize, the clients of loan companies are more likely than other people to struggle with debt (35.5%). Over one third (34.4%) are or have been listed in the National Debt Register, and they are more likely than other people to be subject to court proceedings concerning unpaid debts.

Only 72.7% respondents were able to repay the loan on time; 18.6% were not able to do so owing to insufficient funds. 4.5% of respondents did not repay the loan on time due to a dispute with the creditor.

44.5% of respondents decided to take a loan from a loan company instead of taking bank credit owing to a lack of credit capacity, which means they had no access to traditional bank services. 22.0% cited no formalities—not having to present any documents confirming income or a spouse's consent—as their reason for using loan companies. 8.6% admitted that such loans are very expensive but said the process of obtaining them is very quick. Only 4% did not think these loans are expensive.

Respondents cited the following reasons for their lack of credit capacity: no permanent income, work in the gray zone—44.6%, low income—29.6%, and bank debt precluding them from obtaining further bank credit—14.9%. Most respondents—64%—object to the costs of loans (33% of respondents) but take loans anyway out of necessity.

The respondents used their last payday loan money for:

- purchasing food—17.4%
- payment of bills—14.6%
- payment for medical treatment, the purchase of medications—13.1%
- planned renovations, for example, of an apartment—10.3%
- sudden, unexpected expenses, for example, repairs—6.8%
- children's education, i.e., the purchase of textbooks, school fees—6.6%
- travel, holidays—6.2%
- purchasing basic necessities for family members, e.g., clothing for children—4.9%.

The other choices represented less than 4 percentage points, but it is worth pointing out that 3.1% of respondents took payday loans to satisfy their ongoing basic needs, which they could not finance because they were paying off credit, and 2.3% of the respondents used the loan to repay debts taken by family members. Only 3.9% of the respondents declared that they had taken a payday loan to finance a luxury item, for example, an expensive cell phone.

The presented structure of needs that "payday loans" serve to satisfy is a saddening one and it is indubitable that these expensive loans are used to satisfy basic and not exclusive needs.

It is also of some concern that only 51.6% of borrowers read the terms and conditions of the loan agreements, while 29.5% did not ask for them. Nearly 27% (!) of borrowers were not able to state the total cost of their last loan.

To recapitulate: the great majority of respondents who used the services of loan companies were in serious financial trouble. We should not be optimistic about the fact that "only"

6.7% of respondents had recourse to this type of financial products. It can be suspected that the number of payday loan companies' clients is much higher than the result obtained in our survey. Close to 10% of all respondents declared that someone in their family had used the services of loan companies, and close to 15% declared that their friends had done so. We asked all our respondents how often their friends and family used the services of loan companies. Almost 10% (9.7%) of all respondents declared that their family members had used the services of loan companies (80.6% answered negatively); almost 15% (14.7%) declared that their friends use the services of loan companies.

The offerings of loan companies are addressed to two target groups. Stationary companies address their offers primarily to non-wealthy elderly people who have lower competence in using electronic media. Companies that grant loans online also address their offers to younger or very young people, with high competence in using electronic media. The survey results allow us to conclude that regardless of the method by which loan companies function, their clients usually do not have credit capacity, owing to poverty or lack of a permanent job. These people are excluded from the market of traditional banking services, because they do not have the required credit capacity. In this way, lack of credit capacity results in yet another form of exclusion, that is, exclusion from the market of cheaper bank loans.

We conducted in-depth interviews with loan-company managers. As is often the case in conducting studies, it emerged that a large number of the entities selected for the survey refused to take part in the interview despite our guarantee of full anonymity. In the end, we managed to conduct interviews with representatives of eight large loan companies operating on the Polish financial market (they are not identified here due to the guarantee of anonymity). We also conducted in-depth interviews and numerous conversations with Andrzej Roter, president of the Management Board of the Conference of Financial Companies in Poland—Association of Employers, from whom we received additional valuable material. We also conducted in-depth interviews with Jarosław Ryba, President of the Management Board of the Association of Loan Companies in Poland (formerly Związek Firm Pożyczkowych, now Polski Związek Instytucji Pożyczkowych) and with Monika Zakrzewska, President of the Foundation for the Development of the Financial Market in Poland.

Our respondents were asked what functions the loan company sector plays on the financial market. They agreed in this respect; they all underscored the positive functions of the loan company sector. They are of the opinion that the loan company sector supplements bank offerings and satisfies the needs of those consumers who do not fit the bank–client profile owing to the specificity of bank operations. Loan companies provide services to excluded clients—ones who would never be able to take a loan at a bank.

There are various reasons for exclusion from the banking financial market. The dominant reason is lack of credit capacity caused by very low income. Other people may be excluded because they do not meet the formal requirements of banks. These are people who are employed in the grey zone, or are employed on the basis of short-term agreements regulated by general contract law rather than labor law ("garbage contracts"), or are unable to document their income formally. Another reason is having a bad credit history, either long- or short-term. In such cases, a problem with the payment of even a few instalments automatically cancels a client's eligibility. The infrastructure limitations of the financial structure in Poland are another reason for exclusion. The presence of fewer bank branches in small localities means that banks are not able to lend money to the target groups of loan companies. Moreover, lending small amounts is not profitable for banks. Therefore, the loan company sector cannot be viewed as a threat to banks, as it only complements the supply of loan services.

The Legal Situation of Loan Companies' Clients

Research on the legal dimension of consumer micro-loan contracts and their life cycle was conducted at the Institute of Justice in Warsaw in 2015–2016 (the empirical part) and in 2017–2018 (the analytical part) and encompassed analysis of data obtained from a countrywide sample of cases decided by Polish courts in 2015–2016.[1] In the analytical part, a multi-tier set of features of consumer loans on the market and within legal enforcement procedures was identified.

The data collected during the project provides an additional contribution to the existing pool of theoretical and empirical studies on consumer loans in the European Union and the United States (Kraemer-Eis and Conforti 2009; UOKiK 2012; Banks et al. 2015; Rona-Tas and Guseva 2018). At the same time, it also contributes more directly to the broader debate over financial exclusion (Corrado and Corrado 2015; Horská et al. 2013; Reifner 2011; Howell 2009), along with its epitome—consumer over-indebtedness (Mechele Dickerson 2008; Schicks 2010; Domurath et al. 2014)—and its further consequences for social equality and segregation. Due to the characteristics of the sample, the research was naturally centered on a particular aspect of this spectrum: the life of consumer loan agreements from inception to settlement. From this perspective, the study was intended to provide a deeper insight into aspects of the financial exclusion debate that had previously remained on the margins of the theoretical and empirical studies—i.e., the possible interdependencies between social segregation and the actual availability of legal protection. In this regard, the research engages also, indirectly, in a discourse about financial inequality and the role of law (in this regard, especially consumer protection) in providing a fair distribution of wealth in society.[2]

Almost all the court cases we examined were brought by the lenders (usually loan institutions or buyers of claims) against consumer-borrowers.[3] Proceedings in these cases were based on a typical model: the lender or the buyer of the claim brought a claim against the consumer, based on the loan agreement or a promissory note (in numerous cases borrowers

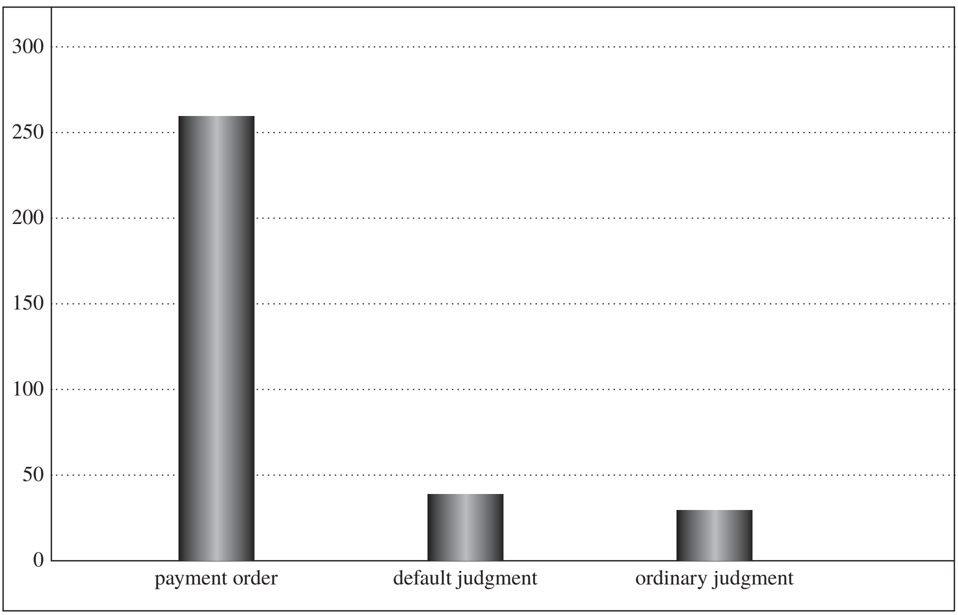
[1] The study was based on the analysis of court files, related to cases decided in 2015 and 2016. The entire sample consisted of 367 cases, decided by ordinary courts (civil courts of the first and second instance, with the exclusion of the Supreme Court).

[2] Separate attention in the project was also paid to a currently emerging alternative to consumer loans, i.e., "social" lending, concluded via peer-to-peer internet platforms. These constitute a special form of trading, based generally on the sharing-economy pattern, where individuals make their private funds available to possible borrowers (usually in return for interest), using a platform as an intermediary in concluding and executing agreements (Mitręga-Niestrój 2014; Ashta and Assadi 2009).

[3] Notably, only one of the disputes was initiated by a consumer (who, on entering a preliminary loan agreement with a lender, had paid an introductory fee and then claimed the repayment of the fee after exercising the right to withdraw from the agreement).

were granted a loan only if they signed a blank promissory note, which could subsequently be filled in by a lender and enforced before a court).[4]

A particular characteristic is that most of the courts' decisions were issued not *ex parte* but based only on facts provided by the lenders. First of all, in the large majority of consumer disputes, lenders were filing claims for the issuance of a payment order. In such cases, the court was only able to examine documents submitted by the plaintiff; the decisions were issued relatively promptly. The rapidity and one-sidedness of this procedure is compensated for by the existence of a comparatively easy way for a plaintiff to challenge the order and to bring the case to full court proceedings. This mechanism is, however, directly contingent on the consumer's ability to understand—at the least—the significance of a payment order and in general how to initiate an appellate procedure. In the majority of cases in the sample, consumers did not effectively exercise this right. Moreover, in some of the cases, the consumers did not collect from the post office the payment orders served upon them by the courts and thus were oblivious to the possible instruments for protecting their rights (though it cannot be excluded that under some circumstances the courts did not correctly identify the consumer's place of residence). As a result, over 50% of the cases in the sample were concluded with a payment order, without any adversarial party dispute. In addition, approximately 19% of cases were concluded with a default judgment, which means that the borrower remained absolutely passive and did not make any attempt to oppose the lender's claims. Consequently, the stratification of decisions in the cases studied was as follows:

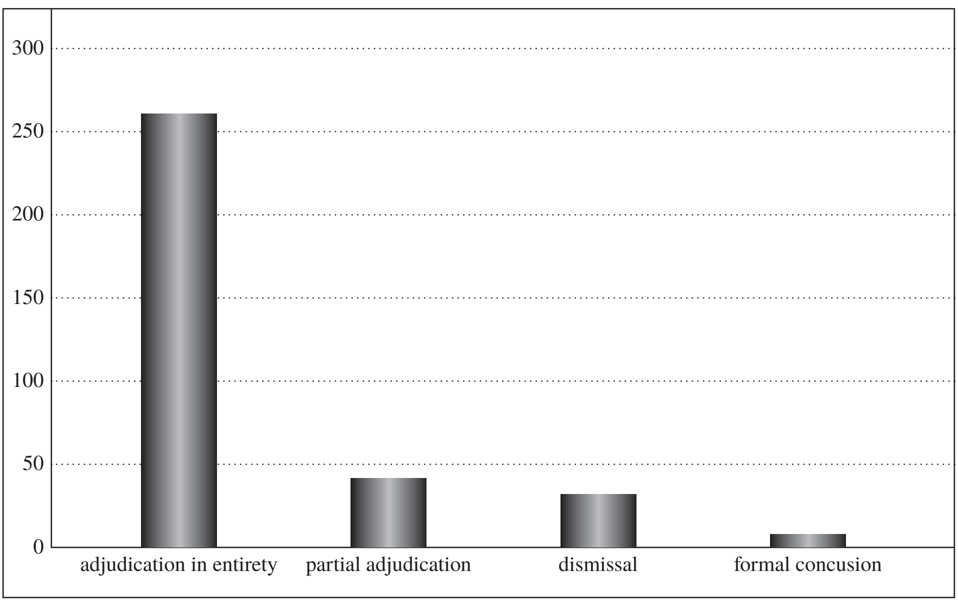


[4] The Code of Civil Procedure creates a substantial facilitation in the recovery of receivables arising from a promissory note, allowing the issuance of a decision (order for payment) only based on the promissory note itself, without examining the contents of the loan agreement and other circumstances related to the claim pursued. Some of the cases investigated were conducted on this basis, which in practice was associated with a serious limitation of consumer protection possibilities. Before issuing the order for payment, the court (ruling only on the basis of the promissory note) cannot scrutinize the loan agreement as such.

The most plausible causes of this phenomenon are twofold. On the one hand, consumers visibly lack sufficient legal and economic literacy to make effective use of the instruments offered them by the general rules of civil procedures. The normative design of civil procedure rules has been founded on the paradigm of parties' parity and equal possibility to defend their rights. The proper operation of this paradigm in consumer cases is hence dependent on an efficient system of *ex post* equalization of the parties' position in the proceedings. In this model, the legal measures are expected to be supported by extra-legal assistance, in particular by legal and financial aid for consumers claiming their rights. This requires either creating a state-based system of institutional support for consumers or reinforcement of the bottom-up emergence of consumer support structures (in particular, by consumer organizations). In the cluster of cases we analyzed, the former method appeared only in two instances, and only in one of them was a consumer represented by a state official before a court (in the other case, the consumer received only legal counselling). None of the cases involved a consumer organization, acting in any of its possible roles (e.g., by direct representation or by submitting an amicus brief).

In addition, a disproportion in the use of lawyers and legal advisors by the parties was clearly visible in the cases examined. While the lender (or the buyer of receivables) usually had the help of a professional representative, the consumers had this form of assistance only in a few cases. The lack can be explained primarily by the high cost of employing an attorney (especially in comparison to the amount of the claims).

The low degree of de facto procedural guarantees for consumers was accompanied by the structure of decisions *in merito* in the cases under analysis. About 80% of the cases were concluded with enforcement of the claim in its entirety or at least in part. Only in about 12% of the cases did the court dismiss the claim entirely (in the others, the proceedings were ended for formal reasons, without a decision on the claim's merits):



In other words, loan proceedings have been relatively low risk for the plaintiffs, giving them quite a high certainty of having a claim against a borrower enforced at least in part. If this outcome is juxtaposed with the above data on the stratification of court decisions, it seems quite clear that the enforcement of claims for the repayment of consumer loans is not only low risk but also transaction-costs favorable for plaintiffs. Plaintiffs can obtain a final judgment in a relatively fast and simple way, with a low probability of getting engaged in a prolonged dispute. In addition, the sample also revealed the high standardization of the proceedings. The claims filed to courts were based on similar formal templates and their merits were construed along similar lines.

A separate phenomenon, clearly visible in the background of the sample, was the trading of debts resulting from consumer loans (in particular small "payday loans").[5] In addition to loan companies, an entire sector of professional entities has developed to acquire and claim debts under various titles, including consumer debt, due to unpaid loans. These entities were various in nature (they were most often debt-collection companies or securitization funds), but their business model was similar in all cases. They usually purchased debt portfolios from loan institutions, ranging from several dozen to several hundred individual claims against consumers. These pools of receivables usually included debts with low "recoverability" (significantly after the payment date, involving consumers in bad financial situations, etc.). They were purchased at a fraction of the actual value. In this connection as well, the courts in many cases awarded claims automatically and often without making a precise determination of the facts or checking the clauses of the contract for fairness. In many cases, this led to a further reduction in the level of consumer protection—debt purchasers asserted their claims wholesale, based on sketchy (and often doubtful) knowledge of the facts related to a contract.

Against the backdrop of the current legal state, however, taking advantage of this possibility required the activeness of the consumer, who had to file a plea of limitation (usually in the course of court proceedings). The consumer thus needed to have at least a minimum knowledge about the essence and use of a plea of limitation. Given the limited range of professional assistance available to consumers in the cases examined, this issue caused substantive problems. As a result, in many of the cases examined, the claims of the lenders were enforced while the consumers were completely passive and did not make use of an effective means of protecting their rights, that is, the plea of limitation.[6]

The de facto diminishing of consumer protection in loan-related cases is not fully counterbalanced at the judicial level. The originally unprivileged position of consumers was hence worsened, since the legal system fell short of equalizing the position of the various actors on the consumer market.

First, the courts in many cases remained rather indifferent toward specific consumer protection rules which have been developed in European Union. This body of law, which

[5] The notion of "payday loans" in US consumer finance provides a close comparison to Polish "instant loans" (*chwilówki*), the most common and characteristic type of consumer loans. The essence of these agreements boils down to providing consumers with small-scale loans, often with high interest rates or robust additional fees. The loans are repaid directly from the consumer's salary (Stoesz 2014; Dobbie and Skiba 2013; Melzer 2011).

[6] This has changed in part with the amendment of the Civil Code of 2018, which in consumer cases ordered the courts to take into account the expiry of the limitation period on its own motion. The change did not affect loan agreements encompassed by the sample.

presumably should enhance consumer protection to a substantial degree, was generally overlooked in judicial practice. The courts ignored both the content of EU acts and the case law of the Court of Justice of the EU, which in some instances was directly relevant to the cases. In this regard, the reluctance to acknowledge a need for consumer protection seems to be an inherent and nearly incurable weakness of Polish private law (Łętowska 1997; Safjan et al. 2008). Moreover, consumer rules—if taken into consideration by the courts—were applied in a selective and inconsistent manner. This pertains, in particular, to the schemes of *ex post* review of consumer contract clauses. The sample does not allow any consistent pattern in the application of the mechanism to be identified. It seems that the courts have been applying this supervision rather spontaneously and incidentally, without any clear legal or policy assumptions, even though under EU law they are obliged to perform such a supervisory role in all cases, acting on their own motion (Lauwaars 2008; Law 2018).[7]

Second, when confronted with consumer weakness, judges do not always seem to understand the issue as an independent policy argument. In some cases in the sample, they considered instruments for the protection of the consumers to be a "privilege" for borrowers who demonstrated a particular moral attitude. More preferential treatment of consumers (e.g., awarding them the possibility of dividing payment into installments) was not considered a necessity (regardless of whether the appeal for that solution was grounded in welfare- or fairness-related reasons); it was rather an exceptional award for those individuals who had attempted to pay their debt but who at the same time had experienced material and unexpected difficulties in the proper execution of the agreement. The mere fact of exploitation or the possibility that the borrower had entered an improper agreement could not serve, in this view, as a self-standing justification for a more protective attitude toward the consumer.

The institutional weakness of consumer protection is clearly demonstrated by the issue of a borrower's plea of limitation. The right to deny payment was awarded borrowers in business-to-consumer settings after three years had passed from the debt's due date. At the same time, in order to exercise this right the consumers have to have at least a minimum of legal awareness, as they are required to claim protection proactively under the limitation rules.

In a few cases, the courts themselves gave consumers instructions on how to protect their rights. For obvious reasons, however, they could not infringe on the impartiality of the court and indicate to the consumer specific evidence or claims that they could make against the business. For this reason, the instructions provided were limited to indicating to consumers that there were entities providing legal assistance (consumer ombudsmen, consumer organizations, etc.) and that there were exemplary pleas that could be raised (but without prejudging whether they would be effective in a specific case).

The analyzed sample of cases clearly evidences a deep mismatch between consumer contract-law rules and the prospects of enforcing them in practice. This, in turn, does not allow an adequate response to the legal consequences of the financial inequality between consumers to be provided. In particular it is impossible for consumers to access the more secure and (on average) cheaper funds available in the form of bank credit. The outcome is

[7] Only in a few cases did the courts opt for a voluntary inspection of the content of consumer agreements. Most often, the courts used this instrument to scrutinize the provisions on the additional enforcement fees imposed on consumers. In a few of the cases in the sample, the courts found these terms unfair, concluding that the fees (e.g., payment reminders sent to borrowers) were out of proportion to the actual costs incurred by the lenders.

that financially underprivileged consumers are exposed to the less regulated sector of loan firms and are thus typically at substantially more risk of deception and predatory pricing. At the same time, these risks are not effectively counteracted at the level of enforcement. In the bulk of the cases examined, redress received by loan companies was largely automated: the courts merely "approved" claims issued against consumers (Jakubowska-Branicka and Grochowski 2019). The most pertinent countermeasures—such as a judicial review of loan agreements for unfair contract terms—were applied rather randomly and were unable to provide a more systemic and substantial answer to the consumers' underprivileged situation. Consequently, the majority of consumer loans de facto involved the exclusive power of the lenders throughout their entire "life cycle," including in the forced collection of debts. The impact of law and its possible enforcers (the courts and administrative market regulators) was illusory; the entire sector of consumer loans seems to function as a specific "enclave," partly exempt from the general consumer-protection schemes.

Cascade Exclusion vs. Equal Social Opportunities

The institutional framework of the market thus substantially encourages the growth of exclusion, from economic segregation to deprivation of state (legal) protection. Cascade exclusion, which forms in this way, entails broader corollaries for the community of consumer-citizens.

In an attempt to understand the nature of these consequences, it is worthwhile to refer to the model of social structure drafted in John Kenneth Galbraith's 1996 book *The Good Society: The Human Agenda*. Its Polish translation appeared for the first time in 1999 under the title *Godne społeczeństwo. Program troski o ludzkość* (Galbraith 1996). Elżbieta Mączyńska (Mączyńska 2012) was correct when she wrote in the introduction that there are few books concerning economics that not only have not lost their relevance over time but on the contrary have only gained. Galbraith is an outstanding modern economist. He provides a broad perspective on current economic, social, and political powers in his search for an answer on how to counteract the systemic flaws in the way the economy and society function, and how to combine the striving for economic power with concern for citizens' social needs. He endeavors to develop a theoretical framework for a socio-economic regime that could be described as truly good. To that end, he analyses the fundamental problems of the modern world (Sadowski 2012).

As Galbraith himself declares, the book is about a good society that is simultaneously a possible society. We must reconcile ourselves to the thought that some obstacles are immovable and impossible to overcome, and therefore have to be accepted. Yet there are also goals that we must not abandon. In a good society, all the citizens need to enjoy personal freedom, satisfactory basic living conditions, equality regardless of race or nationality, and the opportunity to lead a satisfying life (Sadowski 2012). Changes that are desired for social reasons generally encounter opposition based on well-known egoistical interests. The chief example involves those who live in riches but who, due to a perceived harm to their interests—for example, in the form of increased taxes—oppose public actions for the benefit of the poor. Such opposition, according to Galbraith, must not be accepted. When someone says that a certain action might be good but at the same time that it is politically impractical, we know that this is a manifestation of the commonplace desire to protect socially detrimental interests.

In a good society, social success should not be limited by factors that could be remedied—everyone has to have economic opportunities. The role of the economy in a good society is of fundamental relevance, because economic determinism is an unrestrainable force. The economic system in a good society has to work efficiently and for the sake of all (Sadowski 2012). As long as everyone has equal opportunities, social peace is preserved. Economic stagnation and privation have extensive unfavorable social consequences. When people have no jobs, experience financial deprivation, and plunge into hopelessness, a common response is escapism, for instance, into drugs and aggression (against other people or against the state). This rule holds in both the local and world scene. A good society is a social foundation that guarantees peace. Therefore, it is not acceptable either in the political system or the economy for any social groups to be pushed to the margins of society and deprived of income. The first solution is a support scheme for the poor, because the fight against inequality begins with better opportunities for people from the lowest social strata. Second, Galbraith insists that the dominating tendencies of the financial world should be managed, that measures to ensure elementary honesty are put in place, and so forth.

He does not call for a good society to strive for equal incomes, which he deems socially undesirable. He calls for realizing the principle of equality of opportunity, including equality of treatment, and for ensuring a minimum living standard that guarantees dignity.

Bearing these conclusions in mind, it is worthwhile to take a closer look at the dynamics and ramifications of economic inequality in a modern democracy. The British economist Guy Standing published *The Precariat: The New Dangerous Class* in 2011, and *A Precariat Charter: From Denizens to Citizens* in 2014. Thus he introduced the concept of the precariat, which has been present in academic and social discourse ever since. Standing emphasises the unparalleled growth of social inequality: the major part of the surplus based on economic growth is raked in by the “magical” 1% of the wealthiest capital holders. The remaining 99% take out loans to make up for the shortfall of funds necessary to support themselves.

Standing distinguishes between several layers of the precariat—people in whose lives uncertainty is a fundamental category. The uncertainty may involve employment, or the uncertainty of residence, of obtaining a medical service or a social benefit, of finding a good job despite having completed higher education, or of managing to support oneself or pay back one’s debts. Thus the precariat consists of employees who have lost their decently paid jobs and have had to take junk jobs in the services sector, young graduates without a chance of finding permanent employment, and immigrants. According to Standing, the precariat are people who lack the seven forms of labor security that social democrats, labor parties, and trade unions demanded for the working class or the industrial proletariat in the wake of the Second World War, regarding them as a program for the “citizenship of the industrial era.” Those forms of security are: (1) labor market security—adequate employment opportunities, ensured on the micro-level through state-guaranteed “full employment”; (2) employment security—protection against arbitrary dismissal, through regulations on hiring and firing; (3) job security—the ability and opportunity to maintain a niche designated as an occupation, plus barriers to skill dilution, as well as promotion prospects in terms of status and income; (4) work security—protection against accidents and illness at work through, for instance, safety and health regulations, compensation for accidents, and limits on working time, unsocial hours, and night work for women; (5) skill reproduction security—opportunities to gain skills through apprenticeships, employment training, and so forth, plus the opportunity to use those skills; (6) income security—protection of an adequate stable income through, for instance, minimum-wage machinery, wage indexation, comprehensive social security, and progressive taxation aimed at reducing inequality and supplementing low incomes; (7) representation security—protection of the collective voice in the labor market through, for instance, independent trade unions with the right to strike (Standing 2011).

Standing demonstrates that precariatization causes a de facto erosion of civil rights, while economic uncertainty translates into uncertainty in other areas of life. According to Standing, the global precariat, which consists of many millions of people worldwide deprived of stable jobs, is becoming a dangerous new class, prone to follow extremists and to use its electoral rights and money to provide those extremists with an increasingly relevant political platform (Standing 2011).

In the preface to the Polish edition of his book (Standing 2011), Standing writes that millions of people are in that situation in Poland, just as everywhere else. The neoliberal economy has been criticized by many for at least ten years now. More arguments than the above-mentioned ones of Standing are being voiced. Jerzy Wilkin (Wilkin 2015) advances an interesting thesis that the enslavement of the individual can be caused not only by the lack of a free market, but also by the existence of a free market governed by the principles of neoliberal economics. Economists like to speak about the free market and much less about the free man. One of the crucial sins of economics is, in Wilkin's view, ignoring and underestimating the relations of power in the economy. Economists deal with the conditions in which businesses, including great corporations, operate with much greater care than they deal with the conditions in which the consumer, the employee, or the state function. They silently assume that "what is good for business is good for the economy, society and state, which of course resembles the famous saying that what's good for General Motors is good for America" (quoted after: Wilkin 2015).

Milton Friedman's classic theory emphasises that the free market and free economy are the best support for and guarantee of democracy and political freedom. This approach underlines the negative notion of liberty: "liberty from"[8] the oppression of the state, limitations of individual freedoms, enslavement, and so forth. The legitimacy of the theory is unquestionable; its rightness has been verified by historical experience. Yet Wilkin also cites the idea advanced by Amartya Sen, who has introduced the concept of positive liberty into the context of economic relations, that is, the "liberty to" enjoy various rights and opportunities that restrict the area of non-freedom: "Development can be seen [...] as a process of expanding the real freedoms that people enjoy. Focusing on human freedoms contrasts with narrower views of development, such as identifying development with the growth of gross national product, or with the rise in personal incomes, or with industrialization, or with technological advance, or with social modernization." Development requires

[8] The concepts of negative liberty and positive liberty were introduced into scholarly theory by Isaiah Berlin in his essay "Two Concepts of Liberty."

removing the chief sources of non-freedom: poverty, tyranny, scarce economic opportunities, systematic social deprivation, neglected public services, as well as intolerance or undue expansion of the repressive state (A. Sen, quoted after: Wilkin 2015).

In our opinion, the idea of introducing the concept of positive liberty into the language of economics is extremely interesting and promising from the theoretical point of view. Like other groups subject to social exclusion, the precariat described by Standing is undoubtedly deprived of this positive liberty to benefit from economic growth on the macro-level. Socially excluded groups usually blame the state as an institution for such circumstances, which is undeniably one of the reasons for the anti-elitism that is spreading in various countries. The elites are blamed by many for the unequal access to economic goods and the lack of prospects for economic and social advancement. Anti-elitism prepares the ground for populism.

Cascade Exclusion and the Erosion of Liberal Democracy

The subject of the empirical studies discussed in this paper was the Polish market for loan companies. We sought to discuss the market's structure and legal framework, as well as the evolution of both. A major feature of our analyses was the attempt to characterize the clients of loan institutions.

The studies demonstrated unambiguously that the clients of loan institutions in Poland are people whom Standing describes as members of the precariat, who are excluded from the banking financial market and have no creditworthiness for two main reasons. The first is their very low income, and the second is the fact that they usually have no permanent employment but work under so-called junk contracts, which do not meet the banks' formal criteria.[9] Exclusion from the banking system means that they cannot obtain comparatively cheaper credit.[10] Thus, the underprivileged are doomed to become even more underprivileged when they are forced to obtain funds to satisfy what are usually their most basic needs. The initial economic exclusion of the consumer is translated into "credit contract" exclusion and as a result the way is opened for a third level of segregation: legal exclusion, which means deprivation of effective state protection through judicial and administrative enforcement of the laws.[11] At the end, the initial two-tier segregation becomes a "cascade" of three consecutive exclusions. In accord with Standing's ideas, it can be assumed that a group of dissatisfied people—people who blame their situation on the state as an institution—exists in Poland and will probably continue to grow. This group is potentially anti-democratic for the reasons listed above.

[9] See especially data on financial and family standing of consumers-lenders (above at the "Loan company client profile"), which clearly indicate that the majority of consumers-borrowers situates themselves in the lower fractions of the income structure of society or experience grave difficulties in private life.

[10] At the same time, the empirical evidence discussed above in the "Loan-company client profile" section, along with similar data (e.g., Horská et al. 2013), clearly suggests that the choice between bank credit and an extra-bank loan is driven mostly by the easy availability of the money and not by a conscious deliberation over other possible options or the ultimate cost.

[11] As has been said above ("The legal situation of loan companies' clients"), problems in this regard do not occur only within the judiciary and administrative practice as such, but are triggered also by the constrained ability of consumers to execute rights that have been granted under the existing rules.

Thus, in the context of our considerations, is the loan-company sector functional or dysfunctional for society? Critics of the sector's existence focus on the high costs of the services it provides. From this perspective the criticism is undeniably justified. Then again, it cannot be ignored that loan companies constitute the only available source of financial security for people excluded from the financial services of the banking sector when they find themselves in a critical situation. As has been proven by our study and by other research, people who borrow money from loan companies typically use those funds to satisfy their basic needs: to cover current expenses, buy medications, and so forth. Those in true need will always have to borrow money; the delegalization of loan companies would mean that such services would go underground and be excluded from legal regulation. Viewed from this angle, the existence of loan companies is functional. Nevertheless, there is no denying that the most functional solution from the perspective of a democratic state would be to introduce mechanisms that would prevent the exclusion of entire social groups from the banking sector.

Implementation of the principles of neoliberal economics, which often fail to take into account the rights of individuals and exclude entire groups from fundamental areas of social life, produces an extremely dysfunctional situation for modern liberal democracies. Persons who have no sense of security, including economic security, and who suffer high levels of anxiety, will always turn away from freedom to seek shelter in an authoritarian or even totalitarian state.

In his famous work *Escape from Freedom*, which analyses the reasons for the support of fascism in German society of the 1930s (Fromm 1994), Erich Fromm observes that

> We were bound to admit that millions of people in Germany renounced freedom with the same enthusiasm with which their fathers had fought for it; that instead of desiring freedom, they sought escape from it; that millions of others treated it with indifference and believed that freedom deserves neither fighting not dying for. Moreover, we understood that a crisis of democracy is not an exclusively Italian or German problem, but something faced by every modern state. And it does not matter what symbols are employed by the enemies of human freedom: freedom can be equally endangered when it is attacked in the name of antifascism as when it is attacked directly by fascism itself. This truth was expressed so convincingly by John Dewey: "A real threat to our democracy is not the existence of totalitarian states, but the factors present in our personal attitudes and our own institutions, which in other countries paved the way for the victory of externally imposed power, discipline, unity and dependence on the Leader. That is why the field of battle is located here, as well—within our very selves and within our institutions."

Conclusions

The empirical information about the Polish market of consumer loans provides a clear and vivid illustration of Fromm's warning. The observable economic, institutional, and legal exclusion from the extra-banking financial services sector not only perpetuates the causes that led to the initial segregation of consumers but also triggers more profound consequences for their standing as participants in a democratic society. All foundational notions of democracy assume that minorities and other underprivileged social groups, which cannot exercise their rights through majoritarian mechanisms, must be protected. The idea of consumer protection is directly underpinned by this rationale and constitutes a clear instrument of enhancing social justice in a capitalist society (Micklitz 2018).

From this vantage point, the protection of non-professional market actors does not contradict the concept of a liberal market, which has individual autonomy and equality as its main tenets. Consumer law, as a way of including this social fraction in meaningful market relations, may be considered a means of enhancing liberal values and preventing them from being undermined by market dynamics (Hesselink 2007; Dagan and Heller 2017). On the flip side of this rationale, consumers—the citizens of a democratic state—may expect the state to provide protection that would bring them actual inclusion into market processes and allow them to make genuinely autonomous decisions about their economic interests.

Both empirical studies discussed in the paper clearly indicate that the assumed protection fails in two regards. At the foundational level, failure is triggered by an unequal distribution of wealth among consumers and the creation of a cluster excluded from access to bank credit. In seeking access to financial resources, consumers reject the protection that is granted to them *ex ante* by state regulation of the banking system. At the same time, as the studies clearly indicate, consumers are actually deprived of effective state support. While the legal system has substantial instruments (e.g., an inspection of the fairness of consumer contracts), the existing procedural design creates a de facto advantage for professionals who have more robust resources and better access to legal services than consumers. This imbalance should be counteracted by creating state-based or non-governmental support for consumers to help them acquire economic and legal knowledge and to exercise their rights effectively (e.g. Howells 2005; Wrbka 2015). At the same time, judicial enforcement of the law seems confined to the neoliberal paradigm of the market, though viewed in a relatively superficial way. As a result, the courts seem to deviate from compliance with the consumer law in its entirety (and at the same time from proper transposition of European Union law). Change in this regard could occur either from the bottom up or as a result of the imposition of higher and more precise standards of protection, especially through the case law of the Court of Justice of the EU (e.g., Józon 2017). Nevertheless, both studies seem to suggest that the change required in this regard remains quite profound and multifaceted.

Consequently, the deficits of consumer protection not only pose a threat to consumer interests as such, but also have constant and more weighty consequences for the political edifice of democracy. The democratic system is experiencing ongoing erosion, including by a growing group of individuals who are faced with pressing financial needs and who cannot satisfy them in a legally and economically safe environment. The virtual denial of meaningful protection in loan dealings exposes consumers to market forces which they are not equipped to oppose and which should be governed and channelled by the state. Breach of these expectations frustrates the idea of democracy as a system of social participation and creates a group of citizens whose initial economic exclusion proliferates into other spheres of life and becomes self-perpetuating.

Funding

Research project "Why Paraformality Works: The Diffusion of Short Term Loans in Poland," is financed by funds from the National Science Centre Poland on the basis of decision no. DEC-2013/11/B/HS6/01506 and supervised by Iwona Jakubowska-Branicka (Jakubowska-Branicka 2016).

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