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CRIMINAL RESTITUTION OBLIGATIONS AS DEBTS UNDER THE BANKRUPTCY CODE

INTRODUCTION

The Bankruptcy Code (Code)¹ was enacted by Congress to aid debtors and creditors and to give debtors a financial "fresh start."² In the case of an individual debtor, this fresh start consists of discharging that debtor's obligations.³ However, the obligations must first be "debts" under the Bankruptcy Code.

In state criminal courts, a convicted offender may be granted probation⁴ subject entirely to the discretion of the sentencing court.⁵ In granting probation, the court will often impose conditions meant to rehabilitate the offender without incarceration.⁶ One available condition is that the offender compensate the victim through restitution payments.⁷

These federal and state interests conflict when a convicted offender petitions for bankruptcy⁸ and a discharge of his debts, including his restitutionary obligation. The majority of courts have held that this criminal restitution obligation is not a debt.⁹

1. 11 U.S.C. §§ 101-151326 (1982).

2. See *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934); H.R. Rep. No. 595, 95th Cong., 2d Sess. 117 [hereinafter cited as House Report], reprinted in 1978 U.S. Code Cong. & Ad. News 5963, 6078. See *infra* note 13 and accompanying text.

3. House Report, *supra* note 2, at 128, reprinted in 1978 U.S. Code Cong. & Ad. News 5963, 6089.

4. Probation, in the case of a violation of state criminal law, is governed by state statute. 18 U.S.C. § 3651 (1982) is the parallel federal statute.

5. Best & Birzon, *Conditions of Probation: An Analysis*, 51 Geo. L.J. 809, 811-12 (1963); see D. Dressler, *Practice and Theory of Probation and Parole* 241 (2d ed. 1969). See *infra* note 24 and accompanying text.

6. D. Dressler, *supra* note 5, at 16; Best & Birzon, *supra* note 5, at 809. See *infra* notes 27-35 and accompanying text.

7. D. Dressler, *supra* note 5, at 241; Deming, *Correctional Restitution: A Strategy for Correctional Conflict Management*, 40 Fed. Probation, Sept. 1976, at 27. See *infra* notes 36-42 and accompanying text.

8. An individual debtor with a voluntary petition may choose from two types of bankruptcy: liquidation under chapter 7 in a "straight bankruptcy case," where all the debtor's property becomes part of his estate and is discharged pursuant to 11 U.S.C. § 727 (1982), or a plan for repayment under chapters 11 or 13, where the debtor outlines a plan, approved by the court, to pay back debts over a period of time. R. Jordan & W. Warren, *Bankruptcy* 21 (1985). In the issue at hand, the debtor is seeking a discharge of debts under chapter 7.

9. Cases that hold that a criminal restitution obligation is not a debt include: *In re Oslager*, 46 Bankr. 58, 61 (Bankr. M.D. Pa. 1985); *In re George G. Solar Co.*, 44 Bankr. 828, 830 (Bankr. M.D. Fla. 1984); *In re Vik*, 45 Bankr. 64, 67 (Bankr. N.D. Iowa 1984); *In re Johnson*, 32 Bankr. 614, 616-17 (Bankr. D. Colo. 1983); *In re Magnifico*, 21 Bankr. 800, 803 (Bankr. D. Ariz. 1982); *People v. Washburn*, 97 Cal. App. 3d 621, 626, 158 Cal. Rptr. 822, 825 (1979); *State v. Eyre*, 39 Wash. App. 141, 145, 692 P.2d 853, 855 (1984).

Cases that hold that a criminal restitution obligation is a debt include: *In re Robinson*, 776 F.2d 30, 38-39 (2d Cir. 1985), cert. granted *sub nom.* *Kelly v. Robinson*, 106 S. Ct. 1181 (1986); *In re Brown*, 39 Bankr. 820, 826 (Bankr. M.D. Tenn. 1984); *In re Newton*, 15 Bankr. 708, 710 (Bankr. N.D. Ga. 1981). The *Newton* court held that a criminal restitution obligation was a debt but later found it to be a nondischargeable debt.

This Note concludes that a criminal restitution obligation should be considered a debt under the Bankruptcy Code. Part I discusses the policies underlying the Bankruptcy Code and restitution as a condition of probation. Part II examines the Bankruptcy Code and its provisions and argues that restitution is a debt contemplated by the Code. In addition, Part II analyzes the tensions between the Code and the state's interest in enforcing its criminal laws and concludes that a discharge does not unduly frustrate a state's interest. Part III examines the federal/state conflict under the principles of *Younger v. Harris* and the supremacy clause, which mandate that bankruptcy preempt state laws.

I. BANKRUPTCY AND RESTITUTION AS A CONDITION OF PROBATION

A. Bankruptcy

The Bankruptcy Code¹⁰ aims to rehabilitate the debtor¹¹ and to give him a "new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt."¹² The Code gives debtors a fresh start by relieving their financial burdens.¹³ Thus, bankruptcy is a debtor's remedy,¹⁴ which should be con-

10. Bankruptcy law is enacted pursuant to the Constitution, which states that Congress has the power to establish "uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. art. I, § 8, cl. 4. Initially, bankruptcy law was exclusively a creditor's remedy that provided for equitable distribution of the debtor's assets to his creditors. See 1 Collier on Bankruptcy ¶ 1.02 (15th ed. 1985); R. Jordan & W. Warren, *supra* note 8, at 20. The original Bankruptcy Code was constructed in 1898, Act of July 1, 1898, ch. 541, 30 Stat. 544, and was last overhauled in 1938, Act of June 22, 1938, ch. 575, 52 Stat. 840; see S. Rep. No. 989, 95th Cong., 2d Sess. 2 [hereinafter cited as Senate Report], reprinted in 1978 U.S. Code Cong. & Ad. News 5787, 5788. The Bankruptcy Reform Act of 1978 repealed the former Act and sought to modernize and upgrade the existing bankruptcy laws due to the steady growth of bankruptcies, particularly consumer bankruptcies. See Senate Report, *supra*, at 2-3, reprinted in 1978 U.S. Code Cong. & Ad. News 5787, 5788-89.

Title 11 of the United States Code sets out the substantive law of bankruptcy in the Bankruptcy Code. Senate Report, *supra*, at 3, reprinted in 1978 Code Cong. & Ad. News 5787, 5789. Provisions applicable here include chapter 1 (general provisions), chapter 3 (case administration) and chapter 5 (creditors, debtors and estates), which apply to all other chapters. Senate Report, *supra*, at 3, reprinted in 1978 U.S. Code Cong. & Ad. News 5787, 5789. Petitions for bankruptcy are filed under the operative chapters, including chapter 7 (liquidation), chapter 9 (adjustment of municipality debts) or chapter 11 (reorganization). Senate Report, *supra*, at 3, reprinted in 1978 U.S. Code Cong. & Ad. News 5787, 5789.

11. "Debtor" is a "person or municipality concerning which a case under this title has been commenced." 11 U.S.C. § 101(12) (1982).

12. *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934).

13. *Id.*; see *Perez v. Campbell*, 402 U.S. 637, 648 (1971) (quoting *Local Loan Co.*, 292 U.S. at 244); *In re Vickers*, 577 F.2d 683, 686 (10th Cir. 1978); *Appeal of Moynagh*, 560 F.2d 1028, 1030 (1st Cir. 1977); *In re Adlman*, 541 F.2d 999, 1003 (2d Cir. 1976); *In re Norman*, 25 Bankr. 545, 547 (Bankr. S.D. Cal. 1982); *In re Hoover*, 14 Bankr. 592, 596 (Bankr. N.D. Ohio 1981), *aff'd*, 38 Bankr. 325 (N.D. Ohio 1983); House Report, *supra* note 2, at 117, 128, reprinted in 1978 U.S. Code Cong. & Ad. News 5963, 6078, 6089.

14. The Bankruptcy Reform Act of 1978 was promulgated in the wake of "a swing of the pendulum from the spirit of creditor protection to the spirit of debtor protection in

strued in favor of the debtor.¹⁵

When a debtor files for bankruptcy, the collection of debts from the debtor is automatically stayed,¹⁶ giving the debtor a "breathing spell" from harassment by creditors.¹⁷ All debts are then discharged unless expressly excepted.¹⁸ For certain exceptions, the creditor has the burden of objecting to discharge within the context of the bankruptcy proceeding.¹⁹ A discharge voids any judgment of liability against the debtor with respect to the discharged debt.²⁰

B. Restitution as a Condition of Probation

Probation, under state law, is a treatment program in which the court suspends final action in an adjudicated offender's case. He remains at liberty, subject to conditions imposed by a court, and is supervised by a probation worker.²¹ The goal of probation is rehabilitating the offender without incarceration²² and readjusting him to society.²³ It is a discretionary²⁴ judicial act.²⁵ In deciding on probation, the court must take a case-by-case approach, considering the background and individual circumstances of each offender so that the conditions of probation best accomplish rehabilitation.²⁶

Conditions of probation generally are intended to aid in rehabilitating the offender,²⁷ reintegrating him into the community²⁸ and encouraging

the legal age of the consumer." Ginsberg, *The Bankruptcy Reform Act of 1978—A Primer*, 28 DePaul L. Rev. 923, 923 (1979); see R. Jordan & W. Warren, *supra* note 8, at 20.

15. See *infra* note 44 and accompanying text.

16. 11 U.S.C. § 362 (1982 & Supp. II 1984).

17. Senate Report, *supra* note 10, at 54, reprinted in 1978 U.S. Code Cong. & Ad. News 5787, 5840; see R. Jordan & W. Warren, *supra* note 8, at 22.

18. See 11 U.S.C. § 727(b) (1982). "Except as provided in section 523 . . . a discharge under subsection (a) of this section discharges the debtor from *all* debts that arose before the date of the order for relief under this chapter . . ." *Id.* (emphasis added).

19. See 11 U.S.C. § 523(c) (Supp. II 1984). See *infra* note 75.

20. 11 U.S.C. § 524(a)(1) (1982); see 3 Collier on Bankruptcy ¶ 524.01 (15th ed. 1985).

21. D. Dressler, *supra* note 5, at 16. Probation involves three stages: the presentation of a pre-sentence report to the court, the suspension of sentence under conditions imposed by the court, and the supervision of the probationer. Best & Birzon, *supra* note 5, at 813-14.

22. See, e.g., La Code Crim. Proc. Ann. art. 895(A) (West 1984); N.Y. Penal Law § 65.10(1) (McKinney 1975); see also Best & Birzon, *supra* note 5, at 809-10.

23. See D. Dressler, *supra* note 5, at 236.

24. See, e.g., Pub. Act No. 83-207, § 1, Ill. Ann. Stat. ch. 38, § 1005-6-1 (Smith-Hurd Supp. 1985); N.Y. Penal Law § 65.10(1) (McKinney 1975); Va. Code § 19.2-303 (Supp. 1985); see also Best & Birzon, *supra* note 5, at 812-13.

25. Best & Birzon, *supra* note 5, at 809-10 n.3 (quoting U.S. Dep't of Justice, Attorney General's Survey of Release Procedures 1 (1939)). Probation is not to be confused with parole, which is imposed after incarceration and is an administrative act of an executive or executive agency. *Id.*

26. See D. Dressler, *supra* note 5, at 241; Best & Birzon, *supra* note 5, at 809.

27. See, e.g., Cal. Penal Code § 1203.1 (West Supp. 1986); Pub. Act No. 83-1047, § 1, Ill. Ann. Stat. ch. 38, § 1005-6-3(b) (Smith-Hurd Supp. 1985); La. Code Crim. Proc. Ann. art. 895(A) (West 1984); Mo. Ann. Stat. § 559.021(1) (Vernon 1979); N.Y. Penal

him to lead a "law-abiding life."²⁹ Some states impose mandatory conditions such as remaining within the jurisdiction,³⁰ reporting to a probation officer,³¹ answering inquiries by the officer,³² paying costs to the state,³³ and not committing another offense.³⁴ Most states, however, allow sentencing courts broad discretion in imposing conditions tailored to the individual offender and his circumstances, provided the conditions are reasonable and achieve the rehabilitative purpose underlying the statute.³⁵

Restitution as a condition of probation generally falls within the discretion of the sentencing court.³⁶ It provides for compensation of the victim³⁷ and rehabilitation of the offender by increasing the offender's

Law § 65.10(2) (McKinney Supp. 1986); Ohio Rev. Code Ann. § 2951.02(C) (Page Supp. 1984); D. Dressler, *supra* note 5, at 241; Best & Birzon, *supra* note 5, at 810.

28. See D. Dressler, *supra* note 5, at 236.

29. See, e.g., Ark. Stat. Ann. § 41-1203(1) (1977); Hawaii Rev. Stat. § 706-624 (1976 & Supp. 1984); Ky. Rev. Stat. Ann. § 533.030(1) (Michie 1985); Me. Rev. Stat. Ann. tit. 17-A, § 1204(1) (1983); Neb. Rev. Stat. § 29-2262(1) (1979); N.J. Rev. Stat. Ann. § 2C:45-1(a) (West 1982); N.Y. Penal Law § 65.10(1) (McKinney 1975); N.C. Gen. Stat. § 15A-1343(a) (1983); 42 Pa. Cons. Stat. Ann. § 9754(b) (Purdon 1982); Vt. Stat. Ann. tit. 28, § 252(a) (Supp. 1985).

30. See, e.g., Pub. Act No. 83-1047, § 1, Ill. Ann. Stat. ch. 38, § 1005-6-3(a)(4) (Smith-Hurd Supp. 1985); Mich. Comp. Laws Ann. § 771.3(1)(b) (West 1982); N.Y. Penal Law § 65.10(3)(b) (McKinney 1975); N.C. Gen. Stat. § 15A-1343(b)(2) (Supp. 1985); Ohio Rev. Code Ann. § 2951.02(C) (Page 1982 & Supp. 1984).

31. See, e.g., Pub. Act No. 83-1047, § 1, Ill. Ann. Stat. ch. 38, § 1005-6-3(a)(2) (Smith-Hurd Supp. 1985); Mich. Comp. Laws Ann. § 771.3(1)(c) (West 1982); N.Y. Penal Law § 65.10(3)(a) (McKinney 1975); N.C. Gen. Stat. § 15A-1343(b)(3) (Supp. 1985).

32. See, e.g., N.Y. Penal Law § 65.10(3)(c) (McKinney 1975); N.C. Gen. Stat. § 15A-1343(b)(3) (Supp. 1985).

33. See, e.g., N.M. Stat. Ann. § 31-20-6 (Supp. 1985); N.C. Gen. Stat. § 15A-1343(b)(6) (Supp. 1985).

34. See, e.g., Ark. Stat. Ann. § 41-1203(1) (1977); Ky. Rev. Stat. Ann. § 533.030 (Michie 1985); Me. Rev. Stat. Ann. tit. 17-A, § 1204(1) (1983); Mich. Comp. Laws Ann. § 771.3(1)(a) (West 1982).

35. See, e.g., Cal. Penal Code § 1203.1 (West Supp. 1986); Pub. Act No. 83-1047, § 1, Ill. Ann. Stat. ch. 38, § 1005-6-3(b) (Smith-Hurd Supp. 1985); Ky. Rev. Stat. Ann. § 533.030(1) (Michie 1985); Mo. Ann. Stat. § 559.021(1) (Vernon 1979); N.Y. Penal Law § 65.10(1) (McKinney 1975); Vt. Stat. Ann. tit. 28, § 252(a) (Supp. 1985); Wis. Stat. Ann. § 973.09(1)(a) (West 1985); see D. Dressler, *supra* note 5, at 241; Best & Birzon, *supra* note 5, at 817-18.

36. Restitution is primarily an optional condition of probation, imposed at the court's discretion. See, e.g., Ala. Code § 15-18-70 (1982); Pub. Act No. 83-1047, § 1, Ill. Ann. Stat. ch. 38, § 1005-6-3(b)(8) (Smith-Hurd Supp. 1985); Me. Rev. Stat. Ann. tit. 17-A, § 1204(2-A)(B) (1983); Mich. Comp. Laws Ann. § 771.3(2)(d) (West 1982); N.Y. Penal Law § 65.10(2)(g) (McKinney Supp. 1986).

A few states require that restitution be considered in cases where the victim has suffered monetary damages. See, e.g., Ky. Rev. Stat. Ann. § 533.030(3) (Michie 1985); Wis. Stat. Ann. § 973.09(1)(b) (West 1985). However, in most of these states, restitution will not be ordered if the court finds valid reasons not to impose it. See, e.g., Fla. Stat. Ann. § 775.089(1)(a) (West Supp. 1986); Wis. Stat. Ann. § 973.09(1)(b) (West 1985).

37. See, e.g., Ark. Stat. Ann. §§ 43-2350, -2351 (Supp. 1985); La. Code Crim. Proc. Ann. art. 895.1(B)(5) (West Supp. 1986); Me. Rev. Stat. Ann. tit. 17-A, § 1151(2) (1983); N.C. Gen. Stat. § 15A-1343(d) (Supp. 1985); Siegel, *Court Ordered Victim-Restitution: An Overview of Theory and Action*, 5 New Eng. J. Prison L. 135, 135 (1979).

awareness of the consequences of his actions.³⁸ "Society wants to make sure the offender realizes the enormity of his conduct, and it asks him to demonstrate this by making amends to the individual most affected by the defendant's depredations."³⁹ Restitution employs compensation of the victim as a method of fostering the rehabilitative purposes of probation.⁴⁰

In imposing restitution, courts consider several factors. The sentencing court begins by determining the amount of the victim's loss, which puts a ceiling on the amount of restitution.⁴¹ This amount is modified by the offender's ability to pay.⁴²

Thus, courts impose restitution when it will further rehabilitation and will tailor the amount and methods to the circumstances of the offender, making it a compensatory condition within the confines of rehabilitative probation.

II. RESTITUTION AS A CONDITION OF PROBATION IS A DISCHARGEABLE DEBT UNDER THE BANKRUPTCY CODE

A primary purpose of the Bankruptcy Code is to give the debtor a fresh start.⁴³ Consequently, courts have held that its provisions should be construed liberally in favor of the debtor, "lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act."⁴⁴ Ambiguities are generally resolved in favor of the debtor.⁴⁵

Under the Code, a debt is a "liability on a claim."⁴⁶ A claim is a "right to payment."⁴⁷ Although the Code does not define "right to payment,"

38. See *State v. Bausch*, 83 N.J. 425, 434, 416 A.2d 833, 838 (1980); *State v. Barr*, 99 Wash. 2d 75, 79, 658 P.2d 1247, 1249-50 (1983) (en banc); Me. Rev. Stat. Ann. tit. 17-A, § 1321 (1983); Deming, *supra* note 7, at 27.

39. D. Dressler, *supra* note 5, at 241.

40. See Me. Rev. Stat. Ann. tit. 17-A, § 1321 (1983); N.H. Rev. Stat. Ann. § 651:62 comment on purpose (Supp. 1983); N.J. Rev. Stat. Ann. § 2C:45-1 (West 1982), construed in *State v. Bausch*, 83 N.J. 425, 434, 416 A.2d 833, 838 (1980).

41. See, e.g., Ga. Code Ann. § 17-14-9 (1982); Pub. Act No. 83-1061, § 1, Ill. Ann. Stat. ch. 38, § 1005-5-6(c)(1) (Smith-Hurd Supp. 1985); La. Code Crim. Proc. Ann. art. 895.1(A) (West Supp. 1986); N.C. Gen. Stat. § 15A-1343(d) (Supp. 1985); Wis. Stat. Ann. § 973.09(1m)(a) (West 1985).

42. See, e.g., Fla. Stat. Ann. § 775.089(6) (Supp. 1986); N.Y. Penal Law § 65.10(2)(g) (McKinney Supp. 1986); Tenn. Code Ann. § 40-35-304(d) (1982). See *infra* note 79 and accompanying text.

43. See *supra* note 13 and accompanying text.

44. *Wright v. Union Cent. Life Ins. Co.*, 311 U.S. 273, 279 (1940); see *Local Loan Co. v. Hunt*, 292 U.S. 234, 244-45 (1934); *In re Vickers*, 577 F.2d 683, 686-87 (10th Cir. 1978); *In re Lange*, 39 Bankr. 483, 485 (Bankr. D. Kan. 1984).

45. *In re Lange*, 39 Bankr. 483, 485 (Bankr. D. Kan. 1984); *In re Payne*, 27 Bankr. 809, 817 (Bankr. D. Kan. 1983).

46. See 11 U.S.C. § 101(11) (1982).

47. 11 U.S.C. § 101(4)(A) (1982). The statute states, in pertinent part, that a claim is a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." *Id.* An alternate definition exists for claims created by a right to

legislative comments maintain that "all legal obligations of the debtor" are meant to be subject to the bankruptcy laws and the definition of claim "permits the *broadest possible relief* in the bankruptcy court."⁴⁸ Thus, the Code places no restrictions on the origin of a claim, and encourages courts to give the most comprehensive relief to debtors.⁴⁹

Since the definition of debt depends on the definition of claim, the terms are coextensive.⁵⁰ Therefore, "debt" should be given the broadest construction in favor of debtor relief.⁵¹ Since the definitions of "claim" and "debt" are unrestricted, Congress showed no specific intent to exclude restitution obligations.⁵² Moreover, because Congress specifically enumerated the debts excepted from discharge in other sections of the Code,⁵³ rather than limiting the definitions of debt and claim, there is no reason to believe Congress intended to restrict these definitions.⁵⁴

Since a right to payment must be found before a claim can exist,⁵⁵ consistency requires that a right to payment be given the same broad interpretation as that of claim. Accordingly, when an offender is ordered to make restitution, the victim holds a right to payment of this obligation, consistent with the broad construction of "claim" outlined by Congress. This right to payment manifests itself in several ways.

In most states, payments are made to the victim.⁵⁶ Indeed, one pur-

an equitable remedy for breach of performance, which is not relevant here. *See id.* § 101(4)(B).

48. House Report, *supra* note 2, at 309, *reprinted in* 1978 U.S. Code Cong. & Ad. News 5963, 6266 (emphasis added); Senate Report, *supra* note 10, at 22, *reprinted in* 1978 U.S. Code Cong. & Ad. News 5787, 5808.

49. *See* House Report, *supra* note 2, at 309, *reprinted in* 1978 U.S. Code Cong. & Ad. News 5963, 6266; Senate Report, *supra* note 10, at 22, *reprinted in* 1978 U.S. Code Cong. & Ad. News 5787, 5808; *see also In re Robinson*, 776 F.2d 30, 34-35 (2d Cir. 1985), *cert. granted sub nom. Kelly v. Robinson*, 106 S. Ct. 1181 (1986); *In re Brown*, 39 Bankr. 820, 822 (Bankr. M.D. Tenn. 1984); *In re Johns-Manville Corp.*, 36 Bankr. 743, 754-55 n.6 (Bankr. S.D.N.Y. 1984); *In re Thomas*, 12 Bankr. 432, 433 (Bankr. S.D. Iowa 1981).

50. Senate Report, *supra* note 10, at 23, *reprinted in* 1978 U.S. Code Cong. & Ad. News 5787, 5809; *see In re Robinson*, 776 F.2d 30, 36 (2d Cir. 1985), *cert. granted sub nom. Kelly v. Robinson*, 106 S. Ct. 1181 (1986); 2 Collier on Bankruptcy ¶ 101.11 (15th ed. 1985). Thus, the "creditor has a 'claim' against the debtor and the debtor owes a 'debt' to the creditor." Senate Report, *supra* note 10, at 23, *reprinted in* 1978 U.S. Code Cong. & Ad. News 5787, 5809.

51. *In re Robinson*, 776 F.2d 30, 36 (2d Cir. 1985), *cert. granted sub nom. Kelly v. Robinson*, 106 S. Ct. 1181 (1986).

52. *Id.* at 38.

53. *See* 11 U.S.C. §§ 523, 727(b) (1982 & Supp. II 1984).

54. *In re Robinson*, 776 F.2d 30, 30 (2d Cir. 1985), *cert. granted sub nom. Kelly v. Robinson*, 106 S. Ct. 1181 (1986).

55. 11 U.S.C. § 101(4)(A) (1982).

56. *See, e.g.,* Ariz. Rev. Stat. Ann. § 13-603(c) (Supp. 1985); Ark. Stat. Ann. § 41-1203(2)(h) (1977); Colo. Rev. Stat. § 16-11-204.5 (Supp. 1984); Fla. Stat. Ann. § 775.089(1)(a) (West Supp. 1986); Ga. Code Ann. § 42-8-35(7) (1985); Ind. Code Ann. § 25-28-2-2(a)(5) (Burns 1985); Iowa Code Ann. § 910.2 (West Supp. 1985); Mich. Comp. Laws Ann. § 771.3(2)(d) (West 1982); Mo. Ann. Stat. § 559.021(2) (Vernon Supp. 1986); N.H. Rev. Stat. Ann. § 651:62(V) (Supp. 1983); N.C. Gen. Stat. § 15A-1343(d) (Supp. 1985); Okla. Stat. Ann. tit. 22, § 991a (West 1986); 18 Pa. Cons. Stat. Ann. § 1106(a)(h) (Purdon 1983); Tenn. Code Ann. § 40-35-303(10) (1982); Vt. Stat. Ann. tit.

pose of restitution is victim compensation,⁵⁷ and in several states, compensating the victim is the primary goal.⁵⁸ A few states give restitution payments priority over the payment of any costs or fines to the state.⁵⁹ Thus, restitution payments remain separate from other obligations to state agencies. Moreover, the amount of restitution ordered is limited by the victim's actual loss.⁶⁰ These factors indicate that the obligation for restitution payments runs directly to the victim, giving the victim a right to payment and thus a claim within the broad construction of the Bankruptcy Code.

Another manifestation of a right to payment is that restitution obligations are related to an underlying debt of the offender to the victim. Although payments to the victim do not jeopardize the victim's right to seek a civil judgment of liability, any civil award must be reduced by the amount of restitution already paid during probation.⁶¹ New Jersey courts have even held that it is preferable that restitution be made in the context of probation, if feasible, rather than through a civil judgment.⁶² If states consider obligations in the probationary context intertwined with those in the civil context, a relationship exists between the offender and the victim. The victim has a right to payment from the offender.⁶³ Because the Code requires a broad interpretation of right to payment, regardless of origin, the victim has a claim under the Code for which the offender is liable. Although this debt is subject to imposition and modification by the court, it is nonetheless a debt under the Bankruptcy Code.

28, § 252(b)(6) (Supp. 1985); Wash. Rev. Code Ann. § 9.92.060 (Supp. 1986); Wis. Stat. Ann. § 973.09(lm)(a) (West 1985). Indeed, in Minnesota, Pennsylvania and Washington, the victim is given a statutory right to restitution or to request that restitution be made. See Minn. Stat. Ann. § 611A.04(1) (West Supp. 1986); Pa. Stat. Ann. tit. 71, § 189-9.3(2) (Purdon Supp. 1985); Wash. Rev. Code Ann. § 9.69.030(13) (Supp. 1986).

57. See *supra* note 37.

58. See, e.g., Ala. Code § 15-18-65 (1982); Idaho Code § 19-5304 (Supp. 1985); Mich. Comp. Laws Ann. § 771.3 (West 1982 & Supp. 1985), construed in *People v. Neil*, 99 Mich. App. 677, 680, 299 N.W.2d 23, 25 (1980); Mo. Ann. Stat. § 559.021(2) (Vernon Supp. 1986); N.M. Stat. Ann. § 31-17-1 (1981), construed in *State v. Lack*, 98 N.M. 500, 505, 650 P.2d 22, 27 (1982); Wis. Stat. Ann. § 973.09(1)(b) (West 1985).

59. See, e.g., Colo. Rev. Stat. § 16-11-204(2.5) (Supp. 1984); Iowa Code Ann. § 910.2 (West Supp. 1985); Ky. Rev. Stat. § 533.030(3) (Michie 1985); Wis. Stat. Ann. § 973.09(lm)(c) (West 1985).

60. See *supra* note 41 and accompanying text.

61. See, e.g., Ala. Code § 15-18-75 (1975); Ark. Stat. Ann. § 43-2359 (Supp. 1985); Fla. Stat. Ann. § 775.089(8) (West Supp. 1986); Ky. Rev. Stat. Ann. § 533.030(3)(g) (Michie 1985); Me. Rev. Stat. Ann. tit. 17-A, § 1327 (1982); Minn. Stat. Ann. § 611A.04(3) (West Supp. 1986); Miss. Code Ann. § 99-37-17(1) (Supp. 1985); Mont. Code Ann. § 46-18-249 (1985); N.H. Rev. Stat. Ann. § 651:65 (Supp. 1983); N.C. Gen. Stat. § 15A-1343(d) (Supp. 1985); N.D. Cent. Code § 12.1-32-08 (1985); Wis. Stat. Ann. § 973.09(7) (West 1985); Wyo. Stat. § 7-13-314 (Supp. 1985).

62. See *State v. Harris*, 70 N.J. 586, 592, 362 A.2d 32, 34 (1976). In that case the Court stated that "without prejudice to the right of any aggrieved party to seek to recover damages in a civil action . . . we regard it as preferable in the ordinary case, where feasible, to provide for restitution within the probation context." *Id.* at 592, 362 A.2d at 34.

63. See *In re Brown*, 39 Bankr. 820, 822-23 (Bankr. M.D. Tenn. 1984).

Some authorities suggest that these obligations are not debts because the victim has no right to enforce the payments.⁶⁴ This argument is unsound. There is no requirement in the definition of claim that the creditor hold a direct right⁶⁵ to enforce payment.⁶⁶ Rather, Congress intended that "claim" be construed in the broadest possible manner⁶⁷ so that all potential claims would be subject to the jurisdiction of the federal courts. Nonetheless, in several states a victim has a direct right to enforce the restitution order as if it were a civil judgment⁶⁸ or a right to request a hearing to enforce the payments.⁶⁹ In these states, since the victim has an express right to enforce the order, he has a clear right to payment.⁷⁰

The remaining states are silent regarding victim enforcement. It should be noted, however, that payments generally are made to a state agency, which then disburses the payments to the victim.⁷¹ A failure of payment is reported to the court by the probation officer,⁷² who will seek to enforce payment on behalf of the victim. Thus, although the state participates in enforcing the debt, the victim retains the right to seek enforcement of the obligation through a probation officer.⁷³ This is a

64. See *In re Vik*, 45 Bankr. 64, 67 (Bankr. N.D. Iowa 1984); *In re Pellegrino*, 42 Bankr. 129, 132 (Bankr. D. Conn. 1984); *In re Johnson*, 32 Bankr. 614, 616 (Bankr. D. Colo. 1983); *In re Button*, 8 Bankr. 692, 694 (Bankr. W.D.N.Y. 1981).

65. "Direct right" in this context refers to the ability of a creditor to enforce payment of an obligation as if it were a civil judgment.

66. See *In re Robinson*, 776 F.2d 30, 35 (2d Cir. 1985), cert. granted sub nom. *Kelly v. Robinson*, 106 S. Ct. 1181 (1986).

67. See *supra* notes 47-49 and accompanying text.

68. See Ala. Code § 15-18-78(a) (Supp. 1985); Ark. Stat. Ann. § 43-2354 (Supp. 1985); Fla. Stat. Ann. § 775.089(5) (West Supp. 1986); Ga. Code Ann. § 17-14-13(a) (Supp. 1985); Idaho Code § 19-5305 (Supp. 1985); Minn. Stat. Ann. § 611A.04(3) (West Supp. 1986); N.D. Cent. Code § 12.1-32-08(1)(c) (1985); S.D. Codified Laws Ann. § 23A-28-1 (Supp. 1985); W. Va. Code § 61-11A-4(h) (1984).

69. See Ala. Code § 15-18-72(a) (1975); N.M. Stat. Ann. § 31-17-1(F) (1981); Vt. Stat. Ann. tit. 28, § 253(c) (Supp. 1985).

70. See *In re Newton*, 15 Bankr. 708, 710 (Bankr. N.D. Ga. 1981).

71. See, e.g., Ky. Rev. Stat. Ann. § 533.030(3)(b) (Michie 1985); Me. Rev. Stat. Ann. tit. 17-A, § 1326 (1983); Md. Ann. Code art. 27, § 640(d)(3)(i) (Supp. 1984); Mont. Code Ann. § 46-18-245 (1985); N.H. Rev. Stat. Ann. § 651:64 (Supp. 1983); Okla. Stat. Ann. tit. 22, § 991a(D) (West 1986); 18 Pa. Cons. Stat. Ann. § 1106(e) (Purdon 1983); R.I. Gen. Laws § 12-19-34 (Supp. 1985); Va. Code § 19.2-305.1(C) (Supp. 1985); Wis. Stat. Ann. § 973.09(lm)(d) (West 1985).

72. See, e.g., Me. Rev. Stat. Ann. tit. 17-A, § 1329(2) (1983); Mont. Code Ann. § 46-18-245 (1985); Wash. Rev. Code Ann. § 9.92.060 (Supp. 1986); see also *In re Robinson*, 776 F.2d 30, 38 (2d Cir. 1985) ("the enforcement of the obligation [is] the responsibility of . . . state probation officers."), cert. granted sub nom. *Kelly v. Robinson*, 106 S. Ct. 1181 (1986).

73. See *In re Brown*, 39 Bankr. 820, 821-22 (Bankr. M.D. Tenn. 1984).

Because payments are made through a probation officer in many cases, he will be the first to become aware of a failure of payment, making him the logical person to report the failure to the court. Since the obligation runs to the victim, the probation officer's report of the failure is done impliedly on behalf of the victim. Thus, a victim has sufficient power to seek enforcement of the right of payment, albeit through a probation officer.

sufficient enforcement right for bankruptcy purposes.⁷⁴

Consequently, since the obligation for restitution runs from the offender to the victim, the victim has a right to payment and a claim under the Code's broad construction of these terms. The offender's liability on this claim therefore creates a debt cognizable in bankruptcy.⁷⁵

III. CONFLICT BETWEEN FEDERAL AND STATE INTERESTS

A. *Bankruptcy Code and the State Criminal Justice System*

Some authorities argue that discharging criminal restitution obligations frustrates the purposes of the state criminal justice system.⁷⁶ How-

74. No right of enforcement is required by the Code. See *In re Robinson*, 776 F.2d 30, 35-36 (2d Cir. 1985), cert. granted sub nom. *Kelly v. Robinson*, 106 S. Ct. 1181 (1986). Thus, if enforcement is an element at all, it should be defined broadly, consistent with the broad construction of "claim" and "right to payment." Therefore, if the victim has the power and the right to have something done about the offender's failure to pay, he should have a "right to payment." The means of enforcement, whether it be garnishment of assets or revocation of probation, is irrelevant. See *id.* at 38 ("The right is not the less cognizable because the obligor must suffer loss of freedom rather than loss of property upon failure to pay.").

75. Once a debt has been established, it will be discharged unless specifically excepted in § 523 or § 727(a) of the Code. 11 U.S.C. §§ 523, 727(a) (1982 & Supp. II 1984). Debts incurred by certain kinds of wrongful conduct are expressly excepted. See *id.* § 523(a)(2) (debts incurred through fraud or through wrongful use of a statement in writing); *id.* § 523(a)(4) (debts incurred through fraud in a fiduciary capacity, embezzlement or larceny); *id.* § 523(a)(6) (debts incurred through willful and malicious conduct to another or the property of another). A creditor, however, must object to the discharge of such a debt. See *id.* § 523(c). If the objection is made, then the bankruptcy court will determine whether to discharge the debt. *Id.* Since characterization of a debt in bankruptcy is a federal question, see *Board of Trade v. Johnson*, 264 U.S. 1, 10 (1923), only the bankruptcy court can determine the issue of dischargeability. See *In re Richardello*, 28 Bankr. 344, 348 (Bankr. D. Mass. 1983); *In re Barnett*, 15 Bankr. 504, 510 (Bankr. D. Kan. 1981); *In re Hoover*, 14 Bankr. 592, 596 (Bankr. N.D. Ohio 1981), *aff'd*, 38 Bankr. 325 (N.D. Ohio 1983). However, if no objection is filed, these debts will be discharged notwithstanding the stated exceptions. See 11 U.S.C. § 523(c) (Supp. II 1984).

It is well-established that these exceptions should be limited to those plainly expressed and should be construed in favor of the debtor, see, e.g., *Gleason v. Thaw*, 236 U.S. 558, 562 (1915); *In re Cross*, 666 F.2d 873, 879-80 (5th Cir. 1982); *In re Marino*, 29 Bankr. 797, 799 (N.D. Ind. 1983); *In re Payne*, 27 Bankr. 809, 817 (Bankr. D. Kan. 1983); *In re Norman*, 25 Bankr. 545, 547 (Bankr. S.D. Cal. 1982); 3 *Collier on Bankruptcy* ¶ 523.05A (15th ed. 1985), since they inherently frustrate the purpose of bankruptcy by not discharging certain obligations of the debtor. See *id.* ¶ 523.05 n.3. The fact that the exceptions are to be construed only by a bankruptcy court indicates congressional intent to preserve federal jurisdiction over the determination of debts. A state court's decision that criminal restitution obligations are not debts would prevent these obligations from even reaching the purview of the federal bankruptcy courts. This is plainly contrary to legislative intent. Placing criminal restitution obligations under the Code rightfully puts the issue of their dischargeability in the federal courts and imposes on the creditor an affirmative obligation to object to their discharge under § 523(c). Only in this way can a debtor be given the best chance for a fresh start, pursuant to the purposes underlying bankruptcy.

76. See *In re Vik*, 45 Bankr. 64, 68 (Bankr. N.D. Iowa 1984); *Petition for Writ of Certiorari at 21, Kelly v. Robinson*, cert. granted, 106 S. Ct. 1181 (1986).

ever, discharge actually meshes with the state system without usurping its power to enforce its criminal laws.

State criminal courts have broad discretion in determining probation conditions,⁷⁷ including the imposition of restitution payments. Although these payments are based initially on the amount necessary to compensate the victim for his losses,⁷⁸ the offender's ability to pay limits the restitution obligation.⁷⁹ Any obligation greater than that undermines rehabilitation.⁸⁰ Courts may impose full, partial or no restitution at all, based on the offender's ability to pay.⁸¹

In most cases, if the probationer fails to make payments, the court will not revoke probation without a hearing to determine the reasons for the failure and to reevaluate the amount of restitution.⁸² Some states specifically provide that probation will be revoked only on a finding of a wilful⁸³ or inexcusable⁸⁴ failure to pay. If a valid reason exists for the failure to pay, the state has the power to modify or eliminate the obligation.⁸⁵

77. See *supra* note 35 and accompanying text.

78. See *supra* notes 37, 41 and accompanying text.

79. See, e.g., Conn. Gen. Stat. § 53a-30(a)(4) (1983); Fla. Stat. Ann. § 775.089(6) (West Supp. 1986); Pub. Act. No. 83-1061, § 1, Ill. Ann. Stat. ch. 38, § 1005-5-6(f) (Smith-Hurd Supp. 1985); Me. Rev. Stat. Ann. tit. 17-A, § 1325(1)(C) & (2)(D) (1983); Mich. Comp. Laws Ann. § 771.3(5)(a) (West 1982); Miss. Code Ann. § 99-37-3(2)(a), (b) (Supp. 1985); N.J. Rev. Stat. Ann. § 2C:45-1(b)(8) (1982); N.Y. Penal Law § 65.10(2)(g) (McKinney Supp. 1986); Tenn. Code Ann. § 40-35-304(d) (1982); see also Bearden v. Georgia, 461 U.S. 660, 669-70 (1983) (in considering restitution, a state court may consider the probationer's "employment history and financial resources"); D. Dressler, *supra* note 5, at 241 ("Common sense dictates that such repayment . . . be made when the individual is earning enough to comply."); S. Schafer, Compensation and Restitution to Victims of Crime 62 (2d ed. 1970) ("It is common . . . to require [a probationer] to make restitution . . . in an amount which he is able to pay. . . .").

80. See *People v. Marx*, 19 A.D.2d 577, 578, 240 N.Y.S.2d 232, 234 (1963) ("[I]f the suspension of the sentence is to be meaningful, the conditions of the defendant's probation must be such as are within the defendant's capacity to meet, in the light of his financial position and average earnings."); *Commonwealth v. Wood*, 300 Pa. Super. 463, 468, 446 A.2d 948, 950 (1982) ("The rehabilitative goal [of restitution] is defeated only when the payments ordered . . . are so unreasonable in view of the defendant's financial circumstances and ability to work that, despite good faith efforts, the defendant cannot hope to comply.").

81. See *supra* notes 41-42 and accompanying text.

82. See, e.g., Ky. Rev. Stat. Ann. § 533.030(3)(f) (Michie 1985); Md. Ann. Code art. 27, § 640(e) (1982); Mont. Code Ann. § 46-18-247(1) (1985); Nev. Rev. Stat. §§ 176, 189(4) (1985); 18 Pa. Cons. Stat. Ann. § 1106(f) (Purdon 1983); Tex. Crim. Proc. Code Ann. § 42.12(B)(3d)(b) (Vernon Supp. 1986); Wis. Stat. Ann. § 973.09(3)(b) (West 1985).

83. See, e.g., Pub. Act. No. 83-1061, § 1, Ill. Ann. Stat. ch. 38, § 1005-5-6(g) (Smith-Hurd Supp. 1985); Mich. Comp. Laws Ann. § 771.3(5)(b) (West Supp. 1985); Miss. Code Ann. § 99-37-5(2) (Supp. 1985).

84. See, e.g., Me. Rev. Stat. Ann. tit. 17-A, § 1328(1) (1983); N.H. Rev. Stat. Ann. § 651:66 (Supp. 1983); see also Tex. Crim. Proc. Code Ann. § 42.12(B) (8)(c) (Vernon Supp. 1986) (inability to pay is an affirmative defense); Va. Code § 19.2-305.1(D) (Supp. 1985) (unreasonable failure to pay).

85. See, e.g., Fla. Stat. Ann. § 948.03(4) (West Supp. 1986); La. Code Crim. Proc. Ann. art. 896 (West 1984); Mich. Comp. Laws Ann. § 771.3(5)(b) (West Supp. 1985); N.M. Stat. Ann. § 31-17-1(C) (1981); 18 Pa. Cons. Stat. Ann. § 1106(c)(3) (Purdon 1983); Va. Code § 19.2-304 (1975).

In addition, the Supreme Court has mandated that probation may not be revoked if the probationer has made reasonable efforts to pay.⁸⁶ Thus, states will not create "debtor's prisons" for offenders who are unable to continue payments.

Furthermore, state systems have means other than restitution to carry out rehabilitation through probation. For instance, the court could order an offender to support dependents,⁸⁷ undergo medical treatment,⁸⁸ remain employed,⁸⁹ pay a fine to the state⁹⁰ or enroll in school or vocational training.⁹¹ Courts could also order restitution in the form of services for the benefit of the victim in lieu of monetary payments.⁹² Discharging a debt in bankruptcy merely eliminates the offender's obligation⁹³ to the *victim*, since the obligation for restitution runs to the victim rather than to the state.⁹⁴ Because a discharge does not interfere with the offender's conviction, the state can modify the conditions of probation to further rehabilitation. Theoretically, no conflict with the Bankruptcy Code should exist because restitution will not be imposed on an offender who has no ability to pay.⁹⁵ However, when these situations do arise, a discharge of this debt will not unduly interfere with the state's ability to enforce its criminal laws and rehabilitate offenders since it has options other than restitution that are unimpaired by a discharge. State policy is defeated if restitution overburdens the offender since this would frustrate the rehabilitative purposes of probation.⁹⁶ Thus, the state's interests in probation will not be frustrated by a discharge of a restitution obligation in bankruptcy.

86. *Bearden v. Georgia*, 461 U.S. 660, 667-70 (1983). A state may not . . . imprison a person solely because [the probationer] lacked the resources to pay [restitution]

[A] probationer who has made sufficient bona fide efforts to pay his . . . restitution, and who has complied with the other conditions of probation, has demonstrated a willingness to pay his debt to society and an ability to conform his conduct to social norms.

Id. at 667-68, 670.

87. *See, e.g.*, Alaska Stat. § 12.55.100(a)(3) (1984); Conn. Gen. Stat. § 53a-30(a)(3) (1985); Fla. Stat. Ann. § 948.03(1)(f) (West 1985); Ind. Code Ann. § 35-38-2-2(a)(4) (Burns 1985); N.Y. Penal Law § 65.10(2)(f) (McKinney Supp. 1986).

88. *See, e.g.*, Ky. Rev. Stat. Ann. § 533.030(2)(d) (Michie 1985); Ind. Code Ann. § 35-38-2-2(a)(2) (Burns 1985); N.Y. Penal Law § 65.10(2)(d) (McKinney Supp. 1986).

89. *See, e.g.*, Conn. Gen. Stat. § 53a-30(a)(1) (1983); Fla. Stat. Ann. § 948.03(1)(c) (West 1985); N.Y. Penal Law § 65.10(2)(c) (McKinney 1975); 42 Pa. Cons. Stat. Ann. § 9754(c)(2) (Purdon 1982).

90. *See, e.g.*, Pub. Act No. 83-1047, § 1, Ill. Ann. Stat. ch. 38, § 1005-6-(b)(2) (Smith-Hurd Supp. 1985); Va. Code § 19.2-305 (Supp. 1985).

91. *See, e.g.*, Hawaii Rev. Stat. § 706-624(2)(d) (Supp. 1984); Ind. Code Ann. § 35-38-2-2(a)(1) (Burns 1985); 42 Pa. Cons. Stat. Ann. § 9754(c)(4) (Purdon 1982).

92. *See, e.g.*, Ark. Stat. Ann. § 41-1203(5) (Supp. 1985); Ky. Rev. Stat. Ann. § 533.030(3) (Michie 1985); N.H. Rev. Stat. Ann. §§ 651:62(V), 651:63 (Supp. 1983).

93. *See* 11 U.S.C. § 524 (1982 & Supp. II 1984).

94. *See supra* notes 55-60 and accompanying text.

95. *See supra* notes 41-42, 81 and accompanying text.

96. *See supra* note 80 and accompanying text.

B. "Our Federalism" and *Younger v. Harris*

The principles of "Our Federalism" were espoused by the Supreme Court in *Younger v. Harris*,⁹⁷ when the Court held that a federal court should not enjoin a pending state criminal prosecution except in extraordinary circumstances.⁹⁸ The holding in *Younger* was based on "a proper respect for state functions . . . and a . . . belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways."⁹⁹ The Court expressly recognized a "sensitivity to the legitimate interests of both State and National Governments."¹⁰⁰ The *Younger* principles have been used to support a broad and somewhat vague notion that federalism bars discharge.¹⁰¹ *Younger*, however, is inapplicable to the issue at hand.

A pending state criminal prosecution¹⁰² is critical to the *Younger* doctrine.¹⁰³ As the Court later stated, "[r]equiring the federal courts totally to step aside when no state criminal prosecution is pending against the federal plaintiff would turn federalism on its head."¹⁰⁴ The Court's primary concern in *Younger* was to preserve the state's ability to prosecute and determine liability under its own criminal laws.¹⁰⁵ In the present issue, however, no one interferes with the state's ability to prosecute. A discharge of a restitution obligation in bankruptcy merely eliminates the offender's obligation to the victim, not to the state.¹⁰⁶ The conviction remains intact. The bankruptcy court makes no attempt to pass judgment on the liability of the offender or to interpret the criminal laws under which he has already been prosecuted and convicted. As one court stated, the purpose of the Bankruptcy Code is to give "financial

97. 401 U.S. 37 (1971).

98. *See id.* at 53-54. The extraordinary circumstances must constitute irreparable harm such as bad faith or harassment, *id.*, or an inadequate remedy in state court, *id.* at 43. *See Trainor v. Hernandez*, 431 U.S. 434, 441-43 (1977); C. Wright, *Law of Federal Courts* § 52A, at 323-24, 329 (4th ed. 1983).

99. *Younger*, 401 U.S. at 44.

100. *Id.*

101. *See, e.g., In re Oslager*, 46 Bankr. 58, 62 (Bankr. M.D. Pa. 1985); *In re Vik*, 45 Bankr. 64, 68 (Bankr. N.D. Iowa 1984); *Petition for Writ of Certiorari* at 18-20, *Kelly v. Robinson*, *cert. granted*, 106 S. Ct. 1181 (1986).

102. *Younger v. Harris*, 401 U.S. 37, 41 (1971). The Court in *Younger* described the plaintiff in that case as involved in an "acute, live controversy with the State and its prosecutor," *see id.*, since the plaintiff had already been charged with a crime, but not yet prosecuted, *id.* at 38-39. The concept of "pending" was later expanded by the Court to include situations where a state criminal prosecution had begun after the federal complaint was filed, but before proceedings on the merits of the federal case had begun. *See Hicks v. Miranda*, 422 U.S. 332, 348-49 (1975).

103. C. Wright, *supra* note 98, § 52A, at 325; *see Lake Carriers' Ass'n v. MacMullan*, 406 U.S. 498, 509 (1972) ("The decisions [in *Younger*] were premised on considerations of equity practice and comity in our federal system that have little force in the absence of a pending state proceeding.").

104. *Steffel v. Thompson*, 415 U.S. 452, 472 (1974).

105. *See Younger v. Harris*, 401 U.S. 37, 45 (1971) (quoting *Fenner v. Boykin*, 271 U.S. 240, 243-44 (1926)).

106. *See supra* note 94 and accompanying text.

freedom, not freedom from criminal prosecution."¹⁰⁷ A discharge of a restitution obligation does in fact provide financial freedom for the offender while preserving the conviction. Because there is no interference with the state's right to prosecute, the underlying concerns of *Younger* are not threatened.

Criminal actions are excepted from the automatic stay that is issued when the petition for bankruptcy is filed.¹⁰⁸ It has been argued that this exception, which is consistent with the principles of *Younger*,¹⁰⁹ indicates that Congress did not intend that criminal restitution obligations be considered debts.¹¹⁰ The use of a stay provision in this context is misplaced.¹¹¹ The provision merely exempts the prosecution of criminal actions from the automatic stay. More importantly, since it has been shown that the discharge of a criminal restitution obligation does not interfere with the state's right to prosecute, the *Younger* concerns underlying the exception are satisfied. Thus, the stay provision is irrelevant to whether a restitution obligation can be considered a dischargeable debt under the Code.

C. *Bankruptcy and the Supremacy Clause*

Under the supremacy clause,¹¹² laws enacted pursuant to the Constitution can preempt the power of state courts to promote state interests.¹¹³ Since the bankruptcy courts were created pursuant to the Constitution,¹¹⁴ the supremacy clause applies. The Bankruptcy Code by its terms provides for preemption of state law.¹¹⁵ Thus, it is clear that the bank-

107. *In re Farrell*, 43 Bankr. 115, 117 (Bankr. M.D. Tenn. 1984).

108. 11 U.S.C. § 362(b)(1) (1982). This section provides that an automatic stay will not apply to "the commencement or continuation of a criminal action or proceeding against the debtor." *Id.* Courts that have used this section commonly quote the legislature's statement that "[t]he bankruptcy laws are not a haven for criminal offenders, but are designed to give relief from financial overextension." Senate Report, *supra* note 10, at 51, reprinted in 1978 U.S. Code Cong. & Ad. News 5787, 5837.

109. 2 Collier on Bankruptcy ¶ 362.05(1) (15th ed. 1985); see *In re Brown*, 39 Bankr. 820, 826-27 (Bankr. M.D. Tenn. 1984).

110. See *In re Vik*, 45 Bankr. 64, 65-66 (Bankr. N.D. Iowa 1984); *In re Magnifico*, 21 Bankr. 800, 802-03 (Bankr. D. Ariz. 1982).

111. See *In re Robinson*, 776 F.2d 30, 37 (2d Cir. 1985), cert. granted sub nom. Kelly v. Robinson, 106 S. Ct. 1181 (1986).

112. U.S. Const. art. VI, § 2.

113. See *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 211 (1824); U.S. Const. art. I, § 8, cl. 4; see also *Perez v. Campbell*, 402 U.S. 637, 652 (1971) (state legislation frustrating full effectiveness of federal law rendered invalid by the supremacy clause).

114. See U.S. Const. art. I, § 8, cl. 4.

115. See 11 U.S.C. § 106 (1982); *id.* § 362 (1982 & Supp. II 1984); see also Senate Report, *supra* note 10, at 29, reprinted in 1978 U.S. Code Cong. & Ad. News 5787, 5815 (legislative comments to 11 U.S.C. § 106 state, "[Congress] may exercise its bankruptcy power through the supremacy clause to prevent or prohibit State action that is contrary to bankruptcy policy"); Senate Report, *supra* note 10, at 51, reprinted in 1978 U.S. Code Cong. & Ad. News 5787, 5837 (comments to 11 U.S.C. § 362 indicate that "this section . . . [is] intended to be . . . an assertion of the bankruptcy power over State governments under the supremacy clause").

ruptcy courts have the power to determine the dischargeability of debts over the interests of the state.¹¹⁶

The bankruptcy courts also may abstain from hearing a case over which they have jurisdiction.¹¹⁷ Though there are few guidelines,¹¹⁸ abstention is discretionary¹¹⁹ and must be exercised "sparingly and cautiously."¹²⁰ Cases based on unresolved questions of state law¹²¹ or on areas that require a "particular expertise" that the bankruptcy courts do not possess¹²² will warrant abstention. The issue of whether to discharge criminal restitution obligations only involves an interpretation of the Bankruptcy Code. Since this is purely a matter of federal concern,¹²³ the abstention provision is not implicated in this context.

D. Bankruptcy and the Anti-Injunction Act

Under the Anti-Injunction Act,¹²⁴ a federal court may not enjoin proceedings in a state court unless, *inter alia*, there is an express authoriza-

116. See *Perez v. Campbell*, 402 U.S. 637, 651-52 (1971); see also *International Shoe Co. v. Pinkus*, 278 U.S. 261, 265 (1929) ("States may not pass or enforce laws to interfere with or complement the Bankruptcy Act . . ."); *Duffey v. Dollison*, 734 F.2d 265, 267 (6th Cir. 1984) (the supremacy clause dictates that a conflict between bankruptcy and state interests be resolved in favor of federal law); *In re Erlin Manor Nursing Home, Inc.*, 36 Bankr. 672, 677 (Bankr. D. Mass. 1984) (if a state regulation conflicts with bankruptcy law, it is not valid in the bankruptcy context); *In re Fidelity Standard Mortgage Corp.*, 36 Bankr. 496, 499 (Bankr. S.D. Fla. 1983) (bankruptcy law is unrestricted and paramount state law).

117. 28 U.S.C.A. § 1334(c)(1) (West 1985). This section provides that "[n]othing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." *Id.*

118. 1 *Collier on Bankruptcy* ¶ 3.01[3][a] (15th ed. 1985).

119. See Senate Report, *supra* note 10, at 154, reprinted in 1978 U.S. Code Cong. & Ad. News 5787, 5940 (§ 1334(c) "permits" the courts to abstain); see also *In re Boughton*, 49 Bankr. 312, 316 (Bankr. N.D. Ill. 1985) (§ 1334(c)(1) grants "discretionary authority" to abstain); *In re Lorren*, 45 Bankr. 584, 589 (Bankr. N.D. Ala. 1984) ("Section 1334(c)(1) is a permissive abstention provision") (emphasis in original); 1 *Collier on Bankruptcy* ¶ 3.01[3][a] (15th ed. 1985) (§ 1334(c)(1) gives the district court the discretion to abstain).

120. *In re Lorren*, 45 Bankr. 584, 589 (Bankr. N.D. Ala. 1985); see *In re G-N Partners*, 48 Bankr. 459, 461 (Bankr. D. Minn. 1985) (declining jurisdiction is "an extraordinary power" to be "exercised with extraordinary care."); *In re Lafayette Radio Elecs. Corp.*, 8 Bankr. 973, 976 (Bankr. E.D.N.Y. 1981) (abstention should be exercised only under unusual or exceptional circumstances); *In re Zamost*, 7 Bankr. 859, 863 (Bankr. S.D. Cal. 1980) (abstention used only in exceptional circumstances); House Report, *supra* note 2, at 51, reprinted in 1978 U.S. Code Cong. & Ad. News 5963, 6012 (abstention was invoked in *Thompson v. Magnolia Petroleum Co.*, 309 U.S. 478 (1940), which involved a "particularly unusual" question of state law).

121. See *Thompson v. Magnolia Petroleum Co.*, 309 U.S. 478, 483-84 (1940); *In re Boughton*, 49 Bankr. 312, 316 (Bankr. N.D. Ill. 1985); *In re Zamost*, 7 Bankr. 859, 862 (Bankr. S.D. Cal. 1980); 1 *Collier on Bankruptcy* ¶ 3.01[3][a] (15th ed. 1985).

122. House Report, *supra* note 2, at 51, reprinted in 1978 U.S. Code Cong. & Ad. News 5963, 6012; see *In re Zamost*, 7 Bankr. 859, 863 (Bankr. S.D. Cal. 1980).

123. See *Board of Trade v. Johnson*, 264 U.S. 1, 10 (1924); *In re Hoover*, 14 Bankr. 592, 596 (Bankr. N.D. Ohio), *aff'd*, 38 Bankr. 325 (N.D. Ohio 1983). See *supra* note 75.

124. 28 U.S.C. § 2283 (1982).

tion of Congress.¹²⁵ The Bankruptcy Code expressly provides such an authorization.¹²⁶ The Supreme Court also has acknowledged that bankruptcy is an exception to the Anti-Injunction Act, allowing federal courts to stay state proceedings that conflict with a federal bankruptcy proceeding.¹²⁷ This further illustrates the power of the bankruptcy courts to give the debtor a fresh start.

CONCLUSION

A criminal restitution obligation imposed as a condition of probation is a debt contemplated by the Bankruptcy Code. Congress specifically provided for a broad construction of the definitions of claim and debt in order to give debtors financial relief. In the context of probation, restitution payments go to the victim and are part of the underlying debt of the probationer to the victim, giving the victim a right to payment and a valid claim. Because this obligation is in fact a debt, a victim is obliged to file any objections to discharge in the bankruptcy proceeding so that the debtor is given the broadest possible relief.

A discharge of this debt eliminates the obligation to the victim, rather than to the state, and does not jeopardize the state's ability to prosecute under its criminal laws. Thus, the *Younger* concern of preserving the autonomy of the state criminal justice system is satisfied. Moreover, because federal courts have broad preemptive powers in the area of bankruptcy, they have the authority and the power to govern the determination of debts. For these reasons, the conclusion that a criminal restitution obligation is a debt contemplated by the Bankruptcy Code best effectuates the fresh start purposes envisioned by Congress.

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125. *Id.*

126. See 11 U.S.C. § 105 (1982). Legislative comments state that "[t]his section is . . . an authorization, [sic] as required under 28 U.S.C. § 2283, for a court of the United States to stay the action of a State court." Senate Report, *supra* note 10, at 29, reprinted in 1978 Code Cong. & Ad. News 5787, 5815; see 2 Collier on Bankruptcy ¶ 105.02, at 105-03 (15th ed. 1985).

127. See *Mitchum v. Foster*, 407 U.S. 225, 233 (1972).

