

in bankruptcy had not altered the conditions of Robinson's probation. The court adopted the analysis it had applied in a similar case decided one month earlier, *In re Pellegrino* (*Pellegrino v. Division of Criminal Justice*), 42 B. R. 129 (Bkrcty. Ct. Conn. 1984).

In *Pellegrino*, the court began with the Bankruptcy Code's definitional sections. First, § 101(11) defines a "debt" as a "liability on a claim." In turn, § 101(4) defines a "claim" as 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." Finally, § 101(9) defines a "creditor" as an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor."

The Bankruptcy Court then examined the statute under which the Connecticut judge had sentenced the debtor to pay restitution. Restitution appears as one of the conditions of probation enumerated in Conn. Gen. Stat. § 53a-30. Under that section, restitution payments are sent to the Probation Office. The payments then are forwarded to the victim. Although the Connecticut penal code does not provide for enforcement of the probation conditions by the victim, it does authorize the trial court to issue a warrant for the arrest of a criminal defendant who has violated a condition of probation. § 53a-32.

Because the Connecticut statute does not allow the victim to enforce a right to receive payment, the court concluded that neither the victim nor the Probation Office had a "right to payment, and hence neither was owed a "debt" under the Bankruptcy Code. It argued:

"Unlike an obligation which arises out of a contractual, statutory or common law duty, here the obligation is rooted in the traditional responsibility of a state to protect its citizens by enforcing its criminal statutes and to

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rehabilitate an offender by imposing a criminal sanction intended for that purpose. 42 B. R., at 133.

The court acknowledged the tension between its conclusion and the Code's expansive definition of debt, but found an exception to the statutory definition in "the long-standing tradition of restraint by federal courts from interference with traditional functions of state governments." *Id.*, at 134.

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← The court concluded that, even if the probation condition was a debt subject to bankruptcy jurisdiction, it was non-dischargeable under § 523(a)(7) of the Code. That subsection provides that a discharge in bankruptcy does not affect any debt that "is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss."

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The court ~~concluded~~ ^{emphasized} that the purpose of the restitution condition was "to promote the rehabilitation of the offender, not to compensate the victim." 42 B. R., at 137. It specifically rejected the argument that the restitution must be deemed compensatory because the amount precisely matched the victim's loss. It noted that the state statute allows an offender "to make restitution of the fruits of his offense or make restitution, in an amount he can afford to pay or provide in a suitable manner, for the loss or damage caused thereby," Conn. Gen. Stat. § 53a-30(a)(4). In its view, the Connecticut statute focuses "upon the offender and not on the victim, and . . . restitution is part of the criminal penalty rather than compensation for a victim's actual loss." 42 B. R., at 137. Thus, the Bankruptcy Court held that the bankruptcy discharge had not affected the conditions of Pellegrino's probation. The United States District Court for the District of Connecticut adopted the Bankruptcy Court's proposed dispositions of *Pellegrino* and this case without alteration.

The Court of Appeals for the Second Circuit reversed. It first examined the Code's definition of debt. Although it recognized that most courts had reached the opposite conclu-

sion, the court decided that a restitution obligation imposed as a condition of probation is a debt. It relied on the legislative history of the Code that evinced Congress's intent to broaden the definition of "debt" from the much narrower definition of the Bankruptcy Act of 1898. The court also noted that anomalies might result from a conclusion that such an obligation is not a debt. Most importantly, nondebt status would deprive a state of the opportunity to participate in distribution of the bankrupt's estate.

Having concluded that restitution obligations are debts, the court turned to the question of dischargeability. The court stated that the appropriate Connecticut agency probably could have avoided discharge of the debt if it had objected under §§ 523(a)(2) or 523(a)(4) of the Code.³ As no objections to discharge were filed, the court concluded that the State could rely only on § 523(a)(7), the subsection that provides for automatic nondischargeability for certain debts.⁴ The court then looked to the text of the Connecticut statute to determine whether Robinson's probation condition was "compensation for actual pecuniary loss" within the meaning of § 523(a)(7). But where the Bankruptcy Court had consid-

³Section 523(a)(2)(A) protects from discharge debts "for obtaining money, property, services, or an extension, renewal, or refinance of credit, by false pretenses, a false representation, or actual fraud." Section 523(a)(4) protects from discharge debts "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." Under § 523(c), debts that are protected from discharge only by § 523(a)(2) or § 523(a)(4) are discharged unless the creditor files an objection to discharge during the bankruptcy proceedings. Because Robinson was convicted of larceny, one of the debts listed in § 523(a)(4), it is quite likely that the Bankruptcy Court would have found the debt nondischargeable under that subsection.

⁴The requirement that creditors object to discharge is limited on its face to paragraphs (2), (4), and (6) of § 523(a). Because paragraph 7 is not listed there, debts described in that paragraph are automatically nondischargeable, under the general rule prescribed in the opening clause of § 523(a) (providing that a "discharge under section 727 . . . of this title does not discharge an individual debtor from any debt" listed in the paragraphs that follow).

ered the entire state probation system, the Court of Appeals focused only on the language that allows a restitution order to be assessed "for the loss or damage caused [by the crime]," Conn. Gen. Stat. § 53a-30(a)(4). The court thought this language compelled the conclusion that the probation condition was "compensation for actual pecuniary loss." It held, therefore, that this particular condition of Robinson's probation was not protected from discharge by § 523(a)(7). Accordingly, it reversed the District Court.

We granted the State's petition for a writ of certiorari. We have jurisdiction to review the judgment of the Court of Appeals under 28 U. S. C. § 1254(1). We reverse.

II

The Court of Appeals' decision focused primarily on the language of §§ 101 and 523 of the Code. Of course, the "starting point in every case involving construction of a statute is the language itself." *Blue Chip Stamps v. Manor Drug Stores*, 421 U. S. 723, 756 (1975) (POWELL, J., concurring). But the text is only the starting point. As JUSTICE O'CONNOR explained last Term, "'In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.'" *Offshore Logistics, Inc. v. Tallentire*, 477 U. S. —, — (1986) (quoting *Mastro Plastics Corp. v. National Labor Relations Board*, 350 U. S. 270, 285 (1956) (quoting *United States v. Heirs of Boisdore*, 8 How. 113, 122 (1849))). In this case, we must consider the language of §§ 101 and 523 in light of the history of bankruptcy court deference to criminal judgments and in light of the interests of the States in unfettered administration of their criminal justice systems.

A

Courts traditionally have been reluctant to interpret federal bankruptcy statutes to remit state criminal judgments. The present text of Title 11, commonly referred to as the

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Bankruptcy Code, was enacted in 1978 to replace the Bankruptcy Act of 1898, ch. 541, 30 Stat. 544.⁵ The treatment of criminal judgments under the Act of 1898 informs our understanding of the language of the Code.

First, § 57 of the Act established the category of "allowable" debts. See 3 Collier on Bankruptcy ¶ 57 (14th ed. 1977). Only if a debt was allowable could the creditor receive a share of the bankrupt's assets. See § 65a. For this case, it is important to note that § 57j excluded from the class of allowable debts penalties owed to government entities. That section provided:

Debts owing to the United States, a State, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose. 30 Stat., at 561.

Second, § 63 established the separate category of "provable" debts. See 3A Collier on Bankruptcy ¶ 63 (14th ed. 1975). Section 17 provided that a discharge in bankruptcy "release[d] a bankrupt from all of his provable debts," subject to several exceptions listed in later portions of § 17. Although § 17 specifically excepted four types of debts from discharge, it did not mention criminal penalties of any kind. The most natural construction of the Act therefore would have allowed criminal penalties to be discharged in bankruptcy, even though the government was not entitled to a share of the bankrupt's estate. Congress had considered criminal penalties when it passed the Act; it clearly made them nonallowable. The failure expressly to make them

⁵ Congress amended the Bankruptcy Act several times between 1898 and 1978. Congress also made numerous technical changes to the Code in the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 380. None of those changes is relevant to this decision.

nondischargeable at the same time offered substantial support for the view that the Act discharged those penalties.

But the courts did not interpret the Act in this way. Despite the clear statutory language, most courts refused to allow a discharge in bankruptcy to affect the judgment of a state criminal court. In the leading case, the court reasoned:

It might be admitted that sections 63 and 17 of the bankrupt act, if only the letter of those provisions be looked to, would embrace [criminal penalties]; but it is well settled that there may be cases in which such literal construction is not admissible. . . . It may suffice to say that nothing but a ruling from a higher court would convince me that congress, by any provision of the bankrupt act, intended to permit the discharge, under its operations, of any judgment entered by a state or federal court imposing a fine in the enforcement of criminal laws. . . . The provisions of the bankrupt act have reference alone to civil liabilities, as demands between debtor and creditors, as such, and not to punishment inflicted pro bono publico for crimes committed." *In re Moore*, 111 F. 145, 148-149 (WD Ky. 1901).⁶

This reasoning was ~~sufficiently~~ accepted by the time Congress enacted the new Code that a leading commentator could state flatly that "fines and penalties are not affected by

⁶ Although courts differed as to the boundaries of the exception, particularly in cases involving nonmonetary sanctions, or sanctions imposed in civil proceedings, the reasoning of *Moore* was widely accepted. See, e. g., *Parker v. United States*, 153 F. 2d 66, 71 (CA1 1946) (citing *Moore* and noting that "[i]t was not in the contemplation of Congress that the federal bankruptcy power should be employed to pardon a bankrupt from the consequences of a criminal offense"); *Zwick v. Freeman*, 373 F. 2d 110, 116 (CA2 1967) (citing *Moore* and stating that "governmental sanctions are not regarded as debts even when they require monetary payments"). We have found only one federal court decision allowing a discharge in bankruptcy to affect a sentence imposed by a criminal court. *In re Alderson*, 98 F. 588 (W. Va. 1899).

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a discharge." See 1A Collier on Bankruptcy ¶17.13, at 1609-1610, and n. 10 (14th ed. 1979).

Moreover, those few courts faced with restitution obligations imposed as part of criminal sentences applied the same reasoning to prevent a discharge in bankruptcy from affecting such a condition of a criminal sentence. For instance, four years before Congress enacted the Code, the New York Supreme Court stated:

A discharge in bankruptcy has no effect whatsoever upon a condition of restitution of a criminal sentence. A bankruptcy proceeding is civil in nature and is intended to relieve an honest and unfortunate debtor of his debts and to permit him to begin his financial life anew. A condition of restitution in a sentence of probation is a part of the judgment of conviction. It does not create a debt nor a debtor/creditor relationship between the persons making and receiving restitution. As with any other condition of a probationary sentence it is intended as a means to insure the defendant will lead a law-abiding life thereafter. *State v. Mosesson*, 78 Misc. 2d 217, 218, 356 N. Y. S. 2d 483, 484 (1974) (citations omitted).⁷

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1 ← Thus, Congress enacted the Code in 1978 against the background of an established judicial exception to discharge for criminal sentences, including restitution orders, an exception created in the face of a statute drafted with considerable care and specificity.

Just last Term we declined to hold that the new Bankruptcy Code silently abrogated exceptions created by courts construing the old Act. In *Midlantic National Bank v. New Jersey Department of Environmental Protection*, 474 U. S. — (1986), a trustee in bankruptcy asked us to hold that the 1978 Code had implicitly repealed an exception to the trust-

⁷ For other decisions adopting this reasoning, see *State ex rel. Auerbach v. Topping Bros.*, 79 Misc. 2d 260, 359 N. Y. S. 2d 985, 987-988 (Crim. Ct. 1974); *State v. Washburn*, 97 Cal. App. 3d 621, 625-626, 158 Cal. Rptr. 822, 825 (1979).

ee's abandonment power. Courts had created that exception out of deference to state health and safety regulations, a consideration comparable to the States' interests implicated by this case. We stated:

The normal rule of statutory construction is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific. The Court has followed this rule with particular care in construing the scope of bankruptcy codifications. If Congress wishes to grant the trustee an extraordinary exemption from non-bankruptcy law, "the intention would be clearly expressed, not left to be collected or inferred from disputable considerations of convenience in administering the estate of the bankrupt." 474 U. S., at — (quoting *Swarts v. Hammer*, 194 U. S. 441, 444 (1904)) (citations omitted).

B

Our interpretation of the Code also must reflect the basis for this judicial exception, a deep conviction that federal bankruptcy courts should not invalidate the results of state criminal proceedings. The right to formulate and enforce penal sanctions is an important aspect of the sovereignty retained by the States. This Court has emphasized repeatedly "the fundamental policy against federal interference with state criminal prosecutions." *Younger v. Harris*, 401 U. S. 37, 46 (1971). The Court of Appeals concluded that Connecticut officials could have ensured continued enforcement of their court's criminal judgment against Robinson by objecting to discharge under § 523(c). This approach is unsatisfactory for several reasons.

First, it would require state prosecutors to defend state criminal judgments before the federal bankruptcy courts.⁸

⁸ Robinson argues that the burden on the state often would be slight. In many cases, principles of issue preclusion might obviate the need for relitigation of factual questions in the bankruptcy court. Differences be

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As JUSTICE BRENNAN has noted, federal adjudication of matters already at issue in state criminal proceedings can be "an unwarranted and unseemly duplication of the State's own adjudicative process." *Perez v. Ledesma*, 401 U. S. 82, 121 (1971) (opinion of BRENNAN, J., concurring in part and dissenting in part).⁹

Also, ^{Second}, as Robinson's attorney conceded at oral argument, some restitution orders would not be protected from discharge even if the state did appear and enter an objection to discharge. For example, a criminal judge in a negligent homicide case might sentence the defendant to probation, conditioned on the defendant's paying the victim's husband compensation for the loss the husband sustained when the defendant killed his wife. It is not clear that such a restitution order would fit the terms of any of the exceptions to discharge listed in § 523 other than § 523(a)(7). Thus, this interpretation of the Code would do more than force state prosecutors to defend state criminal judgments in federal bankruptcy court. Inevitably, ~~it would~~ lead to federal remission of judgments imposed by state criminal judges.

This prospect, in turn, would hamper the flexibility of state criminal judges in choosing the combination of imprisonment, fines, and restitution most likely to further rehabilitation of the defendant. Restitution is a particularly effective means for rehabilitation because it forces the defendant to confront,

between the elements of crimes and the provisions of § 523, however, may hinder the application of issue preclusion. Moreover, the complexity of proceedings in the bankruptcy courts, and the attendant diversion of prosecutorial effort, is not our only concern. We must also consider the unseemliness of requiring state prosecutors to submit the judgments of their criminal courts to federal bankruptcy judges.

⁹ Of course, federal courts often duplicate state adjudicative processes when they consider petitions for the writ of habeas corpus. But explicit reference in the Constitution, Art. I, § 9, cl. 2, as well as several federal statutes, testify to the importance of the writ of habeas corpus. Here, the case for relitigation in the federal courts rests only on the ambiguous words of the Bankruptcy Code.

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in concrete terms, the harm his actions have caused. Trial judges often prefer such an order to a fine, paid to the State as an abstract and impersonal entity, and often calculated without regard to the harm the defendant has caused. The direct relation between the harm and the punishment may make restitution a valuable deterrent as well.¹⁰

Robinson attempts to minimize this difficulty by arguing that state prosecutors and criminal judges need only consult the provisions of the Bankruptcy Code before selecting the appropriate sentence. This contention misses the point entirely. We are not troubled by requirements that state officials understand and apply federal law. But we will not lightly limit the rehabilitative and deterrent options available to state criminal judges. In cases raising close questions of dischargeability under the Bankruptcy Code, those judges would be put to a harsh choice: impose the sentence that best suits the interests of the state criminal process, and hope that the federal courts will not disturb that judgment; or forgo imposition of a restitution order to ensure continued enforcement of some criminal judgment. In short, the Court of Appeals' interpretation of the Code would entail substantial interference in the state criminal process.

In one of our cases interpreting the Act, Justice Douglas remarked: "[W]e do not read these statutory words with the ease of a computer. There is an overriding consideration that equitable principles govern the exercise of bankruptcy jurisdiction." *Bank of Marin v. England*, 385 U. S. 99, 103 (1966). This Court has recognized that the States' interest in administering their criminal justice systems free from federal interference is one of the most powerful of the considerations that should influence a court considering equitable types of relief. See *Younger v. Harris*, 401 U. S. 37, 44-45

¹⁰ See Note, Victim Restitution in the Criminal Process: A Procedural Analysis, 97 Harv. L. Rev. 931, 937-941 (1984).

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(1971). This reflection of our federalism also must influence our interpretation of the Bankruptcy Code in this case.¹¹

III

In light of the long pre-Code ~~tradition precluding bankruptcy courts from altering~~ criminal judgments, we have serious doubts whether Congress intended to make criminal penalties "debts" within the meaning of § 101(4).¹² But we need not address that question in this case, because we hold that § 523(a)(7) preserves from discharge any condition a state criminal court imposes as part of a criminal sentence.

The relevant portion of § 523(a)(7) protects from discharge any debt

to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss.

This language is subject to interpretation. On its face, § 523(a)(7) certainly does not compel the conclusion reached

¹¹ Justice Frankfurter advocated a similar approach to the interpretation of regulatory statutes that infringe upon important state interests:

The task is one of accommodation as between assertions of new federal authority and historic functions of the individual states. Federal legislation of this character cannot therefore be construed without regard to the implications of our dual system of government. . . . The underlying assumptions of our dual form of government, and the consequent presuppositions of legislative draftsmanship which are expressive of our history and habits, cut across what might otherwise be the implied range of legislation. The history of congressional legislation . . . justifies the generalization that, when the Federal Government takes over such local radiations in the vast network of our national economic enterprise and thereby radically readjusts the balance of state and national authority, those charged with the duty of legislating are reasonably explicit. Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Col. L. Rev. 527, 539-540 (1947).

¹² We recognize, as the Court of Appeals emphasized, that the Code's definition of "debt" is broadly drafted, and that the legislative history supports a broad reading of the definition. But nothing in the legislative history of these sections suggests that Congress intended to change the state of the law with respect to criminal judgments.

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by the Court of Appeals, that a discharge in bankruptcy voids restitution orders imposed as conditions of probation by state courts. Nowhere in the House and Senate Reports, is there any indication that this language should be read so intrusively.¹³ If Congress had intended, by § 523(a)(7) or by any other provision, to discharge state criminal sentences, "we can be certain that there would have been hearings, testimony, and debate concerning consequences so wasteful, so inimical to purposes previously deemed important, and so likely to arouse public outrage," *Tennessee Valley Authority v. Hill*, 437 U. S. 153, 209 (1978) (POWELL, J., dissenting).

Our reading of § 523(a)(7) differs from that of the Second Circuit. On its face, it creates a broad exception for all penal sanctions, whether they be denominated fines, penalties, or forfeitures. Congress included two qualifying phrases; the

¹³ For the section-by-section analysis in the legislative reports, see H. R. Rep. No. 595, 95th Cong., 1st Sess., 363 (1977); S. Rep. No. 989, 95th Cong., 2d Sess., 79 (1978). For explanations of the section by commentators, see 3 Collier on Bankruptcy ¶ 523.17 (15th ed. 1986); 1 Norton Bankruptcy Law and Practice § 27.37 (1981). In fact, both of these commentators expressly state that the language should not have the intrusive effect sought by Robinson. See Collier, ¶ 523.17, at 523-123 n. 4; Norton, § 27.37, at 55 n. 2.

It seems likely that the limitation of § 523(a)(7) to fines assessed "for the benefit of a federal, state, or local government" was intended to prevent application of that subsection to wholly private penalties such as punitive damages. See House Doc. No. 137, pt. 2, 93d Cong., 1st Sess., 116, 141 (1973). As for the reference to "compensation for actual pecuniary loss," the Senate Report indicates that the main purpose of this language was to prevent § 523(a)(7) from being applied to tax penalties. S. Rep. No. 989, 95th Cong., 2d Sess., 79 (1978).

We acknowledge that a few stray comments in the hearings and the Bankruptcy Laws Commission Report may suggest that the language bears the interpretation adopted by the Second Circuit. But none of those statements was made by a member of Congress, nor were they included in the official Senate and House reports. We decline to accord any significance to these statements. See *McCaughn v. Hershey Chocolate Co.*, 283 U. S. 488, 493-494 (1931); 2A N. Singer, Sutherland on Statutory Construction § 48.10, at § 19, and n. 11 (rev. 4th ed. 1984).

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finer must be both "to and for the benefit of a governmental unit," and "not compensation for pecuniary loss." Section 523(a)(7) protects traditional criminal fines; it codifies the judicially created exception to discharge for fines. We must decide whether the result is altered by the two major differences between restitution and a traditional fine. Unlike traditional fines, restitution is forwarded to the victim, and may be calculated by reference to the amount of harm the offender has caused.

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In our view, neither of the qualifying clauses of § 523(a)(7) allows the discharge of a criminal judgment that takes the form of restitution. The criminal justice system is not operated primarily for the benefit of victims, but for the benefit of society as a whole. Thus, it is concerned not only with punishing the offender, but also with rehabilitating him. Although restitution does resemble a judgment "for the benefit of" the victim, the context in which it is imposed undermines that conclusion. The victim has no control over the amount of restitution awarded or over the decision to award restitution. Moreover, the decision to impose restitution generally does not turn on the victim's injury, but on the penal goals of the State and the situation of the defendant.

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This point is well illustrated by the Connecticut statute under which the restitution obligation was imposed. The statute authorizes a judge to impose any of eight specified conditions of probation, as well as "any other conditions reasonably related to his rehabilitation." Conn. Gen. Stat. § 53a-30(a)(9). Clause (4) of that section authorizes a judge to require that the defendant

make restitution of the fruits of his offense or make restitution, in an amount he can afford to pay or provide in a suitable manner, for the loss or damage caused thereby and the court may fix the amount thereof and the manner of performance.

This clause does not require imposition of restitution in the amount of the harm caused. Instead, it provides for a flexible remedy tailored to the defendant's situation.

Because criminal proceedings focus on the State's interests in rehabilitation and punishment, rather than the victim's desire for compensation, we conclude that restitution orders imposed in such proceedings operate ^{primarily} "for the benefit of" the State. Similarly, they are not assessed "for . . . compensation" of the victim. The sentence following a criminal conviction necessarily considers the penal and rehabilitative interests of the state.¹⁴ Those interests are sufficient to place restitution orders within the meaning of § 523(a)(7).

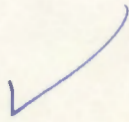
In light of the strong interests of the States, the uniform construction of the old Act over three-quarters of a century, and the absence of any significant evidence that Congress intended to change the law in this area, we believe this result best effectuates the will of Congress. Accordingly, the decision of the Court of Appeals for the Second Circuit is

Reversed.

¹⁴This is not the only context in which courts have been forced to evaluate the treatment of restitution orders by determining whether they were "compensatory" or "penal." Several lower courts have addressed the constitutionality of the federal Victim Witness Protection Act, 18 U. S. C. § 3579. Under that Act, defendants have no right to jury trial as to the amount of restitution, even though the Seventh Amendment would require such a trial if the issue were decided in a civil case. See Note, *The Right to a Jury Trial to Determine Restitution Under the Victim and Witness Protection Act of 1982*, 63 Texas L. Rev. 671 (1984). Every federal circuit court that has considered the question has concluded that criminal defendants contesting the assessment of restitution orders are not entitled to the protections of the Seventh Amendment. See *id.*, at 672 n. 18 (citing cases).

Supreme Court of the United States
Washington, D. C. 20543

October 23, 1986



No. 85-1033 - Kelly v. Robinson

Dear Lewis,

I would be pleased to join your opinion.

Sincerely,

A handwritten signature in black ink, appearing to be "J. Powell", is written below the word "Sincerely,".

Justice Powell

Copies to the Conference



Supreme Court of the United States
Washington, D. C. 20543

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CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 23, 1986

Re: No. 85-1033, Kelly v. Robinson

Dear Lewis:

Please join me.

Sincerely,

Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 23, 1986

Re: No. 85-1033-Kelly v. Robinson

Dear Lewis:

In due course I expect to file a dissent in this one.

Sincerely,

Jm.
T.M.

Justice Powell

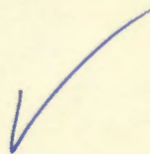
cc: The Conference



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

October 23, 1986



Re: 85-1033 Kelly v. Robinson

Dear Lewis,

Congratulations on circulating the first draft opinion for the 1986 Term! It is well written, as always.

I have only one concern about the draft which I would like to raise. On page 13 you express doubt about whether a restitution order is within the definition of a debt and apparently leave open that question. It seems to me perhaps we should accept that the definition of debt includes restitution orders and then go ahead with holding them protected from discharge under §523(a)(7). Most lower courts have treated restitution orders as not falling within the definition of debt. They may feel it is still open to them to continue to so hold. But the consequence of that approach is indicated on page 5 where you say, "nondebt status would deprive a state of the opportunity to participate in the distribution of the bankrupt's estate."

Perhaps you feel it necessary to leave open the other approach but I am concerned it may lead to confusion. Either way, I will of course join your opinion.

Sincerely,

Justice Powell

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DRAFT

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Scalia

From: **Justice Powell**

Circulated: **OCT 22 1986**

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 85-1033

JOHN J. KELLY, CONNECTICUT CHIEF STATE'S
ATTORNEY, ET AL., PETITIONERS *v.*
CAROLYN ROBINSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[October —, 1986]

JUSTICE POWELL delivered the opinion of the Court.

We granted review in this case to decide whether restitution obligations, imposed as conditions of probation in state criminal proceedings, are dischargeable in proceedings under Chapter 7 of the Bankruptcy Code.

I

In 1980, Carolyn Robinson pled guilty to larceny in the second degree. The charge was based on her wrongful receipt of \$9,932.95 in welfare benefits from the Connecticut Department of Income Maintenance. On November 14, 1980, the Connecticut Superior Court sentenced Robinson to a prison term of not less than one year nor more than three years. The court suspended execution of the sentence and placed Robinson on probation for five years. As a condition of probation, the judge ordered Robinson to make restitution¹ to the State of Connecticut Office of Adult Probation (Probation

¹ Connecticut Gen. Stat. § 53a-30 sets out the conditions a trial court may impose on a sentence of probation. Clause 4 of that section authorizes a condition that the defendant "make restitution of the fruits of his offense or make restitution, in an amount he can afford to pay or provide in a suitable manner, for the loss or damage caused thereby and the court may fix the amount thereof and the manner of performance."

Office) at the rate of \$100 per month, commencing January 16, 1981, and continuing until the end of her probation.²

On February 5, 1981, Robinson filed a voluntary petition under Chapter 7 of the Bankruptcy Code, 11 U. S. C. § 701 *et seq.*, in the United States Bankruptcy Court for the District of Connecticut. That petition listed the restitution obligation as a debt. On February 20, 1981, the Bankruptcy Court notified both of the Connecticut agencies of Robinson's petition and informed them that April 27, 1981, was the deadline for filing objections to discharge. The agencies did not file proofs of claim or objections to discharge, apparently because they took the position that the bankruptcy would not affect the conditions of Robinson's probation. Thus, the agencies did not participate in the distribution of Robinson's estate. On May 14, 1981, the bankruptcy court granted Robinson a discharge. See § 727.

At the time Robinson received her discharge in bankruptcy, she had paid \$450 in restitution. On May 20, 1981, her attorney wrote the Probation Office that he believed the discharge had altered the conditions of Robinson's probation, voiding the condition that she pay restitution. Robinson made no further payments.

The Connecticut Probation Office did not respond to this letter until February 1984, when it informed Robinson that it considered the obligation to pay restitution nondischargeable. Robinson responded by filing an adversary proceeding in the Bankruptcy Court, seeking a declaration that the restitution obligation had been discharged, as well as an injunction to prevent the State's officials from forcing Robinson to pay.

After a trial, the Bankruptcy Court entered a Memorandum and Proposed Order, concluding that the 1981 discharge

²There is some uncertainty about the total amount Robinson was ordered to pay. Although the judge imposed restitution in a total amount of \$9,932.95, five years of payments at one hundred dollars a month total only \$6,000.

in bankruptcy had not altered the conditions of Robinson's probation. The court adopted the analysis it had applied in a similar case decided one month earlier, *In re Pellegrino* (*Pellegrino v. Division of Criminal Justice*), 42 B. R. 129 (Bkrty. Ct. Conn. 1984). In *Pellegrino*, the court began with the Bankruptcy Code's definitional sections. First, § 101(11) defines a "debt" as a "liability on a claim." In turn, § 101(4) defines a "claim" as 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." Finally, § 101(9) defines a "creditor" as an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor."

The Bankruptcy Court then examined the statute under which the Connecticut judge had sentenced the debtor to pay restitution. Restitution appears as one of the conditions of probation enumerated in Conn. Gen. Stat. § 53a-30. Under that section, restitution payments are sent to the Probation Office. The payments then are forwarded to the victim. Although the Connecticut penal code does not provide for enforcement of the probation conditions by the victim, it does authorize the trial court to issue a warrant for the arrest of a criminal defendant who has violated a condition of probation. § 53a-32.

Because the Connecticut statute does not allow the victim to enforce a right to receive payment, the court concluded that neither the victim nor the Probation Office had a "right to payment," and hence neither was owed a "debt" under the Bankruptcy Code. It argued: "Unlike an obligation which arises out of a contractual, statutory or common law duty, here the obligation is rooted in the traditional responsibility of a state to protect its citizens by enforcing its criminal statutes and to rehabilitate an offender by imposing a criminal sanction intended for that purpose." 42 B. R., at 133. The court acknowledged the tension between its conclusion and

the Code's expansive definition of debt, but found an exception to the statutory definition in "the long-standing tradition of restraint by federal courts from interference with traditional functions of state governments." *Id.*, at 134. The court concluded that, even if the probation condition was a debt subject to bankruptcy jurisdiction, it was nondischargeable under § 523(a)(7) of the Code. That subsection provides that a discharge in bankruptcy does not affect any debt that "is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss."

The court also concluded that the purpose of the restitution condition was "to promote the rehabilitation of the offender, not to compensate the victim." 42 B. R., at 137. It specifically rejected the argument that the restitution must be deemed compensatory because the amount precisely matched the victim's loss. It noted that the state statute allows an offender "to make restitution of the fruits of his offense or make restitution, in an amount he can afford to pay or provide in a suitable manner, for the loss or damage caused thereby," Conn. Gen. Stat. § 53a-30(a)(4). In its view, the Connecticut statute focuses "upon the offender and not on the victim, and . . . restitution is part of the criminal penalty rather than compensation for a victim's actual loss." 42 B. R., at 137. Thus, the Bankruptcy Court held that the bankruptcy discharge had not affected the conditions of Pellegrino's probation. The United States District Court for the District of Connecticut adopted the Bankruptcy Court's proposed dispositions of *Pellegrino* and this case without alteration.

The Court of Appeals for the Second Circuit reversed. It first examined the Code's definition of debt. Although it recognized that most courts had reached the opposite conclusion, the court decided that a restitution obligation imposed as a condition of probation is a debt. It relied on the legislative history of the Code that evinced Congress's intent to

broaden the definition of "debt" from the much narrower definition of the Bankruptcy Act of 1898. The court also noted that anomalies might result from a conclusion that such an obligation is not a debt. Most importantly, nondebt status would deprive a state of the opportunity to participate in the distribution of the bankrupt's estate.

Having concluded that restitution obligations are debts, the court turned to the question of dischargeability. The court stated that the appropriate Connecticut agency probably could have avoided discharge of the debt if it had objected under §§ 523(a)(2) or 523(a)(4) of the Code.³ As no objections to discharge were filed, the court concluded that the State could rely only on § 523(a)(7), the subsection that provides for automatic nondischargeability for certain debts.⁴ The court then looked to the text of the Connecticut statute to determine whether Robinson's probation condition was "compensation for actual pecuniary loss" within the meaning of § 523(a)(7). But where the Bankruptcy Court had considered the entire state probation system, the Court of Appeals focused only on the language that allows a restitution order to be assessed "for the loss or damage caused [by the crime],"

³Section 523(a)(2)(A) protects from discharge debts "for obtaining money, property, services, or an extension, renewal, or refinancing of credit, by false pretenses, a false representation, or actual fraud." Section 523(a)(4) protects from discharge debts "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." Under § 523(c), debts that are protected from discharge only by § 523(a)(2) or § 523(a)(4) are discharged unless the creditor files an objection to discharge during the bankruptcy proceedings. Because Robinson was convicted of larceny, one of the debts listed in § 523(a)(4), it is quite likely that the Bankruptcy Court would have found the debt nondischargeable under that subsection.

⁴The requirement that creditors object to discharge is limited on its face to paragraphs (2), (4), and (6) of § 523(a). Because paragraph 7 is not listed there, debts described in that paragraph are automatically nondischargeable, under the general rule prescribed in the opening clause of § 523(a) (providing that a "discharge under section 727 . . . of this title does not discharge an individual debtor from any debt" listed in the paragraphs that follow).

AS

if it had found
the obligation
to be a "debt,"

Conn. Gen. Stat. § 53a-30(a)(4). The court thought this language compelled the conclusion that the probation condition was "compensation for actual pecuniary loss." It held, therefore, that this particular condition of Robinson's probation was not protected from discharge by § 523(a)(7). Accordingly, it reversed the District Court.

We granted the State's petition for a writ of certiorari. We have jurisdiction to review the judgment of the Court of Appeals under 28 U. S. C. § 1254(1). We reverse.

II

The Court of Appeals' decision focused primarily on the language of §§ 101 and 523 of the Code. Of course, the "starting point in every case involving construction of a statute is the language itself." *Blue Chip Stamps v. Manor Drug Stores*, 421 U. S. 723, 756 (1975) (POWELL, J., concurring). But the text is only the starting point. As JUSTICE O'CONNOR explained last Term, "'In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.'" *Offshore Logistics, Inc. v. Tallentire*, 477 U. S. —, — (1986) (quoting *Mastro Plastics Corp. v. National Labor Relations Board*, 350 U. S. 270, 285 (1956) (quoting *United States v. Heirs of Boisdoré*, 8 How. 113, 122 (1849))). In this case, we must consider the language of §§ 101 and 523 in light of the history of bankruptcy court deference to criminal judgments and in light of the interests of the States in unfettered administration of their criminal justice systems.

A

Courts traditionally have been reluctant to interpret federal bankruptcy statutes to remit state criminal judgments. The present text of Title 11, commonly referred to as the Bankruptcy Code, was enacted in 1978 to replace the Bank-

ruptcy Act of 1898, ch. 541, 30 Stat. 544.⁵ The treatment of criminal judgments under the Act of 1898 informs our understanding of the language of the Code.

First, § 57 of the Act established the category of "allowable" debts. See 3 Collier on Bankruptcy ¶ 57 (14th ed. 1977). Only if a debt was allowable could the creditor receive a share of the bankrupt's assets. See § 65a. For this case, it is important to note that § 57j excluded from the class of allowable debts penalties owed to government entities. That section provided:

Debts owing to the United States, a State, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose. 30 Stat., at 561.

Second, § 63 established the separate category of "provable" debts. See 3A Collier on Bankruptcy ¶ 63 (14th ed. 1975). Section 17 provided that a discharge in bankruptcy "release[d] a bankrupt from all of his provable debts," subject to several exceptions listed in later portions of § 17. Although § 17 specifically excepted four types of debts from discharge, it did not mention criminal penalties of any kind. The most natural construction of the Act, therefore, would have allowed criminal penalties to be discharged in bankruptcy, even though the government was not entitled to a share of the bankrupt's estate. Congress had considered criminal penalties when it passed the Act; it clearly made them nonallowable. The failure expressly to make them

⁵ Congress amended the Bankruptcy Act several times between 1898 and 1978. Congress also made numerous technical changes to the Code in the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 380. None of those changes is relevant to this decision.

nondischargeable at the same time offered substantial support for the view that the Act discharged those penalties.

But the courts did not interpret the Act in this way. Despite the clear statutory language, most courts refused to allow a discharge in bankruptcy to affect the judgment of a state criminal court. In the leading case, the court reasoned:

It might be admitted that sections 63 and 17 of the bankrupt act, if only the letter of those provisions be looked to, would embrace [criminal penalties]; but it is well settled that there may be cases in which such literal construction is not admissible. . . . It may suffice to say that nothing but a ruling from a higher court would convince me that congress, by any provision of the bankrupt act, intended to permit the discharge, under its operations, of any judgment entered by a state or federal court imposing a fine in the enforcement of criminal laws. . . . The provisions of the bankrupt act have reference alone to civil liabilities, as demands between debtor and creditors, as such, and not to punishment inflicted pro bono publico for crimes committed." *In re Moore*, 111 F. 145, 148-149 (WD Ky. 1901).⁶

This reasoning was so widely accepted by the time Congress enacted the new Code that a leading commentator could state flatly that "fines and penalties are not affected by a dis-

⁶ Although courts differed as to the boundaries of the exception, particularly in cases involving nonmonetary sanctions, or sanctions imposed in civil proceedings, the reasoning of *Moore* was widely accepted. See, e. g., *Parker v. United States*, 153 F. 2d 66, 71 (CA1 1946) (citing *Moore* and noting that "[i]t was not in the contemplation of Congress that the federal bankruptcy power should be employed to pardon a bankrupt from the consequences of a criminal offense"); *Zwick v. Freeman*, 373 F. 2d 110, 116 (CA2 1967) (citing *Moore* and stating that "governmental sanctions are not regarded as debts even when they require monetary payments"). We have found only one federal court decision allowing a discharge under the Act to affect a sentence imposed by a criminal court. *In re Alderson*, 98 F. 588 (W. Va. 1899).

charge." See 1A Collier on Bankruptcy ¶17.13, at 1609-1610, and n. 10 (14th ed. 1979).

Moreover, those few courts faced with restitution obligations imposed as part of criminal sentences applied the same reasoning to prevent a discharge in bankruptcy from affecting such a condition of a criminal sentence. For instance, four years before Congress enacted the Code, the New York Supreme Court stated:

A discharge in bankruptcy has no effect whatsoever upon a condition of restitution of a criminal sentence. A bankruptcy proceeding is civil in nature and is intended to relieve an honest and unfortunate debtor of his debts and to permit him to begin his financial life anew. A condition of restitution in a sentence of probation is a part of the judgment of conviction. It does not create a debt nor a debtor/creditor relationship between the persons making and receiving restitution. As with any other condition of a probationary sentence it is intended as a means to insure the defendant will lead a law-abiding life thereafter. *State v. Mosesson*, 78 Misc. 2d 217, 218, 356 N. Y. S. 2d 483, 484 (1974) (citations omitted).⁷

Thus, Congress enacted the Code in 1978 against the background of an established judicial exception to discharge for criminal sentences, including restitution orders, an exception created in the face of a statute drafted with considerable care and specificity.

Just last Term we declined to hold that the new Bankruptcy Code silently abrogated another exception created by courts construing the old Act. In *Midlantic National Bank v. New Jersey Department of Environmental Protection*, 474 U. S. — (1986), a trustee in bankruptcy asked us to hold

⁷ For other decisions adopting this reasoning, see *State ex rel. Auerbach v. Topping Bros.*, 79 Misc. 2d 260, 359 N. Y. S. 2d 985, 987-988 (Crim. Ct. 1974); *State v. Washburn*, 97 Cal. App. 3d 621, 625-626, 158 Cal. Rptr. 822, 825 (1979).

that the 1978 Code had implicitly repealed an exception to the trustee's abandonment power. Courts had created that exception out of deference to state health and safety regulations, a consideration comparable to the States' interests implicated by this case. We stated:

The normal rule of statutory construction is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific. The Court has followed this rule with particular care in construing the scope of bankruptcy codifications. If Congress wishes to grant the trustee an extraordinary exemption from non-bankruptcy law, "the intention would be clearly expressed, not left to be collected or inferred from disputable considerations of convenience in administering the estate of the bankrupt." 474 U. S., at — (quoting *Swarts v. Hammer*, 194 U. S. 441, 444 (1904)) (citations omitted).

B

Our interpretation of the Code also must reflect the basis for this judicial exception, a deep conviction that federal bankruptcy courts should not invalidate the results of state criminal proceedings. The right to formulate and enforce penal sanctions is an important aspect of the sovereignty retained by the States. This Court has emphasized repeatedly "the fundamental policy against federal interference with state criminal prosecutions." *Younger v. Harris*, 401 U. S. 37, 46 (1971). The Court of Appeals nevertheless found support for its holding in the fact that Connecticut officials probably could have ensured continued enforcement of their court's criminal judgment against Robinson had they objected to discharge under § 523(c). Although this may be true in many cases, it hardly justifies an interpretation of the 1978 Act that is contrary to the long prevailing view that "fines and penalties are not affected by a discharge," 1A Collier on Bankruptcy ¶ 17.13, at 1610 (14th ed. 1979).

Moreover, reliance on a right to appear and object to discharge would create uncertainties and impose undue burdens on state officials. In some cases it would require state prosecutors to defend particular state criminal judgments before federal bankruptcy courts.⁸ As JUSTICE BRENNAN has noted, federal adjudication of matters already at issue in state criminal proceedings can be "an unwarranted and unseemly duplication of the State's own adjudicative process." *Perez v. Ledesma*, 401 U. S. 82, 121 (1971) (opinion of BRENNAN, J., concurring in part and dissenting in part).⁹

Also, as Robinson's attorney conceded at oral argument, some restitution orders would not be protected from discharge even if the state did appear and enter an objection to discharge. For example, a judge in a negligent homicide case might sentence the defendant to probation, conditioned on the defendant's paying the victim's husband compensation for the loss the husband sustained when the defendant killed his wife. It is not clear that such a restitution order would fit the terms of any of the exceptions to discharge listed in § 523 other than § 523(a)(7). Thus, this interpretation of the Code would do more than force state prosecutors to defend state criminal judgments in federal bankruptcy court. In

⁸ In many cases, of course, principles of issue preclusion would obviate the need for the bankruptcy court to reexamine factual questions, or interpret state law. But differences between the elements of crimes and the provisions of § 523 frequently might hinder the application of issue preclusion. Moreover, apart from the burden on state officials of following and participating in bankruptcy proceedings, it is unseemly to require state prosecutors to submit the judgments of their criminal courts to federal bankruptcy courts.

⁹ Of course, federal courts often duplicate state adjudicative processes when they consider petitions for the writ of habeas corpus. But explicit reference in the Constitution, Art. I, § 9, cl. 2, as well as several federal statutes, testify to the importance of the writ of habeas corpus. Here, the case for relitigation in the federal courts rests only on the ambiguous words of the Bankruptcy Code.

some cases, it could lead to federal remission of judgments imposed by state criminal judges.

This prospect, in turn, would hamper the flexibility of state criminal judges in choosing the combination of imprisonment, fines, and restitution most likely to further the rehabilitative and deterrent goals of state criminal justice systems.¹⁰ We will not lightly limit the rehabilitative and deterrent options available to state criminal judges.

In one of our cases interpreting the Act, Justice Douglas remarked: "[W]e do not read these statutory words with the ease of a computer. There is an overriding consideration that equitable principles govern the exercise of bankruptcy jurisdiction." *Bank of Marin v. England*, 385 U. S. 99, 103 (1966). This Court has recognized that the States' interest in administering their criminal justice systems free from federal interference is one of the most powerful of the considerations that should influence a court considering equitable types of relief. See *Younger v. Harris*, *supra*, at 44-45. This reflection of our federalism also must influence our interpretation of the Bankruptcy Code in this case.¹¹

¹⁰ Restitution is an effective rehabilitative penalty because it forces the defendant to confront, in concrete terms, the harm his actions have caused. Such a penalty will affect the defendant differently than a traditional fine, paid to the State as an abstract and impersonal entity, and often calculated without regard to the harm the defendant has caused. Similarly, the direct relation between the harm and the punishment gives restitution a more precise deterrent effect than a traditional fine. See Note, Victim Restitution in the Criminal Process: A Procedural Analysis, 97 Harv. L. Rev. 931, 937-941 (1984).

¹¹ Justice Frankfurter advocated a similar approach to the interpretation of regulatory statutes that infringe upon important state interests:

The task is one of accommodation as between assertions of new federal authority and historic functions of the individual states. Federal legislation of this character cannot therefore be construed without regard to the implications of our dual system of government. . . . The underlying assumptions of our dual form of government, and the consequent presuppositions of legislative draftsmanship which are expressive of our history and habits, cut across what might otherwise be the implied range of legislation. The his-

III

In light of the established state of the law—that bankruptcy courts could not discharge criminal judgments—we have serious doubts whether Congress intended to make criminal penalties “debts” within the meaning of § 101(4).¹² But we need not address that question in this case, because we hold that § 523(a)(7) preserves from discharge any condition a state criminal court imposes as part of a criminal sentence.

The relevant portion of § 523(a)(7) protects from discharge any debt

to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss.

This language is subject to interpretation. On its face, § 523(a)(7) certainly does not compel the conclusion reached by the Court of Appeals, that a discharge in bankruptcy voids restitution orders imposed as conditions of probation by state courts. Nowhere in the House and Senate Reports is there any indication that this language should be read so intrusively.¹³ If Congress had intended, by § 523(a)(7) or by any

tory of congressional legislation . . . justifi[ies] the generalization that, when the Federal Government takes over such local radiations in the vast network of our national economic enterprise and thereby radically readjusts the balance of state and national authority, those charged with the duty of legislating are reasonably explicit. Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Col. L. Rev. 527, 539–540 (1947).

¹² We recognize, as the Court of Appeals emphasized, that the Code’s definition of “debt” is broadly drafted, and that the legislative history supports a broad reading of the definition. But nothing in the legislative history of these sections suggests that Congress intended to change the state of the law with respect to criminal judgments.

¹³ For the section-by-section analysis in the legislative reports, see H. R. Rep. No. 95–595, p. 363 (1977); S. Rep. No. 95–989, p. 79 (1978). For explanations of the section by commentators, see 3 Collier on Bankruptcy ¶ 523.17 (15th ed. 1986); 1 Norton Bankruptcy Law and Practice § 27.37 (1981). In fact, both of these commentators expressly state that the lan-

, as well as the
Code’s various
priority and
dischargeability
provisions,

Compels
the conclusion

other provision, to discharge state criminal sentences, "we can be certain that there would have been hearings, testimony, and debate concerning consequences so wasteful, so inimical to purposes previously deemed important, and so likely to arouse public outrage," *Tennessee Valley Authority v. Hill*, 437 U. S. 153, 209 (1978) (POWELL, J., dissenting).

Our reading of § 523(a)(7) differs from that of the Second Circuit. On its face, it creates a broad exception for all penal sanctions, whether they be denominated fines, penalties, or forfeitures. Congress included two qualifying phrases; the fines must be both "to and for the benefit of a governmental unit," and "not compensation for pecuniary loss." Section 523(a)(7) protects traditional criminal fines; it codifies the judicially created exception to discharge for fines. We must decide whether the result is altered by the two major differences between restitution and a traditional fine. Unlike traditional fines, restitution is forwarded to the victim, and may be calculated by reference to the amount of harm the offender has caused.

guage does not have the intrusive effect sought by Robinson. See Collier, ¶ 523.17, at 523-123 n. 4; Norton, § 27.37, at 55 n. 2.

It seems likely that the limitation of § 523(a)(7) to fines assessed "for the benefit of a federal, state, or local government" was intended to prevent application of that subsection to wholly private penalties such as punitive damages. See House Doc. No. 93-137, pt. 2, pp. 116, 141 (1973). As for the reference to "compensation for actual pecuniary loss," the Senate Report indicates that the main purpose of this language was to prevent § 523(a)(7) from being applied to tax penalties. S. Rep. No. 95-989, p. 79 (1978).

We acknowledge that a few comments in the hearings and the Bankruptcy Laws Commission Report may suggest that the language bears the interpretation adopted by the Second Circuit. But none of those statements was made by a member of Congress, nor were they included in the official Senate and House reports. We decline to accord any significance to these statements. See *McCaughn v. Hershey Chocolate Co.*, 283 U. S. 488, 493-494 (1931); 2A N. Singer, *Sutherland on Statutory Construction* § 48.10, at 319, and n. 11 (rev. 4th ed. 1984).

In our view, neither of the qualifying clauses of § 523(a)(7) allows the discharge of a criminal judgment that takes the form of restitution. The criminal justice system is not operated primarily for the benefit of victims, but for the benefit of society as a whole. Thus, it is concerned not only with punishing the offender, but also with rehabilitating him. Although restitution does resemble a judgment "for the benefit of" the victim, the context in which it is imposed undermines that conclusion. The victim has no control over the amount of restitution awarded or over the decision to award restitution. Moreover, the decision to impose restitution generally does not turn on the victim's injury, but on the penal goals of the State and the situation of the defendant. As the bankruptcy judge in this case recognized, "Unlike an obligation which arises out of a contractual, statutory or common law duty, here the obligation is rooted in the traditional responsibility of a state to protect its citizens by enforcing its criminal statutes and to rehabilitate an offender by imposing a criminal sanction intended for that purpose." 42 B. R., at 133.

This point is well illustrated by the Connecticut statute under which the restitution obligation was imposed. The statute authorizes a judge to impose any of eight specified conditions of probation, as well as "any other conditions reasonably related to his rehabilitation." Conn. Gen. Stat. § 53a-30(a)(9). Clause (4) of that section authorizes a judge to require that the defendant

make restitution of the fruits of his offense or make restitution, in an amount he can afford to pay or provide in a suitable manner, for the loss or damage caused thereby and the court may fix the amount thereof and the manner of performance.

This clause does not require imposition of restitution in the amount of the harm caused. Instead, it provides for a flexible remedy tailored to the defendant's situation.

Because criminal proceedings focus on the State's interests in rehabilitation and punishment, rather than the victim's desire for compensation, we conclude that restitution orders imposed in such proceedings operate "for the benefit of" the State. Similarly, they are not assessed "for . . . compensation" of the victim. The sentence following a criminal conviction necessarily considers the penal and rehabilitative interests of the state.¹⁴ Those interests are sufficient to place restitution orders within the meaning of § 523(a)(7).

In light of the strong interests of the States, the uniform construction of the old Act over three-quarters of a century, and the absence of any significant evidence that Congress intended to change the law in this area, we believe this result best effectuates the will of Congress. Accordingly, the decision of the Court of Appeals for the Second Circuit is

Reversed.

¹⁴This is not the only context in which courts have been forced to evaluate the treatment of restitution orders by determining whether they are "compensatory" or "penal." Several lower courts have addressed the constitutionality of the federal Victim Witness Protection Act, 18 U. S. C. § 3579. Under that Act, defendants have no right to jury trial as to the amount of restitution, even though the Seventh Amendment would require such a trial if the issue were decided in a civil case. See Note, *The Right to a Jury Trial to Determine Restitution Under the Victim and Witness Protection Act of 1982*, 63 Texas L. Rev. 671 (1984). Every federal circuit court that has considered the question has concluded that criminal defendants contesting the assessment of restitution orders are not entitled to the protections of the Seventh Amendment. See *id.*, at 672 n. 18 (citing cases).

AS
and

lfp/ss 10/24/86 KELLYOC SALLY-POW

85-1033 Kelly v. Robinson

Dear Sandra:

Thank you for your letter of October 23 in which you suggest that "perhaps we should accept that the definition of debt includes restitution orders". It is true that such orders, under my opinion, would be protected in any event from discharge by §523(a)(7).

My notes as to the Conference discussion indicate that some Justices were in doubt as to a restitution order would be a "debt" within the meaning of §101(4). As it is not necessary to decide this question in this case, I thought it prudent simply to leave the question open. I do think footnote 12, as presently drafted, can be read as implying a negative answer to the question left open. I

could make the note entirely neutral by changing it to
read:

(Ronald: Here add the revision you suggest in your
undated memorandum).

I could make this change without clearing it with
Justices who have joined by opinion.

Sincerely,

Justice O'Connor

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 24, 1986

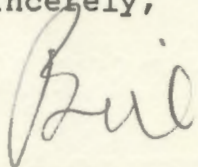
No. 85-1033

Kelly v. Robinson

Dear Lewis:

I agree.

Sincerely,



Justice Powell

Copies to the Conference

October 24, 1986

85-1033 Kelly v. Robinson

Dear Sandra:

Thank you for your letter of October 23 in which you suggest that "perhaps we should accept that the definition of debt includes restitution orders". It is true that such orders, under my opinion, would be protected in any event from discharge by §523(a)(7).

My notes on the Conference discussion indicate that some Justices were in doubt as to whether a restitution order is a "debt" within the meaning of §101(4). I understood Harry to say it is not a debt. As it is not necessary to decide this question in this case, I thought it prudent simply to leave the question open.

I do think footnote 12, as presently drafted, can be read as implying a negative answer to the question left open. I could make the note entirely neutral by changing it to read:

12. We recognize, as the Court of Appeals emphasized, that the Code's definition of "debt" is broadly drafted, and that the legislative history, as well as the Code's various priority and dischargeability provisions, support a broad reading of the definition. But nothing in the legislative history of these sections compels the conclusion that Congress intended to change the state of the law with respect to criminal judgments.

I could make this change without clearing it with Justices who have joined my opinion.

Sincerely,

Justice O'Connor

lfp/ss



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

✓

October 24, 1986

No. 85-1033 Kelly v. Robinson

Dear Lewis,

I would appreciate seeing the change you suggest for FN 12. Thank you. It will remove some of the open-ended invitation for lower courts to go off on a less useful approach.

Sincerely,

Sandra

Justice Powell

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

✓

October 24, 1986

Re: 85-1033 - Kelly v. Robinson

Dear Lewis:

I shall await Thurgood's dissent.

Respectfully,

JP

Justice Powell

Copies to the Conference

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Stevens
 Justice O'Connor
 Justice Scalia

PP. 5, 13

From: Justice Powell

Circulated: _____

Recirculated: OCT 26 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-1033

JOHN J. KELLY, CONNECTICUT CHIEF STATE'S
 ATTORNEY, ET AL., PETITIONERS *v.*
 CAROLYN ROBINSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SECOND CIRCUIT

[October —, 1986]

JUSTICE POWELL delivered the opinion of the Court.

We granted review in this case to decide whether restitution obligations, imposed as conditions of probation in state criminal proceedings, are dischargeable in proceedings under Chapter 7 of the Bankruptcy Code.

I

In 1980, Carolyn Robinson pled guilty to larceny in the second degree. The charge was based on her wrongful receipt of \$9,932.95 in welfare benefits from the Connecticut Department of Income Maintenance. On November 14, 1980, the Connecticut Superior Court sentenced Robinson to a prison term of not less than one year nor more than three years. The court suspended execution of the sentence and placed Robinson on probation for five years. As a condition of probation, the judge ordered Robinson to make restitution¹ to the State of Connecticut Office of Adult Probation (Probation

¹Connecticut Gen. Stat. § 53a-30 sets out the conditions a trial court may impose on a sentence of probation. Clause 4 of that section authorizes a condition that the defendant "make restitution of the fruits of his offense or make restitution, in an amount he can afford to pay or provide in a suitable manner, for the loss or damage caused thereby and the court may fix the amount thereof and the manner of performance."

Office) at the rate of \$100 per month, commencing January 16, 1981, and continuing until the end of her probation.²

On February 5, 1981, Robinson filed a voluntary petition under Chapter 7 of the Bankruptcy Code, 11 U. S. C. § 701 *et seq.*, in the United States Bankruptcy Court for the District of Connecticut. That petition listed the restitution obligation as a debt. On February 20, 1981, the Bankruptcy Court notified both of the Connecticut agencies of Robinson's petition and informed them that April 27, 1981, was the deadline for filing objections to discharge. The agencies did not file proofs of claim or objections to discharge, apparently because they took the position that the bankruptcy would not affect the conditions of Robinson's probation. Thus, the agencies did not participate in the distribution of Robinson's estate. On May 14, 1981, the bankruptcy court granted Robinson a discharge. See § 727.

At the time Robinson received her discharge in bankruptcy, she had paid \$450 in restitution. On May 20, 1981, her attorney wrote the Probation Office that he believed the discharge had altered the conditions of Robinson's probation, voiding the condition that she pay restitution. Robinson made no further payments.

The Connecticut Probation Office did not respond to this letter until February 1984, when it informed Robinson that it considered the obligation to pay restitution nondischargeable. Robinson responded by filing an adversary proceeding in the Bankruptcy Court, seeking a declaration that the restitution obligation had been discharged, as well as an injunction to prevent the State's officials from forcing Robinson to pay.

After a trial, the Bankruptcy Court entered a Memorandum and Proposed Order, concluding that the 1981 discharge

²There is some uncertainty about the total amount Robinson was ordered to pay. Although the judge imposed restitution in a total amount of \$9,932.95, five years of payments at one hundred dollars a month total only \$6,000.

in bankruptcy had not altered the conditions of Robinson's probation. The court adopted the analysis it had applied in a similar case decided one month earlier, *In re Pellegrino* (*Pellegrino v. Division of Criminal Justice*), 42 B. R. 129 (Bkrcty. Ct. Conn. 1984). In *Pellegrino*, the court began with the Bankruptcy Code's definitional sections. First, § 101(11) defines a "debt" as a "liability on a claim." In turn, § 101(4) defines a "claim" as 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." Finally, § 101(9) defines a "creditor" as an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor."

The Bankruptcy Court then examined the statute under which the Connecticut judge had sentenced the debtor to pay restitution. Restitution appears as one of the conditions of probation enumerated in Conn. Gen. Stat. § 53a-30. Under that section, restitution payments are sent to the Probation Office. The payments then are forwarded to the victim. Although the Connecticut penal code does not provide for enforcement of the probation conditions by the victim, it does authorize the trial court to issue a warrant for the arrest of a criminal defendant who has violated a condition of probation. § 53a-32.

Because the Connecticut statute does not allow the victim to enforce a right to receive payment, the court concluded that neither the victim nor the Probation Office had a "right to payment," and hence neither was owed a "debt" under the Bankruptcy Code. It argued: "Unlike an obligation which arises out of a contractual, statutory or common law duty, here the obligation is rooted in the traditional responsibility of a state to protect its citizens by enforcing its criminal statutes and to rehabilitate an offender by imposing a criminal sanction intended for that purpose." 42 B. R., at 133. The court acknowledged the tension between its conclusion and

the Code's expansive definition of debt, but found an exception to the statutory definition in "the long-standing tradition of restraint by federal courts from interference with traditional functions of state governments." *Id.*, at 134. The court concluded that, even if the probation condition was a debt subject to bankruptcy jurisdiction, it was nondischargeable under § 523(a)(7) of the Code. That subsection provides that a discharge in bankruptcy does not affect any debt that "is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss."

The court also concluded that the purpose of the restitution condition was "to promote the rehabilitation of the offender, not to compensate the victim." 42 B. R., at 137. It specifically rejected the argument that the restitution must be deemed compensatory because the amount precisely matched the victim's loss. It noted that the state statute allows an offender "to make restitution of the fruits of his offense or make restitution, in an amount he can afford to pay or provide in a suitable manner, for the loss or damage caused thereby," Conn. Gen. Stat. § 53a-30(a)(4). In its view, the Connecticut statute focuses "upon the offender and not on the victim, and . . . restitution is part of the criminal penalty rather than compensation for a victim's actual loss." 42 B. R., at 137. Thus, the Bankruptcy Court held that the bankruptcy discharge had not affected the conditions of Pellegrino's probation. The United States District Court for the District of Connecticut adopted the Bankruptcy Court's proposed dispositions of *Pellegrino* and this case without alteration.

The Court of Appeals for the Second Circuit reversed. It first examined the Code's definition of debt. Although it recognized that most courts had reached the opposite conclusion, the court decided that a restitution obligation imposed as a condition of probation is a debt. It relied on the legislative history of the Code that evinced Congress's intent to

broaden the definition of "debt" from the much narrower definition of the Bankruptcy Act of 1898. The court also noted that anomalies might result from a conclusion that such an obligation is not a debt. Most importantly, nondebt status would deprive a state of the opportunity to participate in the distribution of the bankrupt's estate.

Having concluded that restitution obligations are debts, the court turned to the question of dischargeability. The court stated that the appropriate Connecticut agency probably could have avoided discharge of the debt if it had objected under §§ 523(a)(2) or 523(a)(4) of the Code.³ As no objections to discharge were filed, the court concluded that the State could rely only on § 523(a)(7), the subsection that provides for automatic nondischargeability for certain debts.⁴ The court then looked to the text of the Connecticut statute to determine whether Robinson's probation condition was "compensation for actual pecuniary loss" within the meaning of § 523(a)(7). But where the Bankruptcy Court had considered the entire state probation system, the Court of Appeals focused only on the language that allows a restitution order

³Section 523(a)(2)(A) protects from discharge debts "for obtaining money, property, services, or an extension, renewal, or refinancing of credit, by false pretenses, a false representation, or actual fraud." Section 523(a)(4) protects from discharge debts "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." Under § 523(c), debts that are protected from discharge only by § 523(a)(2) or § 523(a)(4) are discharged unless the creditor files an objection to discharge during the bankruptcy proceedings. Because Robinson was convicted of larceny, one of the debts listed in § 523(a)(4), it is quite likely that the Bankruptcy Court, if it had found the obligation to be a "debt," would have found it nondischargeable under that subsection.

⁴The requirement that creditors object to discharge is limited on its face to paragraphs (2), (4), and (6) of § 523(a). Because paragraph 7 is not listed there, debts described in that paragraph are automatically nondischargeable, under the general rule prescribed in the opening clause of § 523(a) (providing that a "discharge under section 727 . . . of this title does not discharge an individual debtor from any debt" listed in the paragraphs that follow).

to be assessed "for the loss or damage caused [by the crime]," Conn. Gen. Stat. § 53a-30(a)(4). The court thought this language compelled the conclusion that the probation condition was "compensation for actual pecuniary loss." It held, therefore, that this particular condition of Robinson's probation was not protected from discharge by § 523(a)(7). Accordingly, it reversed the District Court.

We granted the State's petition for a writ of certiorari. We have jurisdiction to review the judgment of the Court of Appeals under 28 U. S. C. § 1254(1). We reverse.

II

The Court of Appeals' decision focused primarily on the language of §§ 101 and 523 of the Code. Of course, the "starting point in every case involving construction of a statute is the language itself." *Blue Chip Stamps v. Manor Drug Stores*, 421 U. S. 723, 756 (1975) (POWELL, J., concurring). But the text is only the starting point. As JUSTICE O'CONNOR explained last Term, "'In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.'" *Offshore Logistics, Inc. v. Tallentire*, 477 U. S. —, — (1986) (quoting *Mastro Plastics Corp. v. National Labor Relations Board*, 350 U. S. 270, 285 (1956) (quoting *United States v. Heirs of Boisdoré*, 8 How. 113, 122 (1849))). In this case, we must consider the language of §§ 101 and 523 in light of the history of bankruptcy court deference to criminal judgments and in light of the interests of the States in unfettered administration of their criminal justice systems.

A

Courts traditionally have been reluctant to interpret federal bankruptcy statutes to remit state criminal judgments. The present text of Title 11, commonly referred to as the Bankruptcy Code, was enacted in 1978 to replace the Bank-

ruptcy Act of 1898, ch. 541, 30 Stat. 544.⁵ The treatment of criminal judgments under the Act of 1898 informs our understanding of the language of the Code.

First, § 57 of the Act established the category of "allowable" debts. See 3 Collier on Bankruptcy ¶ 57 (14th ed. 1977). Only if a debt was allowable could the creditor receive a share of the bankrupt's assets. See § 65a. For this case, it is important to note that § 57j excluded from the class of allowable debts penalties owed to government entities. That section provided:

Debts owing to the United States, a State, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose. 30 Stat., at 561.

Second, § 63 established the separate category of "provable" debts. See 3A Collier on Bankruptcy ¶ 63 (14th ed. 1975). Section 17 provided that a discharge in bankruptcy "release[d] a bankrupt from all of his provable debts," subject to several exceptions⁶ listed in later portions of § 17. Although § 17 specifically excepted four types of debts from discharge, it did not mention criminal penalties of any kind. The most natural construction of the Act, therefore, would have allowed criminal penalties to be discharged in bankruptcy, even though the government was not entitled to a share of the bankrupt's estate. Congress had considered criminal penalties when it passed the Act; it clearly made them nonallowable. The failure expressly to make them

⁵ Congress amended the Bankruptcy Act several times between 1898 and 1978. Congress also made numerous technical changes to the Code in the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 380. None of those changes is relevant to this decision.

nondischargeable at the same time offered substantial support for the view that the Act discharged those penalties.

But the courts did not interpret the Act in this way. Despite the clear statutory language, most courts refused to allow a discharge in bankruptcy to affect the judgment of a state criminal court. In the leading case, the court reasoned:

It might be admitted that sections 63 and 17 of the bankrupt act, if only the letter of those provisions be looked to, would embrace [criminal penalties]; but it is well settled that there may be cases in which such literal construction is not admissible. . . . It may suffice to say that nothing but a ruling from a higher court would convince me that congress, by any provision of the bankrupt act, intended to permit the discharge, under its operations, of any judgment entered by a state or federal court imposing a fine in the enforcement of criminal laws. . . . The provisions of the bankrupt act have reference alone to civil liabilities, as demands between debtor and creditors, as such, and not to punishment inflicted pro bono publico for crimes committed." *In re Moore*, 111 F. 145, 148-149 (WD Ky. 1901).⁶

This reasoning was so widely accepted by the time Congress enacted the new Code that a leading commentator could state flatly that "fines and penalties are not affected by a dis-

⁶ Although courts differed as to the boundaries of the exception, particularly in cases involving nonmonetary sanctions, or sanctions imposed in civil proceedings, the reasoning of *Moore* was widely accepted. See, e. g., *Parker v. United States*, 153 F. 2d 66, 71 (CA1 1946) (citing *Moore* and noting that "[i]t was not in the contemplation of Congress that the federal bankruptcy power should be employed to pardon a bankrupt from the consequences of a criminal offense"); *Zwick v. Freeman*, 373 F. 2d 110, 116 (CA2 1967) (citing *Moore* and stating that "governmental sanctions are not regarded as debts even when they require monetary payments"). We have found only one federal court decision allowing a discharge under the Act to affect a sentence imposed by a criminal court. *In re Alderson*, 98 F. 588 (W. Va. 1899).

charge." See 1A Collier on Bankruptcy ¶17.13, at 1609-1610, and n. 10 (14th ed. 1979).

Moreover, those few courts faced with restitution obligations imposed as part of criminal sentences applied the same reasoning to prevent a discharge in bankruptcy from affecting such a condition of a criminal sentence. For instance, four years before Congress enacted the Code, the New York Supreme Court stated:

A discharge in bankruptcy has no effect whatsoever upon a condition of restitution of a criminal sentence. A bankruptcy proceeding is civil in nature and is intended to relieve an honest and unfortunate debtor of his debts and to permit him to begin his financial life anew. A condition of restitution in a sentence of probation is a part of the judgment of conviction. It does not create a debt nor a debtor/creditor relationship between the persons making and receiving restitution. As with any other condition of a probationary sentence it is intended as a means to insure the defendant will lead a law-abiding life thereafter. *State v. Mosesson*, 78 Misc. 2d 217, 218, 356 N. Y. S. 2d 483, 484 (1974) (citations omitted).⁷

Thus, Congress enacted the Code in 1978 against the background of an established judicial exception to discharge for criminal sentences, including restitution orders, an exception created in the face of a statute drafted with considerable care and specificity.

Just last Term we declined to hold that the new Bankruptcy Code silently abrogated another exception created by courts construing the old Act. In *Midlantic National Bank v. New Jersey Department of Environmental Protection*, 474 U. S. — (1986), a trustee in bankruptcy asked us to hold

⁷ For other decisions adopting this reasoning, see *State ex rel. Auerbach v. Topping Bros.*, 79 Misc. 2d 260, 359 N. Y. S. 2d 985, 987-988 (Crim. Ct. 1974); *State v. Washburn*, 97 Cal. App. 3d 621, 625-626, 158 Cal. Rptr. 822, 825 (1979).

that the 1978 Code had implicitly repealed an exception to the trustee's abandonment power. Courts had created that exception out of deference to state health and safety regulations, a consideration comparable to the States' interests implicated by this case. We stated:

The normal rule of statutory construction is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific. The Court has followed this rule with particular care in construing the scope of bankruptcy codifications. If Congress wishes to grant the trustee an extraordinary exemption from non-bankruptcy law, "the intention would be clearly expressed, not left to be collected or inferred from disputable considerations of convenience in administering the estate of the bankrupt." 474 U. S., at — (quoting *Swarts v. Hammer*, 194 U. S. 441, 444 (1904)) (citations omitted).

B

Our interpretation of the Code also must reflect the basis for this judicial exception, a deep conviction that federal bankruptcy courts should not invalidate the results of state criminal proceedings. The right to formulate and enforce penal sanctions is an important aspect of the sovereignty retained by the States. This Court has emphasized repeatedly "the fundamental policy against federal interference with state criminal prosecutions." *Younger v. Harris*, 401 U. S. 37, 46 (1971). The Court of Appeals nevertheless found support for its holding in the fact that Connecticut officials probably could have ensured continued enforcement of their court's criminal judgment against Robinson had they objected to discharge under §523(c). Although this may be true in many cases, it hardly justifies an interpretation of the 1978 Act that is contrary to the long prevailing view that "fines and penalties are not affected by a discharge," 1A Collier on Bankruptcy ¶17.13, at 1610 (14th ed. 1979).

Moreover, reliance on a right to appear and object to discharge would create uncertainties and impose undue burdens on state officials. In some cases it would require state prosecutors to defend particular state criminal judgments before federal bankruptcy courts.⁸ As JUSTICE BRENNAN has noted, federal adjudication of matters already at issue in state criminal proceedings can be "an unwarranted and unseemly duplication of the State's own adjudicative process." *Perez v. Ledesma*, 401 U. S. 82, 121 (1971) (opinion of BRENNAN, J., concurring in part and dissenting in part).⁹

Also, as Robinson's attorney conceded at oral argument, some restitution orders would not be protected from discharge even if the state did appear and enter an objection to discharge. For example, a judge in a negligent homicide case might sentence the defendant to probation, conditioned on the defendant's paying the victim's husband compensation for the loss the husband sustained when the defendant killed his wife. It is not clear that such a restitution order would fit the terms of any of the exceptions to discharge listed in § 523 other than § 523(a)(7). Thus, this interpretation of the Code would do more than force state prosecutors to defend state criminal judgments in federal bankruptcy court. In

⁸ In many cases, of course, principles of issue preclusion would obviate the need for the bankruptcy court to reexamine factual questions, or interpret state law. But differences between the elements of crimes and the provisions of § 523 frequently might hinder the application of issue preclusion. Moreover, apart from the burden on state officials of following and participating in bankruptcy proceedings, it is unseemly to require state prosecutors to submit the judgments of their criminal courts to federal bankruptcy courts.

⁹ Of course, federal courts often duplicate state adjudicative processes when they consider petitions for the writ of habeas corpus. But explicit reference in the Constitution, Art. I, § 9, cl. 2, as well as several federal statutes, testify to the importance of the writ of habeas corpus. Here, the case for relitigation in the federal courts rests only on the ambiguous words of the Bankruptcy Code.

some cases, it could lead to federal remission of judgments imposed by state criminal judges.

This prospect, in turn, would hamper the flexibility of state criminal judges in choosing the combination of imprisonment, fines, and restitution most likely to further the rehabilitative and deterrent goals of state criminal justice systems.¹⁰ We will not lightly limit the rehabilitative and deterrent options available to state criminal judges.

In one of our cases interpreting the Act, Justice Douglas remarked: "[W]e do not read these statutory words with the ease of a computer. There is an overriding consideration that equitable principles govern the exercise of bankruptcy jurisdiction." *Bank of Marin v. England*, 385 U. S. 99, 103 (1966). This Court has recognized that the States' interest in administering their criminal justice systems free from federal interference is one of the most powerful of the considerations that should influence a court considering equitable types of relief. See *Younger v. Harris*, *supra*, at 44-45. This reflection of our federalism also must influence our interpretation of the Bankruptcy Code in this case.¹¹

¹⁰ Restitution is an effective rehabilitative penalty because it forces the defendant to confront, in concrete terms, the harm his actions have caused. Such a penalty will affect the defendant differently than a traditional fine, paid to the State as an abstract and impersonal entity, and often calculated without regard to the harm the defendant has caused. Similarly, the direct relation between the harm and the punishment gives restitution a more precise deterrent effect than a traditional fine. See Note, Victim Restitution in the Criminal Process: A Procedural Analysis, 97 Harv. L. Rev. 931, 937-941 (1984).

¹¹ Justice Frankfurter advocated a similar approach to the interpretation of regulatory statutes that infringe upon important state interests: The task is one of accommodation as between assertions of new federal authority and historic functions of the individual states. Federal legislation of this character cannot therefore be construed without regard to the implications of our dual system of government. . . . The underlying assumptions of our dual form of government, and the consequent presuppositions of legislative draftsmanship which are expressive of our history and habits, cut across what might otherwise be the implied range of legislation. The his-

III

In light of the established state of the law—that bankruptcy courts could not discharge criminal judgments—we have serious doubts whether Congress intended to make criminal penalties “debts” within the meaning of § 101(4).¹² But we need not address that question in this case, because we hold that § 523(a)(7) preserves from discharge any condition a state criminal court imposes as part of a criminal sentence.

The relevant portion of § 523(a)(7) protects from discharge any debt

to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss.

This language is subject to interpretation. On its face, § 523(a)(7) certainly does not compel the conclusion reached by the Court of Appeals, that a discharge in bankruptcy voids restitution orders imposed as conditions of probation by state courts. Nowhere in the House and Senate Reports is there any indication that this language should be read so intrusively.¹³ If Congress had intended, by § 523(a)(7) or by any

tory of congressional legislation . . . justifi[es] the generalization that, when the Federal Government takes over such local radiations in the vast network of our national economic enterprise and thereby radically readjusts the balance of state and national authority, those charged with the duty of legislating are reasonably explicit. Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Col. L. Rev. 527, 539–540 (1947).

¹² We recognize, as the Court of Appeals emphasized, that the Code’s definition of “debt” is broadly drafted, and that the legislative history, as well as the Code’s various priority and dischargeability provisions, support a broad reading of the definition. But nothing in the legislative history of these sections compels the conclusion that Congress intended to change the state of the law with respect to criminal judgments.

¹³ For the section-by-section analysis in the legislative reports, see H. R. Rep. No. 95–595, p. 363 (1977); S. Rep. No. 95–989, p. 79 (1978). For explanations of the section by commentators, see 3 Collier on Bankruptcy ¶ 523.17 (15th ed. 1986); 1 Norton Bankruptcy Law and Practice § 27.37

other provision, to discharge state criminal sentences, "we can be certain that there would have been hearings, testimony, and debate concerning consequences so wasteful, so inimical to purposes previously deemed important, and so likely to arouse public outrage," *Tennessee Valley Authority v. Hill*, 437 U. S. 153, 209 (1978) (POWELL, J., dissenting).

Our reading of § 523(a)(7) differs from that of the Second Circuit. On its face, it creates a broad exception for all penal sanctions, whether they be denominated fines, penalties, or forfeitures. Congress included two qualifying phrases; the fines must be both "to and for the benefit of a governmental unit," and "not compensation for pecuniary loss." Section 523(a)(7) protects traditional criminal fines; it codifies the judicially created exception to discharge for fines. We must decide whether the result is altered by the two major differences between restitution and a traditional fine. Unlike traditional fines, restitution is forwarded to the victim, and may be calculated by reference to the amount of harm the offender has caused.

(1981). In fact, both of these commentators expressly state that the language does not have the intrusive effect sought by Robinson. See Collier, ¶ 523.17, at 523-123 n. 4; Norton, § 27.37, at 55 n. 2.

It seems likely that the limitation of § 523(a)(7) to fines assessed "for the benefit of a federal, state, or local government" was intended to prevent application of that subsection to wholly private penalties such as punitive damages. See House Doc. No. 93-137, pt. 2, pp. 116, 141 (1973). As for the reference to "compensation for actual pecuniary loss," the Senate Report indicates that the main purpose of this language was to prevent § 523(a)(7) from being applied to tax penalties. S. Rep. No. 95-989, p. 79 (1978).

We acknowledge that a few comments in the hearings and the Bankruptcy Laws Commission Report may suggest that the language bears the interpretation adopted by the Second Circuit. But none of those statements was made by a member of Congress, nor were they included in the official Senate and House reports. We decline to accord any significance to these statements. See *McCaughn v. Hershey Chocolate Co.*, 283 U. S. 488, 493-494 (1931); 2A N. Singer, *Sutherland on Statutory Construction* § 48.10, at 319, and n. 11 (rev. 4th ed. 1984).

In our view, neither of the qualifying clauses of § 523(a)(7) allows the discharge of a criminal judgment that takes the form of restitution. The criminal justice system is not operated primarily for the benefit of victims, but for the benefit of society as a whole. Thus, it is concerned not only with punishing the offender, but also with rehabilitating him. Although restitution does resemble a judgment "for the benefit of" the victim, the context in which it is imposed undermines that conclusion. The victim has no control over the amount of restitution awarded or over the decision to award restitution. Moreover, the decision to impose restitution generally does not turn on the victim's injury, but on the penal goals of the State and the situation of the defendant. As the bankruptcy judge in this case recognized, "Unlike an obligation which arises out of a contractual, statutory or common law duty, here the obligation is rooted in the traditional responsibility of a state to protect its citizens by enforcing its criminal statutes and to rehabilitate an offender by imposing a criminal sanction intended for that purpose." 42 B. R., at 133.

This point is well illustrated by the Connecticut statute under which the restitution obligation was imposed. The statute authorizes a judge to impose any of eight specified conditions of probation, as well as "any other conditions reasonably related to his rehabilitation." Conn. Gen. Stat. § 53a-30(a)(9). Clause (4) of that section authorizes a judge to require that the defendant

make restitution of the fruits of his offense or make restitution, in an amount he can afford to pay or provide in a suitable manner, for the loss or damage caused thereby and the court may fix the amount thereof and the manner of performance.

This clause does not require imposition of restitution in the amount of the harm caused. Instead, it provides for a flexible remedy tailored to the defendant's situation.

Because criminal proceedings focus on the State's interests in rehabilitation and punishment, rather than the victim's desire for compensation, we conclude that restitution orders imposed in such proceedings operate "for the benefit of" the State. Similarly, they are not assessed "for . . . compensation" of the victim. The sentence following a criminal conviction necessarily considers the penal and rehabilitative interests of the state.¹⁴ Those interests are sufficient to place restitution orders within the meaning of § 523(a)(7).

In light of the strong interests of the States, the uniform construction of the old Act over three-quarters of a century, and the absence of any significant evidence that Congress intended to change the law in this area, we believe this result best effectuates the will of Congress. Accordingly, the decision of the Court of Appeals for the Second Circuit is

Reversed.

¹⁴This is not the only context in which courts have been forced to evaluate the treatment of restitution orders by determining whether they are "compensatory" or "penal." Several lower courts have addressed the constitutionality of the federal Victim and Witness Protection Act, 18 U. S. C. § 3579. Under that Act, defendants have no right to jury trial as to the amount of restitution, even though the Seventh Amendment would require such a trial if the issue were decided in a civil case. See Note, *The Right to a Jury Trial to Determine Restitution Under the Victim and Witness Protection Act of 1982*, 63 Texas L. Rev. 671 (1984). Every federal circuit court that has considered the question has concluded that criminal defendants contesting the assessment of restitution orders are not entitled to the protections of the Seventh Amendment. See *id.*, at 672 n. 18 (citing cases).

October 27, 1986

Re: No. 85-1033 Kelly v. Robinson

Dear Lewis,

Please join me.

Sincerely,

*Signature
in next pg.*

p.s. - I submit the following two suggestions for your consideration; my "join" is not conditioned upon your adopting either or both of them:

1. On page 6 you begin the first full paragraph after II with the usual obeisance to the importance of statutory language and statutory construction, but then within a couple of sentences you elect to consider the two sections involved here "in light of the history...etc." I would think one added sentence in this paragraph to the effect that §§101 and 523 of the Bankruptcy Code are not clear in their meaning as applied to the facts of this case would aid in this transition.

2. On page 12, first full paragraph, you state "we will not lightly limit the rehabilitative and deterrent options available to state criminal judges." I wonder if this wouldn't sound better if it were framed in terms of a congressional view, rather than a judicial view of such limitation: e.g., "We do not think Congress would lightly

limit the rehabilitative and deterrent options available to
state criminal judges."

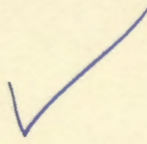
W

Justice Powell



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR



October 27, 1986

No. 85-1033 Kelly v. Robinson

Dear Lewis,

Please join me.

Sincerely,

Sandra

Justice Powell

Copies to the Conference



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

October 28, 1986



85-1033 - Kelly v. Robinson

Dear Lewis,

Please join me.

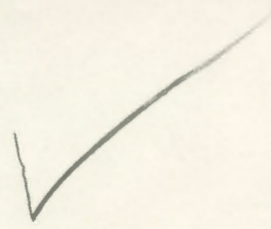
Sincerely yours,

Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS



October 31, 1986

Re: 85-1033 - Kelly v. Robinson

Dear Thurgood:

Please join me.

Respectfully,

Justice Marshall

Copies to the Conference

11/05
Stylistic Changes Throughout

10. The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Scalia

From: **Justice Powell**

Circulated: _____

Recirculated: **NOV 5 1986** _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-1033

JOHN J. KELLY, CONNECTICUT CHIEF STATE'S
ATTORNEY, ET AL., PETITIONERS *v.*
CAROLYN ROBINSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

[November —, 1986]

JUSTICE POWELL delivered the opinion of the Court.

We granted review in this case to decide whether restitution obligations, imposed as conditions of probation in state criminal proceedings, are dischargeable in proceedings under Chapter 7 of the Bankruptcy Code.

I

In 1980, Carolyn Robinson pleaded guilty to larceny in the second degree. The charge was based on her wrongful receipt of \$9,932.95 in welfare benefits from the Connecticut Department of Income Maintenance. On November 14, 1980, the Connecticut Superior Court sentenced Robinson to a prison term of not less than one year nor more than three years. The court suspended execution of the sentence and placed Robinson on probation for five years. As a condition of probation, the judge ordered Robinson to make restitution¹ to the State of Connecticut Office of Adult Probation (Probation Office) at the rate of \$100 per month, commencing

¹ Connecticut Gen. Stat. § 53a-30 (1985), sets out the conditions a trial court may impose on a sentence of probation. Clause 4 of that section authorizes a condition that the defendant "make restitution of the fruits of his offense or make restitution, in an amount he can afford to pay or provide in a suitable manner, for the loss or damage caused thereby and the court may fix the amount thereof and the manner of performance."

January 16, 1981, and continuing until the end of her probation.²

On February 5, 1981, Robinson filed a voluntary petition under Chapter 7 of the Bankruptcy Code, 11 U. S. C. § 701 *et seq.*, in the United States Bankruptcy Court for the District of Connecticut. That petition listed the restitution obligation as a debt. On February 20, 1981, the Bankruptcy Court notified both of the Connecticut agencies of Robinson's petition and informed them that April 27, 1981, was the deadline for filing objections to discharge. The agencies did not file proofs of claim or objections to discharge, apparently because they took the position that the bankruptcy would not affect the conditions of Robinson's probation. Thus, the agencies did not participate in the distribution of Robinson's estate. On May 14, 1981, the Bankruptcy Court granted Robinson a discharge. See § 727.

At the time Robinson received her discharge in bankruptcy, she had paid \$450 in restitution. On May 20, 1981, her attorney wrote the Probation Office that he believed the discharge had altered the conditions of Robinson's probation, voiding the condition that she pay restitution. Robinson made no further payments.

The Connecticut Probation Office did not respond to this letter until February 1984, when it informed Robinson that it considered the obligation to pay restitution nondischargeable. Robinson responded by filing an adversary proceeding in the Bankruptcy Court, seeking a declaration that the restitution obligation had been discharged, as well as an injunction to prevent the State's officials from forcing Robinson to pay.

After a trial, the Bankruptcy Court entered a memorandum and proposed order, concluding that the 1981 discharge

²There is some uncertainty about the total amount Robinson was ordered to pay. Although the judge imposed restitution in a total amount of \$9,932.95, five years of payments at one hundred dollars a month total only \$6,000.

in bankruptcy had not altered the conditions of Robinson's probation. *Robinson v. McGuigan*, 45 B. R. 423 (1984). The court adopted the analysis it had applied in a similar case decided one month earlier, *In re Pellegrino* (*Pellegrino v. Division of Criminal Justice*), 42 B. R. 129 (Conn. 1984). In *Pellegrino*, the court began with the Bankruptcy Code's definitional sections. First, § 101(11) defines a "debt" as a "liability on a claim." In turn, § 101(4) defines a "claim" as 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." Finally, § 101(9) defines a "creditor" as an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor."

The *Pellegrino* Court then examined the statute under which the Connecticut judge had sentenced the debtor to pay restitution. Restitution appears as one of the conditions of probation enumerated in Conn. Gen. Stat. § 53a-30 (1985). Under that section, restitution payments are sent to the Probation Office. The payments then are forwarded to the victim. Although the Connecticut penal code does not provide for enforcement of the probation conditions by the victim, it does authorize the trial court to issue a warrant for the arrest of a criminal defendant who has violated a condition of probation. § 53a-32.

Because the Connecticut statute does not allow the victim to enforce a right to receive payment, the court concluded that neither the victim nor the Probation Office had a "right to payment," and hence neither was owed a "debt" under the Bankruptcy Code. It argued: "Unlike an obligation which arises out of a contractual, statutory or common law duty, here the obligation is rooted in the traditional responsibility of a state to protect its citizens by enforcing its criminal statutes and to rehabilitate an offender by imposing a criminal sanction intended for that purpose." 42 B. R., at 133. The

court acknowledged the tension between its conclusion and the Code's expansive definition of debt, but found an exception to the statutory definition in "the long-standing tradition of restraint by federal courts from interference with traditional functions of state governments." *Id.*, at 134. The court concluded that, even if the probation condition was a debt subject to bankruptcy jurisdiction, it was nondischargeable under § 523(a)(7) of the Code. That subsection provides that a discharge in bankruptcy does not affect any debt that "is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss."

The court also concluded that the purpose of the restitution condition was "to promote the rehabilitation of the offender, not to compensate the victim." 42 B. R., at 137. It specifically rejected the argument that the restitution must be deemed compensatory because the amount precisely matched the victim's loss. It noted that the state statute allows an offender to "make restitution of the fruits of his offense or make restitution, in an amount he can afford to pay or provide in a suitable manner, for the loss or damage caused thereby," Conn. Gen. Stat. § 53a-30(a)(4) (1985). In its view, the Connecticut statute focuses "upon the offender and not on the victim, and . . . restitution is part of the criminal penalty rather than compensation for a victim's actual loss." 42 B. R., at 137. Thus, the Bankruptcy Court held that the bankruptcy discharge had not affected the conditions of Pellegrino's probation. The United States District Court for the District of Connecticut adopted the Bankruptcy Court's proposed dispositions of *Pellegrino* and this case without alteration.

The Court of Appeals for the Second Circuit reversed. *In re Robinson*, 776 F. 2d 30 (1985). It first examined the Code's definition of debt. Although it recognized that most courts had reached the opposite conclusion, the court decided that a restitution obligation imposed as a condition of proba-

tion is a debt. It relied on the legislative history of the Code that evinced Congress' intent to broaden the definition of "debt" from the much narrower definition of the Bankruptcy Act of 1898. The court also noted that anomalies might result from a conclusion that such an obligation is not a debt. Most importantly, nondebt status would deprive a State of the opportunity to participate in the distribution of the bankrupt's estate.

Having concluded that restitution obligations are debts, the court turned to the question of dischargeability. The court stated that the appropriate Connecticut agency probably could have avoided discharge of the debt if it had objected under §§ 523(a)(2) or 523(a)(4) of the Code.³ As no objections to discharge were filed, the court concluded that the State could rely only on § 523(a)(7), the subsection that provides for automatic nondischargeability for certain debts.⁴ The court then looked to the text of the Connecticut statute to determine whether Robinson's probation condition was "compensation for actual pecuniary loss" within the meaning of § 523(a)(7). But where the Bankruptcy Court had consid-

³Section 523(a)(2)(A) protects from discharge debts "for obtaining money, property, services, or an extension, renewal, or refinancing of credit, by . . . false pretenses, a false representation, or actual fraud." Section 523(a)(4) protects from discharge debts "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." Under § 523(c), debts that are protected from discharge only by § 523(a)(2) or § 523(a)(4) are discharged unless the creditor files an objection to discharge during the bankruptcy proceedings. Because Robinson was convicted of larceny, one of the debts listed in § 523(a)(4), it is quite likely that the Bankruptcy Court, if it had found the obligation to be a "debt," would have found it nondischargeable under that subsection.

⁴The requirement that creditors object to discharge is limited on its face to paragraphs (2), (4), and (6) of § 523(a). Because ¶ 7 is not listed there, debts described in that paragraph are automatically nondischargeable, under the general rule prescribed in the opening clause of § 523(a) (providing that a "discharge under section 727 . . . of this title does not discharge an individual debtor from any debt" listed in the paragraphs that follow).

ered the entire state probation system, the Court of Appeals focused only on the language that allows a restitution order to be assessed "for the loss or damage caused [by the crime]," Conn. Gen. Stat. § 53a-30(a)(4) (1985). The court thought this language compelled the conclusion that the probation condition was "compensation for actual pecuniary loss." It held, therefore, that this particular condition of Robinson's probation was not protected from discharge by § 523(a)(7). Accordingly, it reversed the District Court.

We granted the State's petition for a writ of certiorari. 475 U. S. — (1986). We have jurisdiction to review the judgment of the Court of Appeals under 28 U. S. C. § 1254(1). We reverse.

II

The Court of Appeals' decision focused primarily on the language of §§ 101 and 523 of the Code. Of course, the "starting point in every case involving construction of a statute is the language itself." *Blue Chip Stamps v. Manor Drug Stores*, 421 U. S. 723, 756 (1975) (POWELL, J., concurring). But the text is only the starting point. As JUSTICE O'CONNOR explained last Term, "In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *Offshore Logistics, Inc. v. Tallentire*, 477 U. S. —, — (1986) (quoting *Mastro Plastics Corp. v. NLRB*, 350 U. S. 270, 285 (1956) (quoting *United States v. Heirs of Boisdoré*, 8 How. 113, 122 (1849))). In this case, we must consider the language of §§ 101 and 523 in light of the history of bankruptcy court deference to criminal judgments and in light of the interests of the States in unfettered administration of their criminal justice systems.

A

Courts traditionally have been reluctant to interpret federal bankruptcy statutes to remit state criminal judgments. The present text of Title 11, commonly referred to as the

Bankruptcy Code, was enacted in 1978 to replace the Bankruptcy Act of 1898, ch. 541, 30 Stat. 544.⁵ The treatment of criminal judgments under the Act of 1898 informs our understanding of the language of the Code.

First, § 57 of the Act established the category of "allowable" debts. See 3 Collier on Bankruptcy ¶ 57 (14th ed. 1977). Only if a debt was allowable could the creditor receive a share of the bankrupt's assets. See § 65a. For this case, it is important to note that § 57j excluded from the class of allowable debts penalties owed to government entities. That section provided:

"Debts owing to the United States, a State, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose." 30 Stat. 561.

Second, § 63 established the separate category of "provable" debts. See 3A Collier on Bankruptcy ¶ 63 (14th ed. 1975). Section 17 provided that a discharge in bankruptcy "release[d] a bankrupt from all of his provable debts," subject to several exceptions listed in later portions of § 17. Although § 17 specifically excepted four types of debts from discharge, it did not mention criminal penalties of any kind. The most natural construction of the Act, therefore, would have allowed criminal penalties to be discharged in bankruptcy, even though the government was not entitled to a share of the bankrupt's estate. Congress had considered criminal penalties when it passed the Act; it clearly made them nonallowable. The failure expressly to make them nondischargeable at the same time offered substantial support for the view that the Act discharged those penalties.

⁵ Congress amended the Bankruptcy Act several times between 1898 and 1978. Congress also made numerous technical changes to the Code in the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 380. None of those changes is relevant to this decision.

But the courts did not interpret the Act in this way. Despite the clear statutory language, most courts refused to allow a discharge in bankruptcy to affect the judgment of a state criminal court. In the leading case, the court reasoned:

"It might be admitted that sections 63 and 17 of the bankrupt act, if only the letter of those provisions be looked to, would embrace [criminal penalties]; but it is well settled that there may be cases in which such literal construction is not admissible. . . . It may suffice to say that nothing but a ruling from a higher court would convince me that congress, by any provision of the bankrupt act, intended to permit the discharge, under its operations, of any judgment rendered by a state or federal court imposing a fine in the enforcement of criminal laws. . . . The provisions of the bankrupt act have reference alone to civil liabilities, as demands between debtor and creditors, as such, and not to punishment inflicted pro bono publico for crimes committed." *In re Moore*, 111 F. 145, 148-149 (WD Ky. 1901).⁶

This reasoning was so widely accepted by the time Congress enacted the new Code that a leading commentator could state flatly that "fines and penalties are not affected by a discharge." See 1A Collier on Bankruptcy ¶17.13, pp. 1609-1610, and n. 10 (14th ed. 1978).

⁶ Although courts differed as to the boundaries of the exception, particularly in cases involving nonmonetary sanctions, or sanctions imposed in civil proceedings, the reasoning of *Moore* was widely accepted. See, e. g., *Parker v. United States*, 153 F. 2d 66, 71 (CA1 1946) (citing *Moore* and noting that "[i]t was not in the contemplation of Congress that the federal bankruptcy power should be employed to pardon a bankrupt from the consequences of a criminal offense"); *Zwick v. Freeman*, 373 F. 2d 110, 116 (CA2 1967) (citing *Moore* and stating that "governmental sanctions are not regarded as debts even when they require monetary payments"). We have found only one federal court decision allowing a discharge under the Act to affect a sentence imposed by a criminal court. *In re Alderson*, 98 F. 588 (W. Va. 1899).

Moreover, those few courts faced with restitution obligations imposed as part of criminal sentences applied the same reasoning to prevent a discharge in bankruptcy from affecting such a condition of a criminal sentence. For instance, four years before Congress enacted the Code, a New York Supreme Court stated:

"A discharge in bankruptcy has no effect whatsoever upon a condition of restitution of a criminal sentence. A bankruptcy proceeding is civil in nature and is intended to relieve an honest and unfortunate debtor of his debts and to permit him to begin his financial life anew. A condition of restitution in a sentence of probation is a part of the judgment of conviction. It does not create a debt nor a debtor-creditor relationship between the persons making and receiving restitution. As with any other condition of a probationary sentence it is intended as a means to insure the defendant will lead a law-abiding life thereafter." *State v. Mosesson*, 78 Misc. 2d 217, 218, 356 N. Y. S. 2d 483, 484 (1974) (citations omitted).⁷

Thus, Congress enacted the Code in 1978 against the background of an established judicial exception to discharge for criminal sentences, including restitution orders, an exception created in the face of a statute drafted with considerable care and specificity.

Just last Term we declined to hold that the new Bankruptcy Code silently abrogated another exception created by courts construing the old Act. In *Midlantic National Bank v. New Jersey Dept. of Environmental Protection*, 474 U. S. — (1986), a trustee in bankruptcy asked us to hold that the 1978 Code had implicitly repealed an exception to the trustee's abandonment power. Courts had created that exception

⁷For other decisions adopting this reasoning, see *People v. Topping Bros.*, 79 Misc. 2d 260, 262, 359 N. Y. S. 2d 985, 987-988 (Crim. Ct. 1974); *People v. Washburn*, 97 Cal. App. 3d 621, 625-626, 158 Cal. Rptr. 822, 825 (1979).

out of deference to state health and safety regulations, a consideration comparable to the States' interests implicated by this case. We stated:

"The normal rule of statutory construction is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific. The Court has followed this rule with particular care in construing the scope of bankruptcy codifications. If Congress wishes to grant the trustee an extraordinary exemption from nonbankruptcy law, 'the intention would be clearly expressed, not left to be collected or inferred from disputable considerations of convenience in administering the estate of the bankrupt.'" *Id.*, at — (quoting *Swarts v. Hammer*, 194 U. S. 441, 444 (1904)) (citations omitted).

.B

Our interpretation of the Code also must reflect the basis for this judicial exception, a deep conviction that federal bankruptcy courts should not invalidate the results of state criminal proceedings. The right to formulate and enforce penal sanctions is an important aspect of the sovereignty retained by the States. This Court has emphasized repeatedly "the fundamental policy against federal interference with state criminal prosecutions." *Younger v. Harris*, 401 U. S. 37, 46 (1971). The Court of Appeals nevertheless found support for its holding in the fact that Connecticut officials probably could have ensured continued enforcement of their court's criminal judgment against Robinson had they objected to discharge under § 523(c). Although this may be true in many cases, it hardly justifies an interpretation of the 1978 Act that is contrary to the long prevailing view that "fines and penalties are not affected by a discharge," 1A *Collier on Bankruptcy* ¶ 17.13, at 1610 (14th ed. 1979).

Moreover, reliance on a right to appear and object to discharge would create uncertainties and impose undue burdens

on state officials. In some cases it would require state prosecutors to defend particular state criminal judgments before federal bankruptcy courts.⁸ As JUSTICE BRENNAN has noted, federal adjudication of matters already at issue in state criminal proceedings can be "an unwarranted and unseemly duplication of the State's own adjudicative process." *Perez v. Ledesma*, 401 U. S. 82, 121 (1971) (opinion concurring in part and dissenting in part).⁹

Also, as Robinson's attorney conceded at oral argument, some restitution orders would not be protected from discharge even if the State did appear and enter an objection to discharge. For example, a judge in a negligent homicide case might sentence the defendant to probation, conditioned on the defendant's paying the victim's husband compensation for the loss the husband sustained when the defendant killed his wife. It is not clear that such a restitution order would fit the terms of any of the exceptions to discharge listed in § 523 other than § 523(a)(7). Thus, this interpretation of the Code would do more than force state prosecutors to defend state criminal judgments in federal bankruptcy court. In some cases, it could lead to federal remission of judgments imposed by state criminal judges.

⁸ In many cases, of course, principles of issue preclusion would obviate the need for the bankruptcy court to reexamine factual questions, or interpret state law. But differences between the elements of crimes and the provisions of § 523 frequently might hinder the application of issue preclusion. Moreover, apart from the burden on state officials of following and participating in bankruptcy proceedings, it is unseemly to require state prosecutors to submit the judgments of their criminal courts to federal bankruptcy courts.

⁹ Of course, federal courts often duplicate state adjudicative processes when they consider petitions for the writ of habeas corpus. But explicit reference in the Constitution, Art. I, § 9, cl. 2, as well as several federal statutes, testifies to the importance of the writ of habeas corpus. Here, the case for relitigation in the federal courts rests only on the ambiguous words of the Bankruptcy Code.

This prospect, in turn, would hamper the flexibility of state criminal judges in choosing the combination of imprisonment, fines, and restitution most likely to further the rehabilitative and deterrent goals of state criminal justice systems.¹⁰ We do not think Congress lightly would limit the rehabilitative and deterrent options available to state criminal judges.

In one of our cases interpreting the Act, Justice Douglas remarked: "[W]e do not read these statutory words with the ease of a computer. There is an overriding consideration that equitable principles govern the exercise of bankruptcy jurisdiction." *Bank of Marin v. England*, 385 U. S. 99, 103 (1966). This Court has recognized that the States' interest in administering their criminal justice systems free from federal interference is one of the most powerful of the considerations that should influence a court considering equitable types of relief. See *Younger v. Harris*, *supra*, at 44-45. This reflection of our federalism also must influence our interpretation of the Bankruptcy Code in this case.¹¹

¹⁰ Restitution is an effective rehabilitative penalty because it forces the defendant to confront, in concrete terms, the harm his actions have caused. Such a penalty will affect the defendant differently than a traditional fine, paid to the State as an abstract and impersonal entity, and often calculated without regard to the harm the defendant has caused. Similarly, the direct relation between the harm and the punishment gives restitution a more precise deterrent effect than a traditional fine. See Note, Victim Restitution in the Criminal Process: A Procedural Analysis, 97 Harv. L. Rev. 931, 937-941 (1984).

¹¹ Justice Frankfurter advocated a similar approach to the interpretation of regulatory statutes that infringe upon important state interests:

"The task is one of accommodation as between assertions of new federal authority and historic functions of the individual states. Federal legislation of this character cannot therefore be construed without regard to the implications of our dual system of government. . . . The underlying assumptions of our dual form of government, and the consequent presuppositions of legislative draftsmanship which are expressive of our history and habits, cut across what might otherwise be the implied range of legislation. The history of congressional legislation . . . justifies the generalization that, when the Federal Government takes over such local radiations in the

III

In light of the established state of the law—that bankruptcy courts could not discharge criminal judgments—we have serious doubts whether Congress intended to make criminal penalties “debts” within the meaning of § 101(4).¹² But we need not address that question in this case, because we hold that § 523(a)(7) preserves from discharge any condition a state criminal court imposes as part of a criminal sentence.

The relevant portion of § 523(a)(7) protects from discharge any debt

“to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss.”

This language is subject to interpretation. On its face, § 523(a)(7) certainly does not compel the conclusion reached by the Court of Appeals, that a discharge in bankruptcy voids restitution orders imposed as conditions of probation by state courts. Nowhere in the House and Senate Reports is there any indication that this language should be read so intrusively.¹³ If Congress had intended, by § 523(a)(7) or by any

vast network of our national economic enterprise and thereby radically re-adjusts the balance of state and national authority, those charged with the duty of legislating are reasonably explicit.” Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 539–540 (1947).

¹² We recognize, as the Court of Appeals emphasized, that the Code’s definition of “debt” is broadly drafted, and that the legislative history, as well as the Code’s various priority and dischargeability provisions, support a broad reading of the definition. But nothing in the legislative history of these sections compels the conclusion that Congress intended to change the state of the law with respect to criminal judgments.

¹³ For the section-by-section analysis in the legislative Reports, see H. R. Rep. No. 95–595, p. 363 (1977); S. Rep. No. 95–989, p. 79 (1978). For explanations of the section by commentators, see 3 *Collier on Bankruptcy* ¶ 523.17 (15th ed. 1986); 1 W. Norton, *Bankruptcy Law and Practice* § 27.37 (1982). In fact, both of these commentators expressly state that

other provision, to discharge state criminal sentences, "we can be certain that there would have been hearings, testimony, and debate concerning consequences so wasteful, so inimical to purposes previously deemed important, and so likely to arouse public outrage," *TVA v. Hill*, 437 U. S. 153, 209 (1978) (POWELL, J., dissenting).

Our reading of § 523(a)(7) differs from that of the Second Circuit. On its face, it creates a broad exception for all penal sanctions, whether they be denominated fines, penalties, or forfeitures. Congress included two qualifying phrases; the fines must be both "to and for the benefit of a governmental unit," and "not compensation for actual pecuniary loss." Section 523(a)(7) protects traditional criminal fines; it codifies the judicially created exception to discharge for fines. We must decide whether the result is altered by the two major differences between restitution and a traditional fine. Unlike traditional fines, restitution is forwarded to the victim, and may be calculated by reference to the amount of harm the offender has caused.

In our view, neither of the qualifying clauses of § 523(a)(7) allows the discharge of a criminal judgment that takes the

the language does not have the intrusive effect sought by Robinson. See Collier, ¶ 523.17, at 523-123, n. 4; Norton, § 27.37, at 55, n. 2.

It seems likely that the limitation of § 523(a)(7) to fines assessed "for the benefit of a governmental unit" was intended to prevent application of that subsection to wholly private penalties such as punitive damages. See House Doc. No. 93-137, pt. 2, pp. 116, 141 (1973). As for the reference to "compensation for actual pecuniary loss," the Senate Report indicates that the main purpose of this language was to prevent § 523(a)(7) from being applied to tax penalties. S. Rep. No. 95-989, *supra*, at 79.

We acknowledge that a few comments in the hearings and the Bankruptcy Laws Commission Report may suggest that the language bears the interpretation adopted by the Second Circuit. But none of those statements was made by a Member of Congress, nor were they included in the official Senate and House Reports. We decline to accord any significance to these statements. See *McCaughn v. Hershey Chocolate Co.*, 283 U. S. 488, 493-494 (1931); 2A N. Singer, *Sutherland on Statutory Construction* § 48.10, pp. 319, and 321, n. 11 (4th ed. 1984).

form of restitution. The criminal justice system is not operated primarily for the benefit of victims, but for the benefit of society as a whole. Thus, it is concerned not only with punishing the offender, but also with rehabilitating him. Although restitution does resemble a judgment "for the benefit of" the victim, the context in which it is imposed undermines that conclusion. The victim has no control over the amount of restitution awarded or over the decision to award restitution. Moreover, the decision to impose restitution generally does not turn on the victim's injury, but on the penal goals of the State and the situation of the defendant. As the Bankruptcy Judge who decided this case noted in *Pellegrino*, "Unlike an obligation which arises out of a contractual, statutory or common law duty, here the obligation is rooted in the traditional responsibility of a state to protect its citizens by enforcing its criminal statutes and to rehabilitate an offender by imposing a criminal sanction intended for that purpose." 42 B. R., at 133.

This point is well illustrated by the Connecticut statute under which the restitution obligation was imposed. The statute authorizes a judge to impose any of eight specified conditions of probation, as well as "any other conditions reasonably related to his rehabilitation." Conn. Gen. Stat. § 53a-30(a)(9) (1985). Clause (4) of that section authorizes a judge to require that the defendant

"make restitution of the fruits of his offense or make restitution, in an amount he can afford to pay or provide in a suitable manner, for the loss or damage caused thereby and the court may fix the amount thereof and the manner of performance."

This clause does not require imposition of restitution in the amount of the harm caused. Instead, it provides for a flexible remedy tailored to the defendant's situation.

Because criminal proceedings focus on the State's interests in rehabilitation and punishment, rather than the victim's desire for compensation, we conclude that restitution orders

imposed in such proceedings operate "for the benefit of" the State. Similarly, they are not assessed "for . . . compensation" of the victim. The sentence following a criminal conviction necessarily considers the penal and rehabilitative interests of the State.¹⁴ Those interests are sufficient to place restitution orders within the meaning of § 523(a)(7).

In light of the strong interests of the States, the uniform construction of the old Act over three-quarters of a century, and the absence of any significant evidence that Congress intended to change the law in this area, we believe this result best effectuates the will of Congress. Accordingly, the decision of the Court of Appeals for the Second Circuit is

Reversed.

¹⁴This is not the only context in which courts have been forced to evaluate the treatment of restitution orders by determining whether they are "compensatory" or "penal." Several lower courts have addressed the constitutionality of the federal Victim and Witness Protection Act, 18 U. S. C. § 3579. Under that Act, defendants have no right to jury trial as to the amount of restitution, even though the Seventh Amendment would require such a trial if the issue were decided in a civil case. See Note, The Right to a Jury Trial to Determine Restitution Under the Victim and Witness Protection Act of 1982, 63 Texas L. Rev. 671 (1984). Every Federal Court of Appeals that has considered the question has concluded that criminal defendants contesting the assessment of restitution orders are not entitled to the protections of the Seventh Amendment. See *id.*, at 672, n. 18 (citing cases).

85-1033 Kelly v. Robinson

This case comes to us from the Court of Appeals for the Second Circuit. It presents the question whether a restitution order, imposed as a condition of probation by a state criminal court, can be discharged in bankruptcy.

Robinson was convicted of larceny in a Connecticut court. She was ordered to pay restitution to the government agency from which she had stolen money. Thereafter, she filed for bankruptcy under Chapter 7 of the Bankruptcy Code, and eventually received a discharge.

A ~~few weeks later~~ ^{year} ^{Subsequently,} Connecticut sought to enforce the restitution order against Robinson. The bankruptcy court held that the discharge in bankruptcy had not affected the restitution order. The District Court affirmed, but the Court of Appeals reversed.

For the reasons stated in our opinion filed today with the Clerk, we find that the restitution order was not discharged. We do not think Congress intended, when it enacted the new Code in 1978, to

change

well established,
change the judicially created rule, that such orders are
not dischargeable.

Restitution is an important, and frequently
used, means of punishment in criminal cases.

Accordingly, we reverse the judgment of the
Court of Appeals.

Justice Marshall has filed a dissenting
opinion, in which Justice Stevens has joined.

85-1033 Kelly v. Robinson (Ronald)

LFP for the Court 10/13/86

1st draft 10/22/86

2nd draft 10/27/86

3rd draft 11/5/86

Joined by AS 10/23/86

HAB 10/23/86

WJB 10/24/86

CJ 10/27/86

SOC 10/27/86

BRW 10/28/86

TM dissenting

1st draft 10/31/86

2nd draft 11/3/86

3rd draft 11/5/86

Joined by JPS 10/31/86

TM will dissent 10/23/86

JPS waiting dissent 10/24/86

Post 11/19/86 Kelly File

Restitution Recommended

CAROLYN ROBINSON probably thought she had found a great loophole. The Connecticut woman, charged with welfare fraud, pleaded guilty to wrongfully receiving \$9,932.95 in benefits. A judge sentenced her to one to three years in prison but suspended that penalty and placed her on probation. As a condition of probation, however, she was ordered to pay restitution to the state at the rate of \$100 a month. Three weeks after her first payment, Miss Robinson filed a bankruptcy petition in federal court, and when her petition was granted a few months later, her lawyer advised her probation officer that she wouldn't be making any more payments. It sounds a lot easier than three years in prison, doesn't it?

Unfortunately for Miss Robinson, the Supreme Court caught up with her this week when it ruled that obligations to pay restitution to the victim of a crime are not dischargeable in bankruptcy. They are not like a personal or commercial debt owed to an individual or corporation, but are part of the judgment of conviction. Thus restitution is more like a fine or penalty, which would not be discharged in bankruptcy, than an obligation to the victim. If

Congress had intended otherwise, said the court, "there would have been hearings, testimony and debate concerning consequences so wasteful, so inimical to purposes previously deemed important and so likely to arouse public outrage."

In addition to the justices' wise decision to keep federal bankruptcy courts out of the business of nullifying sentences imposed in state criminal courts, they saw benefits in encouraging the use of restitution as a condition of probation or parole. Most states allow it, and a few even make it mandatory. It's good for the victim, of course, because he recovers some of his economic loss from the criminal. It's good for the state because it is so often used in place of costly imprisonment. And it's best for the offender, who not only avoids a prison term but is forced to confront, in concrete terms that cost him money, the impact of his criminal behavior. Paying \$100 a month year after year to compensate someone he has harmed makes a strong and sustained impression on the offender. It is also a continuing reminder that crime has consequences. The Supreme Court's ruling should provide an incentive for criminal court judges to use the penalty more often.