Comments

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Chapter 9 Municipal Bankruptcy

• The current paper adds to Juliet Moringiello’s extensive work on municipal bankruptcy law
• I use her writings and those of a few other law professors to provide a rough sketch of the debate over Chapter 9 provisions and their calls for change
• They base their work on descriptive ‘case’ studies and normative principles instead of empirical work
• That approach is understandable because there are so few general purpose municipal bankruptcies to draw upon
• But, that is also the reason I see no basis for making changes in the law at this time
Chapter 9 Federalism Puzzle to Resolve Muni Problems

Debt “Fresh Start”

- Respect state sovereignty
- No interference with political powers without local consent
- But:
  - No debtor restraint, only adjust debt
  - State can’t impose binding plans of adjustment on nonconsenting creditors
  - Same officials remain in control
  - Not change habits or resolve fragmentation of decision-making
  - Not address the root causes

Efficient Reorganization of Assets

- Allow governance restructuring (similar to Chapter 11)
- Provide more options (e.g., resolve fragmentation and make tax changes)
- Overcome undesirable strategic behavior by local officials
- Allow continuing role to monitor the confirmation plan
- Focus on eligibility (front-end) and plan confirmation (back-end -- ‘veto’)

Pre

State as Gatekeeper

In

State Oversight

If

Formal: Give Judges More Powers

Informal: Judicial Management as in “Detroit Blueprint”
Creditor Priorities, or “Who’s Preferences Count?”

PROPERTY
• Grant of security carries a remedy against the property interest pledged
• Estate created of all debtor’s interest in property
• Fair and orderly distribution of property
• But public assets are not available to creditors

CONTRACTUAL
Secured claims:
• Revenue debt - only if sufficient funds going forward (non-recourse)
• Liens (as in Rhode Island?)*
  – Not: if only “springs into effect”
  – Genuine: if matter outside Chp.9 (See paper at Brandeis 2014)

Unsecured claims:
• Bond lawyers vs. Bankruptcy attorneys; Detroit UTGOs
• “Worthy” vs. “Unworthy” - these need to be fleshed out more

Selective References

- Juliet M. Moringiello
  - “Municipal Capital Structure and Chapter 9 Creditor Priorities”


- Clayton P. Gillette
