

Comments

W. Bartley Hildreth
Professor

Andrew Young School of Policy Studies
Georgia State University
Atlanta, GA

BartHildreth@gsu.edu

<http://BartHildreth.com>

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”

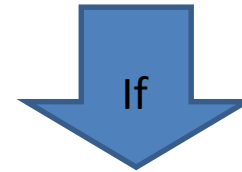
- Respect state sovereignty
- No interference with political powers without local consent
- But:
 - No debtor restraint, only adjust debt
 - State can’t impose binding plans of adjustment on nonconsenting creditors
 - Same officials remain in control
 - Not change habits or resolve fragmentation of decision-making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



State as Gatekeeper



State Oversight



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’)



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”
 - “Chapter 9 Plan Confirmation Standards and the Role of State Choice”, 37 *Campbell Law Review* 71 (2015)
 - “Goals and Governance in Municipal Bankruptcy,” 71 *Washington & Lee Law Review* 403 (2014)
- Melissa B. Jacoby, “Federalism Form and Function in the Detroit Bankruptcy,” 33 *Yale Journal on Regulation* 55 (2016)
- Clayton P. Gillette
 - “Can Public Debt Enhance Democracy?” 50 *William & Mary Law Review* 937 (2008)
 - “Dictatorships for Democracy: Takeover of Financially Failed Cities,” 114 *Columbia Law Review* 1373 (2014)
 - and David A. Skeel, Jr. “Governance Reform and the Judicial Role in Municipal Bankruptcy,” 125 *Yale Law Journal* 1150 (2016)
- David A. Skeel, Jr. “What is a Lien? Lessons from Municipal Bankruptcy,” 2015 *University of Illinois Law Review* 675 (2015)
- Tima T. Moldogaziev, Sharon N. Kioko, and W. Bartley Hildreth, “Bankruptcy Risk Premium in the Municipal Securities Market” (2014 version; revised later), <http://cdn.bondbuyer.com/media/pdfs/BBrandeis14-Tima-paper.pdf>