Governance and the Judicial Role in Municipal Bankruptcy

(AKA … Munic BR as a Governance Lever)

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Roadmap

1) Role of governance reform in Chapter 11
2) Why don’t we see it in Chapter 9?
3) The affirmative case for governance reform
4) Objections
5) Further reforms
1) Governance Reform in Chapter 11

- The source: 1123(a)
- Varieties of reform
  - Reshaping board
  - Voting trusts
  - Takeover defenses
  - Board seats (Chrysler)
The WorldCom Experiment

- A Jed Rakoff special
- Richard Breeden as Corporate Monitor
- “State of the Art” governance
2) Why no governance reform in Chapter 9?

- State sovereignty?
- Yes, but historical accident
- 1930s
- 1970s: NYC:
  - Ford’s Chapter XVI
  - The Pachan proposal
- Selection bias
3) The Affirmative Case for Governance Reform

- Key issue = fragmentation
  - Detroit e.g.’s
- Bankruptcy’s benefits:
  - 1) creates opening to reform
  - 2) centralizes decision making
  - 3) feasibility requires etc
4) Objections

- 1) Interference with municipal/governmental powers (Tenth amendment; section 904)
- 2) Chapter 9 only permits “adjustment of debts”
- 3) State should make any changes
5) Further Reforms?

- 1) Unilateral BR judge authority to compel governance reform
- 2) Remove the insolvency requirement