

**EXPLORING THE BOUNDARIES OF MUNICIPAL
BANKRUPTCY**

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I. ABSTRACT

Municipal fiscal insolvency has become the central challenge facing American cities. Municipal fiscal insolvency is the result of many factors, including risk taking, fiscal mismanagement, corruption, and the absence of political will to make hard choices. There are also structural factors at play—specifically, local government organization and the fiscal constraints states place on their subdivisions play a significant role in the ability of municipalities to achieve sustainability and growth. These factors are rarely included in the discussion on municipal fiscal insolvency, and understandably so. It is hard to determine the role that local government organization plays in undermining the fiscal health of a municipality relative to issues such as the pension crisis or corruption. While most municipalities address events of fiscal crisis through negotiation and the intervention of states, a small but increasing

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number have turned to Chapter 9 bankruptcy. While bankruptcy is controversial, it holds many advantages for cities and their creditors. However, there is more that Chapter 9 could do if bankruptcy courts were allowed to require municipalities and states to address the structural drivers that might accrue to local government organization. This would require a significant reworking of Chapter 9, however, and would implicate serious constitutional issues. Without the exploration of these changes, bankruptcy courts cannot ensure that the structural determinants that might have contributed to the default in the first place don't happen again.

II. INTRODUCTION

The municipal insolvency crisis is the defining challenge facing American cities. Increasingly municipalities large and small are struggling to maintain or expand service delivery, address crumbling infrastructures, stem the tide of resident and capital flight, reconcile the conflicting realities of inter-municipal competitive pressures and address a growing municipal employee benefit crisis. Municipal insolvency is in no way a new issue—cities like New York, New York; Washington, D.C. and Miami, Florida have all at one time or another stood on the brink of insolvency and managed to effect a turn around.¹ But the multiplicity of current and projected threats to municipal fiscal stability threatens to overwhelm the capacity of states and their subdivisions to effectively and proactively respond. The specter of municipal insolvency is morphing from being a marginal or episodic phenomenon to a constant thread in local government finance and general welfare.

Historically, insolvency has been a problem for special purpose municipalities; i.e. utilities districts or school districts.² Increasingly, however, general purpose municipalities are facing fiscal distress as they attempt to reconcile the rising costs of public service delivery with a rapidly diminishing public appetite for new taxes. General purpose local governments face unprecedented challenges with funding pension systems and addressing infrastructure needs that have

1. See, e.g., Omer Kimhi, *Reviving Cities: Legal Remedies to Municipal Financial Crises*, 88 B.U.L. REV. 633, 634–35 (2008) (discussing the occasional phenomenon of municipal fiscal distress and occurrences in a number of cities over the past several decades).

2. Michael De Angelis & Xiaowei Tian, *United States: Chapter 9 Municipal Bankruptcy—Utilization, Avoidance and Impact*, in UNTIL DEBT DO US PART: SUBNATIONAL DEBT, INSOLVENCY, AND MARKETS 311, 312 (Octaviano Canuto & Lili Liu eds., 2013).

long gone unaddressed. Looming over all of this is an estimated \$3.5 billion of municipal bond debt and more than 19 million state and local government employees, most of them represented by labor unions.³

Persistent insolvency may lead to a complete incapacity to maintain obligations to citizens and creditors alike. In the past several years municipalities such as Orange County, California and Jefferson County, Alabama have filed for bankruptcy under Chapter 9 of the U.S. Bankruptcy Code (Chapter 9).⁴ More than any other city, Detroit, Michigan's long and epic slide into insolvency and its historic bankruptcy filing have become emblematic of the fragile fiscal state of many municipal governments. The specter of ever-increasing instances of fiscal insolvency among general purpose governments and, more specifically, the recent municipal bankruptcy filings, are the subject of a growing body of scholarly inquiry and debate.⁵ More events of insolvency (and possible bankruptcy filings) are expected in cities all over the nation.⁶

Municipal bankruptcy—like corporate bankruptcy—is viewed as an extreme alternative to a state takeover. Many regard a municipal bankruptcy filing as a last resort and as in the case of a private corporation, utter failure. Municipalities enjoy relatively broad discretion under Chapter 9⁷ to readjust their debt obligations in the face of insolvency.⁸ This discretion comes with few strings attached—municipalities enjoy far greater ability under federal

3. See Jim Powell, *What Are The Most Likely Outcomes Of State And Municipal Financial Crises?*, FORBES, Aug. 20, 2013, <http://www.forbes.com/sites/jimpowell/2013/08/20/what-are-the-most-likely-outcomes-of-state-and-municipal-financial-crises/>.

4. See 11 U.S.C. §§ 901–46 (2012).

5. See, e.g., Michelle Wilde Anderson, *The New Minimal Cities*, 123 YALE L.J. 1118 (2014); Melissa B. Jacoby, *The Detroit Bankruptcy, Pre-Eligibility*, 41 FORDHAM URB. L.J. 849 (2014); Kimhi, *supra* note 1; Omer Kimhi, *Chapter 9 of the Bankruptcy Code: A Solution in Search of a Problem*, 27 YALE J. ON REG. 351 (2010); C. Scott Pryor, *Municipal Bankruptcy: When Doing Less is Doing Best*, 88 AM. BANKR. L.J. 85 (2014); David A. Skeel, *States of Bankruptcy*, 79 U. CHI. L. REV. 677 (2012); Richard Trotter, *Running On Empty: Municipal Insolvency and Rejection of Collective Bargaining Agreements in Chapter 9 Bankruptcy*, 36 S. ILL. U. L.J. 45 (2011); Frederick Tung, *After Orange County: Reforming California Municipal Bankruptcy Law*, 53 HASTINGS L.J. 885 (2002); Elizabeth M. Watkins, *In Defense of the Chapter 9 Option: Exploring the Promise of a Municipal Bankruptcy as a Mechanism for Structural Political Reform*, 39 J. LEGIS. 89 (2012–13).

6. Monica Davey & Mary Williams Walsh, *Billions in Debt, Detroit Tumbles Into Insolvency*, N.Y. TIMES, July 18, 2013, http://www.nytimes.com/2013/07/19/us/detroit-files-for-bankruptcy.html?pagewanted=all&_r=0.

7. 11 U.S.C. §§ 901–46.

8. See *id.* §§ 941–46.

bankruptcy laws to control the adjustments of debts than do private corporations under Chapters 7 or 11 of the Bankruptcy Code.⁹ Bankruptcy courts are explicitly prohibited from interfering with the political or governmental powers of the debtor municipality and, by extension, the state.¹⁰ Consequently when a municipality files for bankruptcy questions about structural governmental issues or broader questions about the role of state policy in contributing to the crisis are off the table.

In her article, *In Defense of the Chapter 9 Option: Exploring the Promise of a Municipal Bankruptcy as a Mechanism for Structural Political Reform*, Elizabeth Watkins makes a compelling argument for municipal bankruptcy's beneficial role in addressing the structural drivers of insolvency.¹¹ Watkins cites the additional disclosure, insulation from political conflicts of interest, the ability to drive political reform and the role of stigma in encouraging citizen engagement as advantages of bankruptcy over state intervention.¹² Watkins casts municipal bankruptcy as a mechanism for forcing a confrontation with local government law in order to address challenges that the political process and the nature of municipal finance are unlikely or incapable of bringing about.

In promoting municipal bankruptcy as a worthwhile option for structural reform, Watkins acknowledges that the Tenth Amendment protections embedded within Chapter 9 limit its potential as a tool for structural reform.¹³ She goes on to make a compelling case for how municipal bankruptcy aids structural reform, but she leaves unaddressed the issue of whether the Tenth Amendment limitations are desirable or even necessary. States set considerable constraints on municipal finance, including the ability to petition for bankruptcy relief. If they allow their municipalities to petition for bankruptcy, however, the municipalities have the opportunity to have a federal court readjust their debts without having to ever consider the extent to which matters such as local government organization contribute to cycles of insolvency. This is significant because there is ample evidence that local government organization matters impact a municipality's fiscal health. For instance, the local boundary problem

9. Compare *id.* §§ 901–46, with §§ 701–84, and §§ 1101–74.

10. See *id.* § 904.

11. See Watkins, *supra* note 5.

12. See *id.* at 104–13.

13. See Watkins, *supra* note 5, at 91.

has produced all types of imbalances in the modern metropolis that imperil older central cities and increasingly inner suburbs. It is impossible to consider the contemporary municipal insolvency crisis without understanding the historic and present role of municipal boundaries.¹⁴

The central question in considering the role of Chapter 9 bankruptcy in the midst of what is likely a trend of growing municipal insolvency is: Can the municipal bankruptcy process be used to encourage, incentivize, or outright force states to examine how local government organization issues place some municipalities on an inevitable path to insolvency?

If state local government organization law allows one unit of a metropolitan area to face a drastically different fiscal fate than the other metropolitan area jurisdictions adjacent to or in close proximity to its borders, why is it impermissible for review in a municipal bankruptcy proceeding? Is it fair to allow the federal government to adjust contractual obligations on behalf of municipalities in metropolitan areas that as a whole are prosperous and, save the limits of municipal boundaries, could contribute greatly to placing their weakest link, or links, on a path to solvency? Furthermore, is there a significant Tenth Amendment concern when the voluntary state-sanctioned petition is the essential first step for entering into a Chapter 9 proceeding?

In this essay I explore broadly an expansion of Chapter 9 bankruptcy to allow bankruptcy judges to consider issues of local government organization in addressing a municipality's debt readjustment proposals in a bankruptcy proceeding. I aspire only to sketch the theoretical and legal considerations related to how matters of local government organization might be broached in a Chapter 9 proceeding. In Part III, I will examine the municipal fiscal crisis and the role that local government organization has played. In Part IV, I will move beyond the focus on corruption and local politicians to outline the key structural drivers of insolvency. Specifically, Part V reconsiders the Tenth Amendment protections which limit the court's reach into the governmental affairs of the municipality or the state and explores the reasons for expanding the judiciary's role under

14. See Christopher J. Tyson, *Annexation and the Mid-Size Metropolis: New Insights in the Age of Mobile Capital*, 73 U. Pitt. L. Rev. 505, 531–40 (2012) [hereinafter *Annexation and the Mid-Size Metropolis*] (discussing the relationship between boundary elasticity and municipal fiscal health).

how it will pay its creditors and restructure its debt.¹⁹ At press time trial proceedings were still underway.

Concerns over municipal insolvency were not triggered by these epic bankruptcies. The issue was already receiving an increasing amount of attention in light of the 2008–2009 economic crises, mounting fiscal pressures facing U.S. municipalities, and the growing crisis over pension obligations.²⁰ There were 239 municipal bankruptcy filings between 1980 and 2010.²¹ More than 600 municipal bankruptcy petitions were filed in 2011—most of them by small, special-purpose districts, such as utility districts and rural municipalities.²² This compares with only 252 filings between 1980 and 2011.²³ For additional context, there were 51,259 business filings under Chapters 7 and 11 of the U.S. Bankruptcy Code in 2010 alone.²⁴ Historically, general purpose government debt defaults are rare. A Moody's Investors Services study “found that only three general purpose governments rated by Moody's had defaulted on long-term bonds in 30 years.”²⁵

While bankruptcy filings by municipalities under Chapter 9 of the Bankruptcy Code are historically rare, filings are on the rise.²⁶ Eight municipalities have filed for bankruptcy protection since 2010: Detroit, Michigan; San Bernardino, California; Mammoth Lakes, California; Stockton, California; Jefferson County, Alabama; Harrisburg, Pennsylvania; Central Falls, Rhode Island; and Boise

19. See, e.g., Sarah Cwiek, *Detroit Bankruptcy Battle Begins in Federal Court*, NPR.ORG (Sept. 2, 2014), <http://www.npr.org/2014/09/02/345056007/detroit-bankruptcy-battle-begins-in-federal-court>.

20. See, e.g., Kimhi, *supra* note 1; Michael A. Fletcher, Harrisburg, Pa., Other Cities Overwhelmed by Economic Downturn and Debt, WASH. POST (June 21, 2010), <http://www.washingtonpost.com/wpdyn/content/article/2010/06/20/AR2010062003544.html>; Ian Lovett, Third City in California Votes to Seek Bankruptcy, N.Y. TIMES (July 12, 2012), <http://www.nytimes.com/2012/07/12/us/san-bernardino-council-votes-to-file-bankruptcy.html?ref=business>; Cyrus Sanati, *What the Next Bankruptcy Wave Will Bring*, *Dealbook*, N.Y. TIMES (Mar. 4, 2009), <http://dealbook.nytimes.com/2009/03/04/what-the-next-bankruptcy-wave-will-bring/?module=Search&mabReward=relbias%3Ar%2C%7B%221%22%3A%22RI%3A8%22%7D>.

21. Mike Barnhart, *Is Bankruptcy Right for Our Municipal Governments?*, HUFFINGTON POST (2/27/2013 6:10 PM), http://www.huffingtonpost.com/mike-barnhart/municipal-bankruptcy_b_2777010.html.

22. Angelis & Tian, *supra* note 2, at 312

23. *Id.*

24. *Id.*

25. *Id.*

26. See 11 U.S.C. §§ 901–46. (2012); see Tung, *supra*, note 5, at 886.

County, Idaho.²⁷

The municipal fiscal crisis is unfolding against a backdrop of an intricate and expansive system of local governments throughout the country. Local governments are many and diverse. There are about 90,056 local governments, including 3,031 counties, 19,519 large and small cities, 16,360 towns, 12,880 school systems, and 38,266 special district governments responsible for services like hospitals and fire protection.²⁸ Municipalities' fiscal obligations are principally to their citizens to whom they provide health, safety, and general welfare services and protections; bondholders who finance their debt; employees who depend on city governments for their livelihood; recipients of essential infrastructure and services provided by both general and special purpose municipalities; and retirees who have paid into pension funds upon which they count on to support them until death (and potentially afterwards in the case of surviving spouses). Different dynamics are at play when a sewer district, school district, or the city of Detroit is unable to pay their bills. Limited or special purpose governments perhaps provide the best prism through which to view fiscal insolvency brought on by fiscal mismanagement or risk taking. By their very nature limited purpose governments have a narrow range of external factors affecting their ability to fulfill their service obligations. General purpose municipalities, however, are beset with an array of pressing issues that seem to be converging into a perfect storm of urgent, hard to resolve choices and consequences for states and local communities.

Scholars have identified economic decline, tax base erosion, demographic changes, federal and state mandates, federal revenue cuts, state tax levy limits, recessions, and mismanagement as the leading causes of local government fiscal distress.²⁹ Recently, the causes that have received most of the attention are the role of corruption and mismanagement, the public employee pension crisis, rising cuts to state funding for municipalities, and the manner in which suburbanization shapes local finances.

27. Brad Plumer, *Detroit isn't alone. The U.S. cities that have gone bankrupt, in one map*, WASH. POST WONKBLOG (July 18, 2013), <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/07/18/detroit-isnt-alone-the-u-s-cities-that-have-gone-bankrupt-in-one-map/>.

28. See CARMA HOGUE, U.S. DEPARTMENT OF COMMERCE, GOVERNMENT ORGANIZATION SUMMARY REPORT: 2012, at 1 (2013), available at http://www2.census.gov/govs/cog/g12_org.pdf.

29. See Charles K. Coe, *Local Government Fiscal Crises: Emerging Best Practices*, 68 PUB. ADMIN. REV. 759, 759 (2008), available at <http://www.jstor.org/stable/25145657>.

First, it is impossible to broach the topic of municipal insolvency without acknowledging the poor decision-making, questionable risk taking, miscalculations in budgeting, and outright corruption that have contributed to the fiscal demise of many cities. Scholars have recently examined the impact of public officials' corruption on the size and allocation of state expenditures, finding that corruption increases state spending by more than five percent.³⁰ City corruption has loomed large in lay and scholarly analyses of the causes of insolvency, and it has been a prominent factor in how the struggles of Detroit and other cities is discussed and understood.³¹ This is understandable given the actions of the city's imprisoned former Detroit mayor, Kwame Kilpatrick, and the manner in which fraudulent actions during his administration gutted the assets of the pension fund and then attempted to cover it up by pursuing questionable debt-financing schemes.³² While corruption of the character and scale as that which defined Detroit's recent political leadership must be recognized for its role in sealing the city's fiscal fate, corruption tales offer little in the form of prescriptive insight for how to address persistent insolvency. Once the bad guys are locked up, grave structural issues remain.

The pension crisis is perhaps the most urgent dilemma facing cities. The pension crisis is both a state and a municipal problem, and the challenges states face with meeting retirement benefit obligations to state workers has reached a crisis level as almost every state has taken steps in recent years to address public employee pension costs.³³ Changing demographics, the tendency of political officials to

30. See generally, Cheol Liu & John L. Mikesell, *The Impact of Public Officials' Corruption on the Size and Allocation of U.S. State Spending*, 74 PUB. ADMIN. REV. 346 (2014), available at <http://onlinelibrary.wiley.com/doi/10.1111/puar.12212/full>.

31. See, e.g., Maria O'Brien Hylton, *Central Falls Retirees v. Bondholders: Assessing Fear of Contagion in Chapter 9 Proceedings*, 59 WAYNE L. REV. 525, 554 (2013); Tresa Baldas, *The High Cost of Corruption: How Kwame Kilpatrick's Crimes Deepened Detroit's Crisis*, DETROIT FREE PRESS (Oct. 6, 2013) <http://www.freep.com/article/20131006/NEWS01/310060083/Kilpatrick-corruption-costs>; Jess Bidgood, *Rhode Island: Central Falls Mayor Quits and Is to Plead Guilty to Corruption*, N. Y. TIMES (Sep. 19, 2012), http://www.nytimes.com/2012/09/20/us/rhode-island-central-falls-mayor-quits-and-is-to-plead-guilty-to-corruption.html?_r=0; Floyd Norris, *Portent of Peril for Muni Bondholders*, N. Y. TIMES (June 6, 2013), <http://www.nytimes.com/2013/06/07/business/bankruptcy-in-alabama-county-offers-warning-for-other-municipalities.html?pagewanted=all>; Kevin D. Williamson, *The Corrupt Bargain*, THE NATIONAL REVIEW ONLINE (Sept. 2, 2014), <http://www.nationalreview.com/article/386875/corrupt-bargain-kevin-d-williamson>.

32. See Baldas, *supra* note 31.

33. See Rick Lyman & Mary Williams Walsh, *Public Pension Tabs Multiply as States Defer Costs and Hard Choices*, N. Y. TIMES, Feb. 24, 2014, <http://nyti.ms/1k5oQdH>.

agree to long-term benefits increases, and the decline in the market value of pension fund assets all contributes to the growing instability in public employee pensions.³⁴ According to the credit-rating agency Moody's, "Illinois's net public-employee pension liabilities now amount to \$133 billion, or 241 percent of the state's total annual revenues; in Connecticut, 190 percent; in New Jersey, 137 percent; and in New York, 17 percent. America's state and municipal pensions concede that they are underfunded by more than \$1 trillion."³⁵

Sixty-one cities have a gap of more than \$217 billion between what cities "promised their workers in pensions and retiree health care and what [cities] ha[ve] saved to pay that bill."³⁶ San Jose, California's city pension payments increased from \$73 million in 2001 to \$245 million in 2012, which constituted 27% of the city's general fund budget.³⁷ In San Diego, California, "retirement fund payments soared from \$43 million in 1999 to \$231.2 million in 2012."³⁸ Chicago's pension funding crisis has captured that state's attention, with the Illinois governor signing a bill intended to boost funding for two of the city's public pension funds.³⁹ Central Falls, Rhode Island and Vallejo, California both went bankrupt because of police and firefighter pension obligations.⁴⁰ In Desert Hot Springs, California "about \$7 million of the city's \$10.6 million annual payroll went to its thirty-nine member police force."⁴¹

34. See Pryor, *supra* note 5, at 99–103 (citing Thomas J. Healey, et al., *Underfunded Pensions in the United States: The Size of the Problem, the Obstacles in Reform and the Path Forward*, (M-RCBG Faculty, Working Paper No. 2012-08-25, 2012)).

35. Richard J. Riordan & Tim Rutten, *A Plan to Avert the Pension Crisis*, N.Y. TIMES, Aug. 4, 2013, http://www.nytimes.com/2013/08/05/opinion/a-plan-to-avert-the-pension-crisis.html?_r=0.

36. Press Release, Pew Charitable Trusts, *Pew Study Finds 61 Cities' Retirement Systems Face \$217 Billion Gap*, Jan. 15, 2013, <http://www.pewtrusts.org/en/about/newsroom/press-releases/0001/01/01/pew-study-finds-61-cities-retirement-systems-face-217-billion-gap>.

37. Liz Farmer, *The "B" Word: Is Municipal Bankruptcy's Stigma Fading*, GOVERNING (Mar. 2013), <http://www.governing.com/topics/finance/gov-bword-stigma-municipal-bankruptcy-going-away.html>.

38. *Id.*

39. See Karen Pierog, *Illinois Governor Signs Chicago Pension Reform Bill*, REUTERS, June 9, 2014, [available at http://www.reuters.com/article/2014/06/09/usa-chicago-pensions-idUSL2N0OQ1TI20140609](http://www.reuters.com/article/2014/06/09/usa-chicago-pensions-idUSL2N0OQ1TI20140609).

40. See Rick Lyman & Mary Williams Walsh, *Police Salaries and Pensions Push California City to Brink*, N.Y. TIMES, Dec. 27, 2013, http://www.nytimes.com/2013/12/28/us/police-salaries-and-pensions-push-california-city-to-brink.html?pagewanted=all&_r=0.

41. See *id.*

Another facet of rising municipal distress involves the extent to which intergovernmental aid has been dramatically cut.⁴² Intergovernmental aid includes the grants, transfers, and other funds a city receives from federal, state, county, or other local governments.⁴³ On average, state aid funds nearly a third of local government budgets, and that aid fell by \$12.6 billion, or 2.6%, in fiscal year 2010.⁴⁴ In the wake of the recession that ended in 2009, reductions in intergovernmental aid were the driving force for declining revenues in nine of the largest thirty cities in the country.⁴⁵ Intergovernmental grants play an essential role in the ability of local governments to achieve fiscal equalization.⁴⁶

Lastly, financial instability in many cities reflects the toll that suburbanization has taken on municipal finances. Scholars have explored the links between metropolitan fragmentation and economic development and overall municipal fiscal health.⁴⁷ Richard Briffault aptly deduced that “[t]he fundamental feature of contemporary metropolitan governance is the operation of locally bounded fiscal and regulatory autonomy in regions where economic and social activity transcends local boundaries.”⁴⁸

State boundary policy separates groups of people in the

42. See Rob Gurwitt, *As States Cut Aid, Localities Learn to Do Less With Less*, PEW CHARITABLE TRUSTS: STATELINE, Oct. 3, 2011, <http://www.pewstates.org/projects/stateline/headlines/as-states-cut-aid-localities-learn-to-do-less-with-less-85899375306#>; Andrea Kelly, *State Budget Decisions: Not Much Better or Worse for Local Officials*, ARIZONA PUBLIC MEDIA, June 24, 2014, <https://news.azpm.org/p/local-news/2014/6/24/38224-state-budget-decisions-are-not-much-better-not-much-worse-for-local-governments-next-year/>.

43. See THE PEW CHARITABLE TRUSTS, *AMERICA'S BIG CITIES IN VOLATILE TIMES: MEETING FISCAL CHALLENGES AND PREPARING FOR THE FUTURE 10* (2013) [hereinafter *MEETING FISCAL CHALLENGES*], available at <http://www.pewtrusts.org/~media/Assets/2013/11/11/AmericasBigCitiesinVolatileTimes.pdf>.

44. See THE PEW CHARITABLE TRUST, *THE LOCAL SQUEEZE: FALLING REVENUES AND GROWING DEMAND FOR SERVICES CHALLENGE CITIES, COUNTIES, AND SCHOOL DISTRICTS 1* (2012), available at http://www.pewtrusts.org/~media/Assets/2012/06/Pew_Cities_Local-Squeeze_report.pdf.

45. See *MEETING FISCAL CHALLENGES*, *supra* note 43, at 8.

46. See generally Bo Zhao & Katherine Bradbury, *Designing State Aid Formulas*, 28 J. OF POL'Y ANALYSIS AND MGMT. 278, 279 (2009) (discussing the role of state aid in equalizing tax base and resource disparities between localities, thus diminishing the threat of resident and capital flight).

47. See *Annexation and the Mid-Size Metropolis*, *supra* note 14, at 532 nn.118–19 (2012).

48. See Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1136 (1996).

metropolis who would otherwise receive public goods and services from the same source. This separation leads to the uneven distribution of metropolitan area benefits and burdens and renders the freedom and self-determination gains produced by liberal boundary policies a very costly endeavor. There is a great deal of irrationality that goes into these decisions as well. Narrative, imagination, and the perception of risk are all highly irrational forces that have as much influence on metropolitan ordering as does the need for connections and information.⁴⁹

The effects of suburbanization on the fiscal fate of cities are seen in the burden cities with greater populations of poor residents experience and how that impacts their overall capacity. Moreover, central cities tend to have a greater share of tax exempt property—public parks, hospitals, stadiums, and municipal buildings—than their suburban neighbors.⁵⁰ An examination of the intra-metropolitan and spatial implications of uncompensated poverty spending in the Southern California metropolitan region illustrates that poor cities are more likely to have to exert a high fiscal effort to provide public services.⁵¹ The study included the aforementioned San Bernardino County, which is home to the city of San Bernardino.⁵² San Bernardino's decision to seek bankruptcy protection in 2012 came amidst political feuds over provisions for police and fire with the city's diminished tax base, which was attributable to the housing crisis and the city's 15% unemployment rate.⁵³ The study concluded

49. Christopher J. Tyson, *Municipal Identity as Property*, 118 PENN. ST. L. REV. 647, 669 (2014) [hereinafter *Municipal Identity*] (discussing how individual and group identity, over time, fuses with notions of jurisdictional ordering to add a cultural component to the investment in state boundary policy—particularly where notions of legal autonomy are concerned); See Daniel B. Rodriguez & David Schleicher, *The Location Market*, 19 GEO. MASON L. REV. 637 (2012) (discussing how the Tiebout-style gains that flow from the population sorting that occurs in highly fragmented metropolises is offset by the efficiency losses for regional governance).

50. Timothy McNulty, *Tax-exempt Properties Are Killing City Financially*, *Controller Flaherty Says*, PITTSBURG POST-GAZETTE, Jan. 13, 2000, <http://news.google.com/newspaper?id=Z4wNAAAIBAJ&sjid=JXADAAAIBAJ&pg=2821%2C898994>.

51. See Pascale M. Joassart-Marcelli, Juliet A. Musso & Jennifer R. Wolch, *Fiscal Consequences of Concentrated Poverty in a Metropolitan Region*, 95 ANNALS OF THE ASS'N OF AM. GEOGRAPHERS 336, 347–48 (2005).

52. *Id.* at 337, 348–49.

53. See Jim Christie & Tori Richards, *San Bernardino Bankruptcy Caused By Political Feuds, Denial*, HUFFINGTON POST, July 16, 2012, http://www.huffingtonpost.com/2012/07/15/san-bernardino-bankruptcy-political-feuds-denial_n_1674936.html.

that metropolitan fragmentation increases resource disparities between localities in a metropolitan region.⁵⁴ Poverty both increases the demand for services and reduces the ability of cities to provide them.⁵⁵ Consequently, poor cities face an unfair disadvantage against wealthier cities and are likely to experience growing fiscal pressure.⁵⁶ While many factors led to San Bernadino's insolvency crisis, the disparities produced within the fragmented metropolis increase the likelihood that municipalities with high concentrations of poor residents will slide into insolvency.

Detroit, Michigan is an example of the impact of suburbanization. The Detroit metropolitan area remains highly segregated along race and class lines. While the state of Michigan has a revenue sharing program⁵⁷ that attempts to equalize municipal funding in light of resource disparities, that program has experienced significant cuts that have imperiled a number of cities, but none more than Detroit.⁵⁸ Since 2003 Detroit is projected to have lost over \$732 million in revenue sharing funds.⁵⁹ Central cities and fiscally stressed suburbs lost the most in the revenue sharing diversion, exacerbating these municipalities' already lopsided ratio of service demand to service delivery capacity.⁶⁰

All of the forces and dynamics mentioned have, to varying degrees, imperiled an increasing number of municipal budgets over the past few decades. All are difficult issues, but taken separately their respective remedy options expose their distinct and separate implications. Corruption and mismanagement can largely be addressed through accountability and transparency measures and political pressure for leadership changes generally carry the day. The pension crisis requires protracted engagement and problem solving that takes both legacy financial commitments and state-local interdependence into consideration. But the state's role in fiscal

54. See Joassart-Marcelli et al., *supra* note 51, at 351.

55. See *id.* at 349–50.

56. See *id.*

57. 2014 Mich. Pub. Acts 252, §§ 950–52.

58. See Jonathan Oosting, *How Michigan's Revenue Sharing 'Raid' Cost Communities Billions for Local Services*, MLIVE (Apr. 13, 2014, 1:13 AM), http://www.mlive.com/lansing-news/index.ssf/2014/03/michigan_revenue_sharing_strug.html; see also AMEREGIS, SEGREGATION, MINORITY SUBURBANIZATION AND FISCAL EQUITY IN THE DETROIT METROPOLITAN AREA (2004), available at <https://www.law.umn.edu/uploads/55/ce/55cef573ab314eac47e32b22f61b8a09/Detroit-NAACP-Min-Suburbanization-Report-2005.pdf>.

59. See Oosting, *supra* note 58.

60. See AMEREGIS, *supra* note 58.

equalization, suburbanization, and social attitudes about jurisdiction and autonomy pose unique challenges for municipal fiscal sustainability. A state's approach to the mal-distribution of resources and capacity between cities involves political determinations about the role of redistribution at the state level. Jurisdiction and local autonomy are political constructs that reflect a state's judgments and preferences for how to best reconcile self-determination and collective responsibility in relation to the management of territory and community. Furthermore, while the local boundary problem has to date been addressed by scholars under the banner of Regionalism or New Regionalism,⁶¹ there is scant popular appreciation for its role in shaping municipal finances.

IV. BEYOND THE LOCAL FISCAL MISMANAGEMENT DISCOURSE

The dominant narrative on the municipal fiscal crisis focuses on the agency of municipal actors and local politics rather than structural forces which frame and constrain the choices cities have to make. The mismanagement discourse focuses on local initiative, local politics, corruption, and assessments of the agency of local officials in financial decisions. The emphasis on mismanagement is not unwarranted, for in virtually every instance of municipal insolvency lays a trail of questionable, if not outright, poor decision-making. Decisions that spurred over-borrowing or a considerable miscalculation of the relative risk involved in taking on greater amounts of debt implicate individual political actors as well as broader dynamics in local political culture.

But the mismanagement discourse is fundamentally inadequate and misleading. It woefully underestimates state plenary power over local fiscal matters and obscures several under-appreciated realities about contemporary local finance. First, the state controls, to a significant degree, the fiscal fate of its local subdivisions. While localism generally and home rule specifically has created spheres of constitutionally or statutorily-based local autonomy characterized by broad constructions of the police power with regard to social and political affairs, such latitude is not reflected in financial affairs. Specifically, state constitutions and statutes impose controls on nearly all aspects of local financial management, including assessment,

61. For a definition and discussion of regionalism, old and new, see, e.g., Christopher J. Tyson, *Localism and Involuntary Annexation: Reconsidering Approaches to New Regionalism* 87 TUL. L. REV. 297, 348–50 (2012) [hereinafter *Involuntary Annexation*].

taxation, indebtedness, budgeting, accounting, auditing and fiscal reporting.⁶² As scholars like Clayton Gillette have recognized, states exercise considerable plenary power over the fiscal matters of their localities.⁶³ States can enact “statutory schemes to withhold advanced funds, create financial control boards, and place localities in receivership,” all of which means the state can extract substantial concessions from distressed cities in return for state assistance.⁶⁴

A second under-appreciated dimension of state influence over city administration is the reality that a city’s very identity is controlled by state law. The formation, reformation, and extinguishment of municipal boundaries is entirely a creature of state law.⁶⁵ The conditions under which central cities can expand their boundaries varies from state to state, and few states afford central cities the capacity to meaningfully impact the ability of other municipalities to form in close proximity to them, force municipalities to merge with them, or force unincorporated territories to be subsumed into them.⁶⁶ Fiscal health is directly tied to the character of the taxable land and population within a city’s borders. The ability to achieve and maintain certain service and amenity levels is part of an unending cycle where the perceived benefits of a city determines who enters and exits. In turn, those residents and their capacity for generating tax revenues determine the services and amenities the city can afford to offer. The boundary management regimes of most states have largely functioned to increase rather than restrict political fragmentation and inter-regional competition.⁶⁷

The prospects for diminishing the ways in which local boundaries reproduce inequality are dim, which brings into focus a third under-appreciated structural impediment to fiscal stability: the emergence of popular movements for new incorporations within existing metropolitan areas, commonly known as “cityhood” movements. The anti-annexation and new municipal incorporation movements signal a rising hostility towards the redistributive

62. See, DANIEL R. MANDELKER ET AL., STATE AND LOCAL GOVERNMENT IN A FEDERAL SYSTEM 286 (7th ed. 2010).

63. See Clayton Gillette, *Fiscal Federalism, Political Will, and the Strategic Use of Municipal Bankruptcy*, 79 U. CHI. L. REV. 281, 285, 314–15 (2012).

64. See *id.* at 315.

65. *Id.* at 314–15.

66. *But see Involuntary Annexation*, *supra* note 61, at 303–25 (reviewing those states which do afford municipalities the powers of involuntary annexation and extraterritorial jurisdiction with regards to the municipal identity of other communities).

67. See *id.*

obligations of sharing municipal territory with dissimilarly situated others.⁶⁸ The white and multi-racial class flight at the core of these movements is nothing new, but the rise in common interest communities and privatized local government adds a new dimension to a long-standing phenomenon. There is a rapidly diminishing appetite for any shared responsibility for alleviating or even managing the effects of persistent poverty. Smaller local governments provide greater opportunities for hyper segregation and a narrow, elitist vision of citizenship.

When the structural realities of city fiscal powerlessness, the state's control over local boundaries, and the growing demand for new municipal incorporations is taken into account, the fiscal crisis emerges as a phenomenon borne less out of local agency and more a manifestation of state policy and localism. These matters do not receive the attention they deserve and therefore the broader discussion of how to address municipal insolvency and the role of municipal bankruptcy is lacking.

V. RE-ASSESSING TENTH AMENDMENT LIMITATIONS UNDER CHAPTER 9

More than twenty years ago, authors Michael McConnell and Randall Picker proposed that municipal bankruptcy proceedings should result in grants of power that force politically unpopular decisions on governments, including those that may produce more efficient forms of municipal organization.⁶⁹ These observations reflect the reality that the limitations placed on bankruptcy courts under Chapter 9 render them incapable of leading municipalities and states to account for some underappreciated structural determinants of insolvency—particularly those that accrue to local government organization. In its current form, Chapter 9 lets states off the hook for local government organization regimes that produce disparities in local resources within metropolitan areas.

Before exploring the capacity of federal bankruptcy courts to address the structural drivers of municipal insolvency, it's necessary to understand the architecture of municipal bankruptcy. Chapter 9 bankruptcy is not available to every failing municipality. Only twenty-four states either specifically or conditionally authorize

68. See *Municipal Identity*, *supra* note 49, at 650–52.

69. See Michael W. McConnell & Randall C. Picker, *When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy*, 60 U. CHI. L. REV. 425, 470 (1993).

municipal bankruptcies.⁷⁰ States cannot petition for bankruptcy relief. The threshold requirements for a municipality seeking bankruptcy relief are that they must, (1) be specifically authorized by state law to be a debtor, (2) be insolvent, (3) desire to effect a plan to adjust its debts, and (4) engage in certain pre-filing efforts to work out its financial difficulties.⁷¹ Municipalities are also required to obtain the agreement of creditors holding at least a majority in amount of claims of each class of debtor and to negotiate in good faith with creditors to obtain the agreement of the majority.⁷² In order to receive court sanction of its debt adjustment plan, the debtor municipality must have reached agreement toward a plan or must have failed to do so despite good faith negotiations, or such negotiation must be impracticable.⁷³ If the municipality meets these requirements, Chapter 9 automatically triggers a stay against creditor collection efforts.⁷⁴ This allows a municipality the ability to continue providing basic public services while negotiating a debt adjustment plan with its creditors.⁷⁵

Scholars have noted the significant differences between bankruptcy for non-municipal debtors and municipal debtors.⁷⁶ Unlike in a Chapter 7⁷⁷ or Chapter 11⁷⁸ bankruptcy proceeding—those provision that apply to individual and corporate bankruptcy—courts have no authority to set limits on the discretion of city officials or state officials in matters of local government organization and management.⁷⁹ The court is merely authorized to determine insolvency and assess the relative soundness of the municipality's

70. See, e.g., Lynn Hume, *Bill Would Give More Rights to Municipal Employees in Bankruptcies*, THE BOND BUYER, Jun. 4, 2014, <http://www.bondbuyer.com/news/washington-budget-finance/bill-would-give-more-rights-to-municipal-employees-in-bankruptcies-1063100-1.html>.

71. 11 U.S.C. § 109(c) (2012).

72. See, e.g., *In re Mendocino Coast Rec & Park Dist.*, 2013 U.S. Dist. LEXIS 139697, at 6–7 (N.D. Cal. 2013).

73. See 11 U.S.C. 941–46 (2012); *In re Cottonwood Water & Sanitation Dist.*, 138 BR 973, 979 (Bankr. D. Colo. 1992).

74. 11 U.S.C. § 922.

75. See Tung, *supra* note 5, at 893.

76. See Gillette, *supra* note 63, at 291–93; Thomas M. Horan & Ericka Fredricks Johnson, *The Debtor Has No Estate, and Other Tales, Why Chapter 9 Looks Different From Chapter 11*, 32-10 ABIJ 22 (2013); McConnell & Picker, *supra* note 69, at 437–35.

77. 11 U.S.C. §§ 701–84.

78. *Id.* §§ 1101–74.

79. See *id.* § 904.

plan for adjusting their debts.⁸⁰

Unlike bankruptcy under Chapter 7 or Chapter 11, creditors have very few rights to participate in the development of the municipality's debt readjustment plans. While the provisions of Chapter 9 require the city to negotiate in good faith with its creditors, creditors have little negotiating leverage under Chapter 9.⁸¹ During these negotiations municipalities enjoy the exclusive right to submit debt readjustment plans to the court. Creditors can only approve or disapprove of the plans. Consequently, in addition to not receiving debt payments because of the automatic stay triggered by the filing of Chapter 9 bankruptcy, creditors cannot submit debt readjustment plans of their own.⁸² Courts are also limited in doing anything more than approving the debt adjustment plans. Chapter 9 permits the adjustment of debts so long as the adjustment is "fair and equitable" and does not "discriminate unfairly."⁸³

There is no liquidation under Chapter 9, as is a possibility under Chapter 7. Bankruptcy courts can only hold out the threat of dismissal, which would leave the debtor municipalities and their creditors to their political and legal devices.⁸⁴ Two provisions of Chapter 9 explicitly limit the reach of the bankruptcy courts: §§ 903 and 904.⁸⁵ Section 903 preserves the state's autonomy over the political and governmental powers of the municipality and § 904 limits the ability of the court to interfere with the municipality's political or governmental powers, its property or revenues, or its use or enjoyment of income-producing property.⁸⁶ These provisions effectively eliminate the bankruptcy court's ability to investigate the structural causes of insolvency discussed herein. They increase the possibility that municipal bankruptcy might be used repeatedly by municipalities and states unwilling to address what are often politically unsalable issues.

The rarity of municipal bankruptcy filings means that there is

80. *See In re Wallace Cnty. Water Control and Improvement Dist. No. 1*, 36 F. Supp. 36, 39 (S.D. Tex. 1940).

81. *See* 11 U.S.C. § 943(b)(7). The "best interest of the creditor" requirement under section 943(b)(7) has been treated similarly by courts to the Chapter 11 "good faith" requirement articulated under 11 U.S.C. § 1129(a)(3).

82. *See, e.g., Kimhi, supra* note 1, at 651.

83. *See, e.g., id.* at 653.

84. *See Pryor, supra* note 5, at 122–23.

85. *See* 11 U.S.C. §§ 903–04.

86. *Id.*

relatively little case law to guide bankruptcy judges if municipal bankruptcy filings become more common. But early development of Chapter 9 reveals the intentions and concerns behind the current structure. Municipal bankruptcy evolved separate from corporate bankruptcy and is marked by specific constitutional concerns related to federalism. Prior to the enactment of Chapter 9 in 1937, the only remedies available to creditors when a municipality was unable to pay the creditors were for the creditors to pursue an action of mandamus and compel the municipality to raise taxes or to seize its accounts.⁸⁷ The passage of the 1937 Municipal Bankruptcy Act changed all of that.⁸⁸ The design and scope of municipal bankruptcy is shaped in large measure by the limits of the Contracts Clause and the Tenth Amendment⁸⁹ to the U.S. Constitution. The Contracts Clause prohibits states from passing laws that impair existing contracts.⁹⁰ The bankruptcy code hinges upon the inapplicability of the Contracts Clause to the federal government. States cannot pass laws that would adjust a municipality's debt obligations. However, Congress is not subject to the restriction that the Contracts Clause places on the states.⁹¹ Contracts may be impaired in a Chapter 9 bankruptcy case without offending the U.S. Constitution.

The Tenth Amendment imprint on Chapter 9 reflects concerns about the balance of federalism.⁹² The Tenth Amendment provides that the powers not delegated to the United States but the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.⁹³ State sovereignty meant that Chapter 9 had to be a more limited version of bankruptcy; otherwise bankruptcy courts would acquire the power to dissolve local governments. The first version of the municipal bankruptcy legislation was ruled unconstitutional by the Supreme Court in the 1936 case *Ashton v. Cameron County Improvement District*.⁹⁴ There the Court opined,

87. See McConnell & Picker, *supra* note 69, at 445.

88. See Watkins, *supra* note 5, at 91 (citing Henry W. Lehmann, *The Federal Municipal Bankruptcy*, 5 J. FIN. 241, 245 (1950)).

89. U.S. CONST. amend. X.

90. U.S. CONST. art. I, § 10.

91. See Ass'n of Retired Employees v. City of Stockton (*In re Stockton*), 478 B.R. 8, 16 (Bankr. E.D. Cal. 2012).

92. See McConnell & Picker, *supra* note 69.

93. U.S. CONST. amend. X.

94. *Ashton v. Cameron Cnty. Improvement Dist.*, 298 U.S. 513 (1936).

If obligations of States or their political subdivisions may be subjected to the interference here attempted, they are no longer free to manage their own affairs; the will of Congress prevails over them; although inhibited, the right to tax might be less sinister. And really the sovereignty of the State, so often declared necessary to the federal system, does not exist.⁹⁵

Justice Cardozo's dissent in the closely decided case underscored the extent to which state sovereignty was protected under the original municipal bankruptcy statute. Cardozo rightly pointed out that the initial federal act preserved state autonomy over local government and limited federal oversight of governmental decisions.⁹⁶ Cardozo also pointed out that states had to grant their municipality's permission to even petition for a Chapter 9 bankruptcy, the ultimate deference to state sovereignty.⁹⁷ If a state felt that Chapter 9 infringed upon their sovereignty, it was only because the state opted to have their municipalities enter into federal bankruptcy in the first place.

The statute was rewritten. The revised act modified the provisions on state approval of a municipality's petition and removed counties from the statute.⁹⁸ The revised statute was upheld in *United States v. Bekins*⁹⁹ and further transformed in *Faitoute Iron & Steel Co. v. Asbury*.¹⁰⁰ In *Faitoute*, the Court upheld a New Jersey law that permitted a plan of adjustment over the objection of minority creditors, allowing bankruptcy to be used as a tool to control minority holdouts in municipal bankruptcy.¹⁰¹

Bankruptcy protection is not a right, and the only way for a municipality to petition for Chapter 9 relief is with the permission of its state. Justice Cardozo recognized this in his *Ashton* dissent. He revealed a fundamental problem with the state and local distinction under Chapter 9—that municipal bankruptcy is in effect the state petitioning for federal intervention to stay the demands of creditors

95. *Id.* at 531.

96. *See id.* at 538–40 (Cardozo, J., dissenting).

97. *See id.*

98. *See* McConnell & Picker, *supra* note 69, at 453.

99. *United States v. Bekins*, 304 U.S. 27 (1938).

100. *Faitoute Iron & Steel Co. v. Asbury*, 316 U.S. 502 (1942).

101. *See* McConnell & Picker, *supra* note 76, at 453–54.

and reorganize the debts of a unit of its governance structure. This essential feature of municipal bankruptcy calls into question whether there are significant—federalism concerns with §§ 903 and 904.

Given what has already been covered about the fiscal constraints on cities, the ability of states to both exclusively authorize cities to petition for bankruptcy relief and set the conditions within which local fiscal autonomy is exercised considerably minimizes any threat to their sovereignty under Chapter 9. It is worth exploring whether §§ 903 and 904 of Chapter 9 have been drawn too narrowly and might be loosened to allow bankruptcy courts to pierce the veil of Chapter 9's state sovereignty protections. This might lead states to address issues of local government organization prior to allowing their municipalities to petition for Chapter 9 relief. While the Tenth Amendment rights of states are well grounded, it is worthy to ponder whether states should expect to relinquish some of these protections in the Chapter 9 bankruptcy proceedings of their municipalities.

Allowing for qualified sovereignty under §§ 903 and 904 would permit bankruptcy courts to inquire into issues of local government organization and administration by the states if the bankruptcy judge deemed such information pertinent to assessing the root causes of default. Bankruptcy Judges could, for instance, approximate risk associated with the structure of local government organization at the state level and encourage municipalities (and their states) to address such risk in the debt adjustment plans the municipalities submit to the court. Debt adjustment plans might then require states to contribute more towards debt adjustment, which would likely occur through the redistribution of state tax revenues towards the struggling municipality in a manner otherwise complicated by the politics of localism.

Loosening the restrictions of §§ 903 and 904 allows root causes to be considered during debt readjustment. With a focus on root causes, possible features of debt adjustment might include requiring the state to consider municipal consolidations, inter-governmental agreements, or forced boundary modifications that would provide new tax revenue sources for struggling municipalities while enforcing other measures to actually restructure debt obligations. States might revisit revenue sharing plans and other devices that more equitably spread the legacy costs of older central cities—specifically their concentration of poorer populations of residents and non-taxable property—across the entire state. Revising Chapter 9 to encourage the pursuit of these types of regional approaches to metropolitan

government constitute a caveat to an otherwise painless process for the state as a whole.

Such reforms to Chapter 9 would challenge local sovereignty as an a-political pursuit. Doing so might open dialogue on the interdependence of a state's communities and the various fictions that stem from the social and political construction of jurisdiction. Advancing these regionalist gains might involve unintended consequences, as the minority of states that allow their municipalities to petition for Chapter 9 relief might be dis-incentivized from seeking such protection. Given the benefits Watkins outlined and summarized at the outset of this essay, this could impair opportunities for municipal government reform.¹⁰²

There are bigger questions that naturally arise in assessing the viability of this approach. Why expand the reach of federal bankruptcy courts in service of the problems of political fragmentation, metropolitan resource imbalances and the municipal boundary problem? Are the bankruptcy courts the appropriate forum for the consideration of regional governance structures? Are these issues not fundamentally prerogatives of the state for the people of the respective states to solve without the interference of courts? Is it even possible to narrowly tailor a solution that does not run afoul of the Tenth Amendment, but is substantially sufficient to bring about the intended changes?

These and other legitimate questions must be addressed in any reconsideration of Chapter 9. Local government organization can be one of many factors impacting fiscal insolvency and while its relative share of causality for a city's slide into bankruptcy is difficult if not impossible to determine, it is a significant determinant to a city's fiscal fate. But what is clear is that as it now stands, Chapter 9 offers states and their municipalities extraordinary debt relief while largely containing the impact of the municipality's insolvency to the municipality and its creditors. This may help cities in the short term, but it allows cities and states to exit bankruptcy with inefficient, inequitable and fundamentally unsustainable governance structures intact.

VI. CONCLUSION

The role of a state's laws for local government organization play

102. See Watkins, *supra* note 5, 104–15.

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in shaping a municipality's fiscal fate should be afforded greater consideration in the broader discussion of municipal insolvency. While Chapter 9 remains a relatively rare and extreme course for resolving municipal insolvency, it is one whose use has increased in recent years and the prospect of growing fiscal challenges for cities across the nation warrants a reconsideration of the various methods for resolving fiscal crisis, including bankruptcy.

With more municipal defaults likely ahead, it is necessary that Chapter 9 be examined not just for its ability to provide relief to municipalities that have hit rock bottom, but also for its untapped potential in urging states to address local government organization, particularly the problems of political fragmentation and the municipal boundary problem. It is beyond the scope of this essay to determine if that can be done in a way that does not offend the federalism concerns that are at the heart of §§ 903 and 904 of Chapter 9. But Justice Cardozo's *Ashton* dissent suggests it is a worthwhile exercise. Bankruptcy is not a right, and if states are willing to allow their municipalities to file bankruptcy petitions, they should also be willing to accept inquiries into how the state sets the conditions for local fiscal management as well as how its laws on local government organization impact the fiscal health of its municipalities.