
Abstract: Recognizing the constitutional challenge to bankruptcy courts’ jurisdictional structure raised by Stern v. Marshall, many argue for a long-term solution to constraints raised by the bankruptcy judges’ lack of life tenure and salary protections, i.e., the restructuring of the system to create specialized Article III bankruptcy courts. This article evaluates this proposal in light of a classic principle of system restructuring, namely, that any proposed restructure should stem from the underlying goals or strategy for that system. The creation of a specialized Article III bankruptcy court is consistent with the view of bankruptcy as a method of distribution, but not with bankruptcy as a procedural mechanism to deal with collective default. This article proposes an alternative solution to the Stern problem that would harmonize other strategic approaches and promote uniformity in bankruptcy, namely, replacing bankruptcy courts with an administrative agency subject to the review of non-specialized district courts.

Preferences Are Public Rights, work in progress, draft substantially complete.

Abstract: In the wake of the Supreme Court’s decision in Stern v. Marshall, there is widespread uncertainty as to what other proceedings may constitutionally fall within a bankruptcy court’s core jurisdiction. Supreme Court jurisprudence has been cryptic regarding the constitutional limitations of non-Article III courts, but the Court has identified a “public rights exception” to the general rule that the judicial power must be exercised only by judges with life tenure and salary protection. This public rights exception has not yet been explicitly extended to a bankruptcy proceeding, but the reasoning of the Court strongly suggests that a trustee’s motion to avoid preferential transfers (transfers from the debtor to a creditor on account of an antecedent debt within the 90 days before bankruptcy) would fall under the public rights exception. Preference actions are proceedings stemming exclusively from bankruptcy law, and are necessary to resolve claims against the estate. Accordingly, and contrary to what most scholars have suggested, preference proceedings fit comfortably within the jurisdiction of bankruptcy courts, even after the Supreme Court’s ruling in Stern.

Uniform Preferences, work in progress, early drafting stage.

Abstract: Under current bankruptcy law, the estate trustee is given discretion in avoidance proceedings, such as motions to recover fraudulent conveyances or preferences. Particularly in the category of preferences, where the standard is one of strict liability, this discretion raises concerns of arbitrariness and favoritism among creditors, concerns that are especially troubling in light of the purpose behind preference law. Preference actions were created for the purpose of ensuring a uniform distribution among similarly-situation creditors by preventing the unequal distribution of the estate just prior to bankruptcy. Discretion in recovering preferences undermines the assurance that creditors will be treated equally, and should be removed. A system that would make preference avoidance automatic upon the filing of bankruptcy would resolve these
concerns, although, like other features of bankruptcy law, it would require safeguards to prevent abuse.

*Uniform is an Adverb*, work in progress, data gathering stage

**Abstract:** The Constitution grants Congress the authority to enact “uniform laws on the subject of bankruptcies.” Although the legislative history indicates very little about the motivation behind this statement, there is reason to believe that the founding fathers were primarily concerned with the inconsistent treatment of debtors and creditors across state lines, and accordingly hoped to provide a mechanism whereby Congress could manage cases of insolvency by enacting laws that would treat all parties uniformly. However, bankruptcy law today is non-uniform in several respects, both in its treatment of debtors and of creditors. Read in the strictest sense, the Constitutional admonition that bankruptcy laws be “uniform” may therefore make portions of the bankruptcy code as currently drafted and enforced unconstitutional.


**Abstract:** The right of conquest was uncontested in its day. However, beginning with the emergence of the norm regarding self-determination during the French Revolution, acts of conquest began to provoke disputes about the content and meaning of international rules regarding a country’s right to claim territory it had seized in battle. Over the course of the Twentieth Century a norm against conquest arose, endorsed first by the League of Nations, then by the United Nations, and ultimately by the world at large, as demonstrated dramatically by international opposition to Iraq’s invasion of Kuwait. The norm against conquest aims to guarantee the continued survival of existing states by protecting their right to continued existence within their current borders.

**Academic Experience**

J. Reuben Clark Law School

*Academic Fellow*, (2012-present)

- **Courses Taught:** Debtors and Creditors (class size ~ 20 students); Secured Transactions (class size ~ 30 students)

- **Teaching Interests:** Contracts; Debtors and Creditors; Business Bankruptcy; Secured Transactions; Civil Procedure; Business Associations

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*Research Assistant* (2005)

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**Legal Experience**

United States Bankruptcy Court for the Central District of California

*Law clerk* to the Honorable Thomas Donovan (2011-2012)

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Harvard Law School, J.D. 2008 cum laude
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Brigham Young University, B.A. in Political Science, 2005 magna cum laude
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