

Chicago-Kent Law Review

Volume 93
Issue 3 *Comparative and Cross-Border Issues in
Bankruptcy and Insolvency Law*

Article 3

9-18-2018

When Borders Dissolve

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Recommended Citation

Laura N. Coordes, *When Borders Dissolve*, 93 Chi.-Kent L. Rev. 649 (2018).
Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol93/iss3/3>

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WHEN BORDERS DISSOLVE

LAURA N. COORDES*

INTRODUCTION

The city of Athens, Georgia, is over 5000 miles from Athens, Greece. The two cities, located in separate countries on separate continents, may initially appear to be alike in name only. Yet, both cities have, within the past few decades, undergone substantial financial and governmental changes. This Article seeks to discern what, if anything, the government in Athens, Greece, which has faced crippling sovereign debt problems, can learn from the experience of Athens, Georgia, when that city's government decided to consolidate with a nearby county government. More broadly, this Article explores how city-county consolidations can provide insight into resolving widespread problems related to governmental fiscal distress.

Applying insights from city-county consolidations to sovereign debt restructuring practices may at first seem as odd as comparing Athens, Georgia, to Athens, Greece. Yet, although a consolidation of two municipal governments may seem quite distinct from the restructuring of the debt of an independent sovereign nation, a comparison of the two situations reveals significant insights.

Over the years, scholars have devoted substantial time and energy to examining the myriad financial aspects of governmental fiscal distress.¹ Scholars have also realized that a government's financial distress typically has multiple underlying causes.² Notably, the consequences of governmental fiscal distress often extend well beyond the impact on the local, domestic economy.

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1. See, e.g., Zachary B. Kedgley-Foot, *Sovereign Debt Restructurings: More Options to Address Holdout Creditors*, 13 N.Y.U. J.L. & BUS. 885, 886–87 (2017) (arguing that more widespread use of trust structure and creditor engagement clauses will lead to more orderly sovereign debt restructurings); Steven L. Schwarcz, *Sovereign Debt Restructuring and English Governing Law*, 12 BROOK. J. CORP. FIN. & COM. L. 73 (2017) (proposing a new legal framework focused on governing law for restructuring unsustainable sovereign debt).

2. See generally Laura N. Coordes & Thom Reilly, *Predictors of Municipal Bankruptcies and State Intervention Programs: An Exploratory Study*, 105 KY. L.J. 493 (2017) (identifying multiple factors contributing to and stemming from governmental fiscal distress).

As discussed further below, U.S. municipal bankruptcy is often invoked as a model for a sovereign debt restructuring. Municipal bankruptcy laws in the United States are designed to address a municipality's debt overhang with minimal to no interference with the municipality's government structure or organization. By drawing the comparison of sovereign debt restructurings to municipal bankruptcy, scholars run the risk of omitting important considerations from a sovereign debt restructuring model—considerations about the non-financial aspects of fiscal distress, such as government structure and policy, mismanagement, poor leadership, influence of particular sectors of society, and so on.

In contrast to bankruptcy, city-county consolidations frequently involve fiscally distressed governments that choose to address financial problems in part by way of structural reform—the creation of an entirely new government structure. Thus, city-county consolidations illustrate a different way to address governmental fiscal distress and provide a reminder of the various roots and consequences of governmental fiscal distress.

Due to these varying roots and consequences, this Article contends that when thinking about managing government debt, whether the debt of a sovereign nation or a quasi-sovereign municipality, scholars should be mindful of alternatives to bankruptcy. In focusing on city-county consolidations, this Article highlights one of these alternatives in order to encourage attention to the non-financial, structural aspects of governmental fiscal distress. The Article explores city-county consolidations as an alternative to bankruptcy, a mechanism for addressing fiscal distress that can paint a more holistic picture of the causes and consequences of governmental fiscal distress.

Importantly, this Article does not suggest that city-county consolidations serve as a model or substitute for sovereign debt restructurings. Instead, it merely draws the comparison between these two mechanisms used to address governmental fiscal distress and highlights insights gained from the comparison. Although a consolidation approach may in fact have benefits for sovereign countries, exploring how such an approach would work at the level of a sovereign government is beyond this Article's scope. Instead, the Article encourages scholars to look beyond bankruptcy as the singular point of comparison for sovereign debt restructurings in order to more fully understand and appreciate the structural aspects of governmental fiscal distress.

The Article proceeds as follows. Part I provides background on the two events that serve as the Article's comparative basis: city-county consolidations and sovereign debt restructurings. Part I also discusses the problem with using U.S. bankruptcy law, and municipal bankruptcy in particular, as the sole or primary model for a sovereign debt restructuring framework. In

particular, Part I contends that a pure comparison to municipal bankruptcy fails to address the systemic roots of governmental fiscal distress.³ Part I concludes by introducing this Article's proposal and encouraging the examination of other tools available to governments to reform their practices.

Part II explores the value of studying city-county consolidations alongside sovereign debt restructurings. Part II explains how consolidations complement, rather than replace, bankruptcy as another tool those concerned with sovereign debt can look to for assistance. In addition, Part II explains how consolidations encourage scholars to look at the fuller picture surrounding governmental fiscal distress.

Part III examines more specific insights into what consolidations can teach us about sovereign debt restructurings. In particular, Part III focuses on two primary considerations: (1) an emphasis on governance with respect to the role of a framework for sovereign debt restructurings, and (2) the importance of amassing political will for significant change.

Part IV concludes by reiterating the benefits of studying consolidations and other tools available to governments alongside municipal bankruptcy as a means of strengthening the toolkit available to sovereign debtors and those entities involved in sovereign debt restructurings.

I. BACKGROUND

This Part begins by defining and describing city-county consolidations and sovereign debt restructurings. It then discusses some of the key difficulties with using U.S. bankruptcy law, and municipal bankruptcy in particular, as the primary or sole point of comparison for a sovereign debt restructuring framework before proposing that city-county consolidations and other tools available to local governments be studied alongside bankruptcy.

A. City-County Consolidations

City-county consolidations can take many forms; however, for the purposes of this Article, a city-county consolidation occurs when two governments, a city government and a county government, consolidate into one unified government.⁴ A prominent example of a successful city-county consolidation is the consolidation of Athens, Georgia, with surrounding Clarke

3. See, e.g., James Spiotto, *Beyond Hurricane Maria: The Gathering Storm of Puerto Rico's Financial Distress*, MUNINET GUIDE (Nov. 12, 2017), <https://muninetguide.com/puerto-rico-recovery-plan/> [<https://perma.cc/32JS-3QPV>] ("Public debt is not the cause of financial distress of a government; it is a symptom of a systemic problem.").

4. See *Metropolitan Nashville Government*, NASHVILLE.GOV, <http://www.nashville.gov/Government/History-of-Metro.aspx> [<https://perma.cc/G6GL-NKJP>] (defining consolidations).

County. In 1990, the citizens of the city and the county voted to combine their governments.⁵ The resulting unified government now provides services, governs, and manages money for both the city and the county.⁶ Thus, the consolidation of two governments into one necessarily requires substantial reorganization efforts, on both the structural level (duplicate positions must be combined, government offices must be consolidated, etc.) and on the financial level (the governments' revenues, assets, contracts, debts, taxing systems, and so on must be streamlined and adapted).⁷

City-county consolidations are not the only mechanism available to local governments seeking change—bankruptcy, annexation, state takeover, dissolution, and receiverships are just a few options—but they are the “most widely attempted metropolitan reorganization model.”⁸ Consolidations are often contemplated when governmental challenges relating to efficiency, accountability, planning capacity, and cost savings arise.⁹

Unlike municipal bankruptcy, which can have undemocratic undertones,¹⁰ consolidations are illustrative of a process of ground-up, largely citizen-initiated change. Only a handful of states provide for city-county consolidations in their general laws.¹¹ For the rest of the states, a majority of citizens must pass a referendum in order for a consolidation proposal to reach the state legislature.¹² The idea for a consolidation may come from citizens or from government officials; typically, the process begins with petitions from the citizenry or the commissioning of studies to determine whether a consolidation effort will achieve the goals the citizens desire.¹³ After the completion of studies, a consolidation proposal can become part of the local public agenda, and often, a commission will be formed to draft a new charter for the proposed consolidated government.¹⁴ This charter will define the

5. Dan Durning & Paula Sanford, *Unification Promises and Outcomes: The Case of Athens and Clarke County, Georgia*, in *CITY-COUNTY CONSOLIDATION: PROMISES MADE, PROMISES KEPT?* 215, 216 (Suzanne M. Leland & Kurt Thurmaier eds., 2010).

6. *Id.*

7. See Michelle Wilde Anderson, *Dissolving Cities*, 121 *YALE L.J.* 1364, 1368 (2012) (noting that when dissolution, another process involving structural government change, occurs, “an entity’s revenues, assets, contracts, and debts must be reorganized”).

8. *Cities 101—Consolidations*, NAT’L LEAGUE OF CITIES (Dec. 14, 2016), <http://www.nlc.org/resource/cities-101-consolidations> [<https://perma.cc/NT6M-UUUZ>].

9. *Id.*

10. See Order Confirming Eighth Amended Plan for the Adjustment of Debts of the City of Detroit at 34, *In re City of Detroit*, No. 13-53846 (Bankr. E.D. Mich. Nov. 12, 2014), ECF No. 8272 (suggesting that democracy needed to be restored to the people of Detroit after the city’s bankruptcy).

11. *Cities 101—Consolidations*, *supra* note 8.

12. *Id.*

13. *Id.*

14. *Id.*

structure of the new, proposed government.¹⁵ After the charter is drafted, a referendum will be held so that the citizens can reject or ratify the charter.¹⁶

Even in a so-called “pure” consolidation, where one or more municipal governments combine with a county government to create a single government covering the metropolitan area, it is still possible for remnants of the former governments to exist.¹⁷ For example, it may make sense to have two different water districts, one providing services to the urban population, and the other serving the rural population.¹⁸ In these instances, citizens are taxed according to the services they are provided.¹⁹ Thus, although the end result of a consolidation is one, overarching government, within that government, special districts, autonomous authorities, and boards that existed pre-consolidation may continue to operate.²⁰

Consolidations have, by and large, flown beneath the scholarly radar, particularly in the legal field. At first glance, it is easy to understand why this is the case. Fewer than fifty consolidated governments exist in the United States,²¹ making consolidations a relatively untested process.²² However, despite the scant number of completed consolidations, in practice, consolidations are often discussed as options for local governments to pursue in times of economic crisis.²³ Notably, the city of Detroit, Michigan, considered and rejected a proposal for the city to consolidate with one or more of the wealthier suburbs that surrounded it and instead opted to file for bankruptcy.²⁴

Although the legal literature is sparse when it comes to consolidations, local government scholars have studied consolidations in an effort to determine whether, in essence, they are worth the effort. Studies conducted in recent years have found “substantial evidence that city-county consolidation can lead to better economic development performance than if the city and county remained separate entities.”²⁵ In addition, scholars have found that

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. A 2010 study counted thirty-nine consolidated governments in the United States. Kurt Thurmaier & Suzanne M. Leland, *Promises Made, Promises Kept*, in *CITY-COUNTY CONSOLIDATION: PROMISES MADE, PROMISES KEPT?*, *supra* note 5, at 271, 272.

22. Indeed, approximately eighty percent of consolidation efforts have failed. *Id.*

23. See Suzanne M. Leland & Kurt Thurmaier, *A Research Design for Evaluating Consolidation Performance*, in *CITY-COUNTY CONSOLIDATION: PROMISES MADE, PROMISES KEPT?*, *supra* note 5, at 1, 1; see also Anderson, *supra* note 7, at 1367 (noting that dissolution, another process involving substantial change to local government, can have origins in economic decline).

24. Coordes & Reilly, *supra* note 2, at 519.

25. Thurmaier & Leland, *supra* note 21, at 293.

consolidated governments have “higher economic growth rates” compared to similar nonconsolidated communities due to increased structural effectiveness.²⁶ Notably, consolidations have been found to be “overwhelmingly effective” when it comes to delivering on promises that consolidation proponents made to voters.²⁷

Although more research into city-county consolidations should be encouraged, the evidence to date shows that these structural reform mechanisms have proven effective in the creation of positive economic change. City-county consolidations are thus worthy of further study, both as an alternative to municipal bankruptcy for local governments and, for purposes of this Article, for the techniques used to effectuate a consolidation, which may be relevant in the sovereign debt restructuring context. In particular, studying successful consolidations can reveal insights into how effective governmental structural reform occurs, supplying a much-needed piece of the puzzle of stabilizing a sovereign nation deep in debt.

B. Sovereign Debt Restructurings

Sovereign debt restructurings are the second type of event that serves as this Article’s comparative basis. When a sovereign nation incurs too much debt, it may seek to restructure that debt with its creditors.²⁸ To effectuate a debt restructuring, sovereign nations frequently turn to outside organizations, such as the International Monetary Fund (IMF) for financial assistance. Indeed, the IMF often serves as a lender of last resort to desperate sovereigns.²⁹ In exchange for offering funds to the sovereign, the IMF typically requires the nation to demonstrate that it is making reforms to its governance structure.³⁰ Much like consolidations then, sovereign debt restructurings typically require governmental changes going beyond a balance sheet adjustment. In addition, lenders of last resort may impose austerity measures as a condition of lending. These measures effectively require the sovereign nation to give up some of its autonomy to the lenders. The sovereign government is left to navigate the “sensitive” political issues that may arise from this “sacrifice of autonomy.”³¹

26. *Id.* (emphasis omitted).

27. *Id.* at 298.

28. See John A. E. Pottow, *What Bankruptcy Law Can and Cannot Do for Puerto Rico*, 85 REV. JUR. U.P.R. 689, 698 (2016) (describing the sovereign debt system as “relevant when independent countries go broke”).

29. *Id.*

30. *Id.* at 699.

31. *Id.*

Over the years, key debates have emerged in the legal literature on sovereign debt restructuring. Notable among these debates is the question of whether some sort of overarching framework is necessary or desirable for sovereign debt restructurings. In the early 2000s, the IMF expended significant efforts to develop a comprehensive, treaty-based framework—a so-called Sovereign Debt Restructuring Mechanism, or SDRM—which would govern sovereign debt restructuring practices among its members.³² Although the IMF's SDRM proposal received much attention and debate, it failed to come to fruition, in part due to reluctance from world powers, such as the United States, to adopt the proposal.³³ Since then, calls for a framework have waxed and waned.³⁴

One challenge with developing a workable framework is the sheer difficulty of developing generalized principles that will apply predictably across highly varied entities. Thus, some scholars have argued that the status quo, a decentralized and largely contractual mechanism that depends significantly on the inclusion of collective action clauses into debt instruments,³⁵ is preferable to a framework. Those who advocate for a framework, on the other hand, have argued that the sovereign debt restructuring process could be improved, and perhaps made more efficient, through a mechanism that provides for increased coordination.³⁶

Sovereign debt restructurings are quite common—one study documented six hundred cases in ninety-five countries over a sixty-year period³⁷—yet many challenges remain unresolved and difficult to address. Still, there is no doubt that in the sovereign debt context, a debtor nation's

32. Sean Hagan, *Designing a Legal Framework to Restructure Sovereign Debt*, 36 GEO. J. INT'L L. 299, 300–01 (2005).

33. *Id.* at 301.

34. See Jeffrey Butensky, *Tango or Sirtaki? The Argentine and Greek Dance with Sovereignty and a Multilateral Sovereign Debt Restructuring Framework*, 35 B.U. INT'L L.J. 157, 159 (2017) (noting that Argentina recently backed a United Nations proposal to establish a multilateral debt restructuring framework).

35. Hagan, *supra* note 32, at 317 (noting that collective action clauses allow “a qualified majority of bondholders . . . to bind all bondholders within the same issue to the financial terms of a restructuring”).

36. *Id.* at 339 (noting that, by increasing predictability, a sovereign debt restructuring mechanism would put creditors in a better position to price and manage risk, which in turn would increase capital market efficiency); Charles W. Mooney, Jr., *A Framework for a Formal Sovereign Debt Restructuring Mechanism: The Kiss Principle (Keep It Simple, Stupid) and Other Guiding Principles*, 37 MICH. J. INT'L L. 57, 110 (2015) (contending that a sovereign debt restructuring mechanism that mimics model collective action clauses would “enhance the efficiency and transparency of negotiations for the restructuring of sovereign debt”).

37. Udaibir S. Das et al., *Sovereign Debt Restructurings 1950–2010: Literature Survey, Data, and Stylized Facts 5* (Int'l Monetary Fund, Working Paper No. 12/203, 2012), <https://www.imf.org/external/pubs/ft/wp/2012/wp12203.pdf> [<https://perma.cc/G6BK-DW5L>].

financial problems are often intricately linked with the sovereign's political problems.³⁸

C. *The Municipal Bankruptcy Model*

Scholars advocating for a sovereign debt restructuring framework have often drawn upon U.S. bankruptcy law, and particularly chapter 9 of the U.S. Bankruptcy Code, as a model.³⁹ Indeed, several commentators have proposed statutory frameworks that incorporate many of chapter 9's key provisions, including an automatic stay (or standstill provision) and the existence of a court to deal with insolvency petitions.⁴⁰ In many ways, U.S. bankruptcy law is an apt model for a sovereign debt restructuring framework. Bankruptcy and sovereign debt restructurings share the same basic goals: both practices seek to eliminate holdout creditors in order to effectuate a debt restructuring.⁴¹

Despite these similarities, however, chapter 9 has particular limitations as a sovereign debt restructuring model. For example, chapter 9 deals with U.S. municipalities—cities, towns, and counties—not sovereign nations. Scholars have remarked that citizens of a city or county are much more mobile compared to citizens of a sovereign nation.⁴² This means that if a municipal tax burden becomes excessive or if a municipality adopts policies that its citizens do not like, perhaps as a result of a bankruptcy, the citizens most able to bear these burdens will be in good positions to move elsewhere.⁴³ Other scholars have characterized chapter 9 bankruptcy as being overly

38. *Id.* at 29 (noting that political risk and instability contribute to problems with the sovereign debt restructuring process).

39. Chapter 9 is the Code chapter used to restructure the debts of U.S. municipalities. 11 U.S.C. §§ 901–946 (2012).

40. See, e.g., Kunibert Raffer, *The IMF's SDRM—Simply Disastrous Rescheduling Management?*, in *SOVEREIGN DEBT AT THE CROSSROADS: CHALLENGES AND PROPOSALS FOR SOLVING THE THIRD WORLD DEBT CRISIS* 246, 257–61 (Chris Jochnick & Fraser A. Preston eds., 2006) (proposing a statutory framework modeled after chapter 9); ANN PETTIFOR, NEW ECON. FOUND., *CHAPTER 9/11? RESOLVING INTERNATIONAL DEBT CRISES—THE JUBILEE FRAMEWORK FOR INTERNATIONAL INSOLVENCY* 1, 5 (2002), http://www.i-r-e.org/bdf/docs/a002_jubilee-framework-for-international-insolvency.pdf [<http://perma.cc/G3RR-Y724>] (same).

41. Mooney, *supra* note 36, at 67 (noting that the sovereign debt restructuring literature gives the impression that an overarching goal is to eliminate the “holdout problem”); Laura N. Coordes, *Gatekeepers Gone Wrong: Reforming the Chapter 9 Eligibility Rules*, 94 WASH. U. L. REV. 1191, 1206 (2017) (discussing how bankruptcy is designed to eliminate holdouts); Kunibert Raffer, *Internationalizing US Municipal Insolvency: A Fair, Equitable, and Efficient Way to Overcome a Debt Overhang*, 6 CHI. J. INT'L L. 361, 361–62 (2005) (proposing an international version of chapter 9 to address sovereign debt problems).

42. William W. Bratton & G. Mitu Gulati, *Sovereign Debt Reform and the Best Interest of Creditors*, 57 VAND. L. REV. 1, 38 (2004).

43. *Id.*

debtor-friendly,⁴⁴ while still others have pointed out that chapter 9 is rarely used in the United States.⁴⁵ It is thus arguably difficult to effectively advocate for chapter 9 as the basis for a sovereign debt restructuring model when chapter 9 itself is relatively untested and has received comparatively little attention. The U.S. Bankruptcy Code in general has been characterized as “famously complex,” and in practice, specialized expertise in the form of lawyers, accountants, financial consultants, and judges is often required for a debtor entity to use the Code effectively to achieve its goals.⁴⁶ Finally, municipalities themselves are of course not sovereign entities; instead, they are subject to the authority of the U.S. federal government as well as the control of the government of the state in which they are located.⁴⁷

Many of the limitations just discussed would apply equally to the use of city-county consolidations as a model for sovereign debt restructurings. For this reason, this Article does not advocate the exclusive use of such a model. Nevertheless, there is a particular limitation of bankruptcy that city-county consolidations do not share. Bankruptcy in general, and chapter 9 bankruptcy in particular, is designed to address the financial aspects of fiscal distress while keeping interference with governance and politics to a minimum.⁴⁸ Chapter 9’s own history confirms this design: shortly after chapter 9’s initial iteration was passed by Congress, the Supreme Court struck it down as an unconstitutional infringement on the sovereign powers of state governments.⁴⁹ Congress’s second attempt at a municipal bankruptcy law, one which explicitly prohibited federal interference with municipalities’ fiscal or political affairs, passed the Supreme Court’s scrutiny.⁵⁰

Today, section 904 of the Bankruptcy Code provides that, in a municipal bankruptcy, the bankruptcy court may not interfere with “the political or governmental powers of the debtor,” including the municipality’s assets.⁵¹ In practice, this means that the bankruptcy court “may not order reductions in expenditure, sale of property, renegotiation of contracts, or increase in

44. Adam Brenneman, Comment, *Gone Broke: Sovereign Debt, Personal Bankruptcy, and a Comprehensive Contractual Solution*, 154 U. PA. L. REV. 649, 673 (2006) (“[E]xisting proposals that use a Chapter 9 framework may tilt too far towards protecting the debtor.”); Alon Seveg, *When Countries Go Bust: Proposals for Debtor and Creditor Resolution*, 3 ASPER REV. INT’L BUS. & TRADE L. 25, 75 (2003) (arguing that chapter 9-based sovereign debt restructuring would create moral hazard).

45. Brenneman, *supra* note 44, at 673–74.

46. Mooney, *supra* note 36, at 63.

47. Brenneman, *supra* note 44, at 674.

48. See Coordes & Reilly, *supra* note 2, at 520 (noting that municipal bankruptcy has not proven effective in offering governance reforms).

49. *Ashton v. Cameron Cty. Water Improvement Dist. No. 1*, 298 U.S. 513 (1936).

50. See Act of Aug. 16, 1937, Pub. L. No. 75-302, 50 Stat. 653; see also *United States v. Bekins*, 304 U.S. 27 (1938) (upholding the new municipal bankruptcy law).

51. 11 U.S.C. § 904 (2012).

taxes.”⁵² Thus, although in practice, a municipal bankruptcy can have effects that modify much more than debt structure, the structural limitations of the Code, combined with the historical precedent supporting a limited scope for chapter 9, strongly suggest that bankruptcy is not designed to effectuate extensive structural modifications to government.

Bankruptcy is thus designed to effectively sidestep the non-financial triggers and consequences of municipal fiscal distress; indeed, interference with these triggers and consequences through bankruptcy law is strictly prohibited. Because of these limitations, bankruptcy cannot completely address the complexity of governmental fiscal distress. Instead, bankruptcy in general, and municipal bankruptcy in particular, is focused on debt adjustment to the near exclusion of any other kind of change. Yet, governmental fiscal distress almost always stems from structural *and* fiscal problems, and these problems intertwine.⁵³ Because of the interconnected nature of governmental fiscal problems, any resolution that seeks to restore long-term stability to the government must address both the structural and fiscal aspects of these problems. Due to its restricted focus on debt adjustment, bankruptcy alone falls short of comprehensively resolving governmental fiscal distress.

In the sovereign debt context, as discussed previously, lenders of last resort like the IMF regularly impose funding conditions that directly interfere with the sovereign state’s political and governmental powers. Such conditions would likely be impermissible in the U.S. municipal bankruptcy context due to the legislative and judicial limitations on chapter 9 discussed above. In contrast, city-county consolidations frequently involve interference with a local government’s powers. Consolidations may thus help scholars better understand the effects of these changes on governments.

1. Municipal Bankruptcy’s Limitations in Practice: Detroit, Michigan

The experience of Detroit with municipal bankruptcy helps illustrate the ways in which municipal bankruptcy falls short of a comprehensive solution for debt-ridden municipalities. Detroit filed for bankruptcy in July of 2013 with \$18 billion in outstanding debt.⁵⁴ Of this amount, \$3.5 billion represented pension debt and \$6.4 billion constituted costs owed for employee

52. Michael W. McConnell & Randal C. Picker, *When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy*, 60 U. CHI. L. REV. 425, 474 (1993).

53. See generally Coordes & Reilly, *supra* note 2.

54. Chris Isidore, *Detroit Files for Bankruptcy*, CNN MONEY (July 18, 2013, 7:25 PM), <http://money.cnn.com/2013/07/18/news/economy/detroit-bankruptcy/> [http://perma.cc/23AX-NN6V].

benefits and retiree healthcare.⁵⁵ Prior to filing for bankruptcy, Detroit experienced an exodus, with nearly “1 million residents and three-quarters of . . . retail businesses” leaving the city.⁵⁶ Scholars who studied Detroit prior to and during its bankruptcy concluded that there were many diverse factors contributing to the bankruptcy filing, including development decisions, loss of employment, irresponsible financial ventures, and union influence.⁵⁷ One study characterized city officials as “kick[ing] the can down the road” instead of facing Detroit’s problems.⁵⁸

Detroit submitted a plan of debt adjustment that was approved by the bankruptcy court, and the city emerged from bankruptcy in 2014 armed with a fiscal plan.⁵⁹ Since the bankruptcy, Detroit has met many of its financial targets.⁶⁰ Yet, the city’s governance structure did not change, and it has been criticized as “fragmented and redundant.”⁶¹ During the bankruptcy itself, the expert hired to assess the feasibility of Detroit’s plan expressed concern that the city was not tackling governance reform alongside the financial changes it was making.⁶² Although Detroit’s fiscal plan was approved, the bankruptcy did not comprehensively address many of Detroit’s outstanding problems, including mismanagement, poor governance practices, and the oversight of the city’s school districts.⁶³ In all, the bankruptcy allowed Detroit to regain a precarious fiscal stability—precarious because other contributing factors were not addressed through the bankruptcy.

2. Sovereign Debt Restructuring’s Limitations in Practice: Greece

U.S. municipalities are not alone in facing complex causes and consequences of fiscal distress, and in the sovereign debt context, Greece provides a salient example of the need to address these issues comprehensively. Greece’s recent economic troubles can be traced directly to decades of poor

55. M. Heith Frost, Comment, *States as Chapter 9 Bankruptcy Gatekeepers: Federalism, Specific Authorization, and Protection of Municipal Economic Health*, 84 MISS. L.J. 817, 819 (2015).

56. Todd Shields, *Comcast to Follow 1 Million Who’ve Fled Bankrupt Detroit*, BLOOMBERG TECH. (Oct. 1, 2014, 5:00 AM), <https://www.bloomberg.com/news/articles/2014-10-01/comcast-to-follow-1-million-who-ve-fled-bankrupt-detroit> [https://perma.cc/2JN3-QAPD].

57. See Vaneeta Chintamaneni, Note, *The Unraveling of an American City: Pensions, Municipal Debt, and Chapter 9 Bankruptcy*, 22 ELDER L.J. 523, 532–34 (2015).

58. Marc Fudge, *The Varied and Diverse Predictors of Local Government Bankruptcy*, PA TIMES (Jan. 17, 2014), <http://patimes.org/varied-diverse-predictors-local-government-bankruptcy/> [https://perma.cc/6TDP-NUPK].

59. Coordes & Reilly, *supra* note 2, at 520–21.

60. *Id.*

61. *Id.* at 520; Clayton P. Gillette & David A. Skeel, Jr., *Governance Reform and the Judicial Role in Municipal Bankruptcy*, 125 YALE L.J. 1150, 1187 (2016).

62. Gillette & Skeel, *supra* note 61, at 1198.

63. Coordes & Reilly, *supra* note 2, at 521.

government policy. In the 1970s, “extensive government control over the economy” in the form of state-owned enterprises contributed to “low economic growth and high debt.”⁶⁴ When Greece continued to accumulate debt in the 1980s, the government attempted to impose policies to address the debt.⁶⁵ Unfortunately, these policies backfired, leading instead to “high inflation and low economic growth.”⁶⁶ In 2001, Greece’s ability to meet the standards necessary to join the European Monetary Union led scholars to question the country’s remarkably quick turnaround, with some suggesting that fraud was the only plausible explanation.⁶⁷

In 2010, Greece received the first of several bailouts from the IMF, the European Commission, and the European Central Bank, three international organizations collectively known as the “Troika.”⁶⁸ Each bailout was conditioned in part on reforms to Greece’s government, including “downsizing public administration.”⁶⁹ The Troika thus recognized the intertwined nature of the fiscal, structural, and governmental policies contributing to Greece’s economic distress. However, the Troika could not exert direct control over Greece, and the Greek government further exacerbated the dire situation by using the bailout funds to repay outstanding debt rather than focusing on aiding the country’s struggling domestic economy.⁷⁰ Incensed Greek voters subsequently elected an anti-austerity government in January of 2015.⁷¹

3. A Looming Crisis in Need of a Comprehensive Solution: Venezuela

Sovereign debt crises continue to blur the lines between fiscal and governmental problems, and any attempt at long-lasting reform will need to address both sets of issues. A recent relevant example of a looming, multifaceted crisis in the sovereign debt context is Venezuela, where the government, led by President Nicolas Maduro, has chosen to make bond payments instead of purchasing much-needed supplies, including medications,

64. Butensky, *supra* note 34, at 167.

65. *Id.*

66. *Id.*

67. *Id.* at 167–68. Greece denies this. *Id.* at 168.

68. *Id.*

69. *Id.* at 169.

70. *Id.* at 170.

71. *Id.*

for its citizens.⁷² The resulting humanitarian crisis in Venezuela is well-documented and recently has received significant media attention.⁷³ Observers have gone so far as to characterize the government's actions—sending money to foreign investors while scaling back necessary imports—as immoral, and the United States has accused the Maduro government of human rights violations.⁷⁴ Thus, in Venezuela, government mismanagement has led to both a humanitarian crisis and “one of the worst economic collapses” in the region's history.⁷⁵ Resolving these crises will take more than adjusting the country's debts.

* * *

Government debt crises are not simply a matter of balance sheet imbalances. Rather, they are complex, multifaceted affairs with interwoven fiscal, structural, and political components. Addressing the financial aspects of a government debt crisis in relative isolation, as municipal bankruptcy is designed to do, is generally insufficient to create long-term stability.⁷⁶ When addressing government debt at the municipal or sovereign level, interference with governmental function and structure is sometimes exactly what is needed to concretely tackle the related financial crisis.⁷⁷ Yet, neither municipal bankruptcy law nor current proposals for restructuring sovereign debt explicitly contemplate such interference.

72. Katia Porzecanski et al., *Venezuela Will Seek to Restructure Debt, Blaming Sanctions*, BLOOMBERG MKTS. (Nov. 2, 2017, 5:39 PM), <https://www.bloomberg.com/news/articles/2017-11-02/venezuela-will-seek-to-restructure-debt-as-sanctions-take-hold> [<https://perma.cc/VYL4-EJRV>].

73. See, e.g., Meredith Kohut & Isayen Herrera, *As Venezuela Collapses, Children are Dying of Hunger*, N.Y. TIMES (Dec. 17, 2017), <https://www.nytimes.com/interactive/2017/12/17/world/americas/venezuela-children-starving.html> [<https://perma.cc/V374-L8T3>].

74. Porzecanski et al., *supra* note 72.

75. See *id.* (“The one who created this monster of debt is the government.”); see also Javier Rubinstein et al., *Venezuela's Debt Crisis: Creditors' Options in a Disorderly Default*, KIRKLAND ALERT (Kirkland & Ellis LLP, Chicago, Ill.), Nov. 15, 2017, at 5, https://www.insol.org/emailer/Dec2017_downloads/Doc5.pdf [<https://perma.cc/XZ7S-84PD>] (“Mismanagement of Venezuela's economy has caused this crisis, and the international community has no confidence in their ability to resolve it.”).

76. See Andrew B. Dawson, *Beyond the Great Divide: Federalism Concerns in Municipal Insolvency*, 11 HARV. L. & POL'Y REV. 31, 32–33 (2017) (“Chapter 9 of the Bankruptcy Code formally treats financial and operational restructuring as separate and independent exercises. . . . This divide between debt matters (financial restructuring) and governance matters (operational restructuring) is understood to reflect the unique sovereignty issues that arise in municipal insolvency. . . . Under this model of debt and governance, Chapter 9 only addresses a city's financial problems without addressing the causes of those problems.” (footnotes omitted)).

77. This is recognized to some extent in the literature on chapter 9. See *id.* at 35 (“Scholars have long understood that the municipal bankruptcy laws provide indirect means for courts to interfere with local governance even though courts cannot directly mandate operational reforms.”).

D. Proposal for Filling the Gap: City-County Consolidations

Bankruptcy is not the exclusive mechanism for resolution of a local government's problems. Indeed, governments have many tools at their disposal and many ways to address financial and structural issues. Bankruptcy is a valuable, and sometimes necessary, tool for addressing governmental fiscal distress. But when that fiscal distress is compounded by structural problems, structural reform may also be needed. The same analysis applies for sovereign nations with debt.

This Article thus proposes studying other tools governments have at their disposal to reform their practices and explores one such tool in depth: city-county consolidations. City-county consolidations contemplate exactly the type of governmental, structural reform that has thus far been downplayed in other debt contexts. Like sovereign debt restructurings and municipal bankruptcies, consolidations are frequently used to address fiscal problems. Yet, unlike the other types of reform discussed, consolidations use structural governmental change as the mechanism for reform. Thus, consolidations can supply a perspective that bankruptcy law does not provide when considering the options for resolving a multi-faceted governmental financial crisis.

When a municipality or sovereign state faces fiscal distress, the entity's government is typically a key player in both contributing to the distress and effectuating reform. Government laws and policies dictate how the entity raises and spends money, and government actors necessarily influence decisions such as when to repay a debt, which services are "essential" for citizens, and how to balance the demands of citizens with those of unpaid creditors.⁷⁸ The structure of municipal bankruptcy, however, dictates that a focus on government take a back seat. Because consolidations generally involve changes to *both* governmental structure and fiscal policy, they are worth studying as a companion to municipal bankruptcy and as an alternative approach to addressing fiscal matters.

This Article therefore advocates studying city-county consolidations in conjunction with U.S. bankruptcy law to better understand and more comprehensively address the problems surrounding global governmental fiscal distress.⁷⁹ Unlike municipal bankruptcies, city-county consolidations provide insight into ways to address the non-financial aspects of fiscal distress.

78. See discussion of Greece, *supra* Part I.C.2, where bailout loans were conditioned on domestic governmental reforms.

79. See Jason Kilborn & Adrian Walters, *Involuntary Bankruptcy as Debt Collection: Multi-Jurisdictional Lessons in Choosing the Right Tool for the Job*, 87 AM. BANKR. L.J. 123, 123 (2013) ("We often

Studying consolidations may also provide guidance on resolving key issues that have arisen in the sovereign debt restructuring context, notably on the issue of whether a formal sovereign debt restructuring mechanism or a contractual, market-based approach is the better fit for addressing sovereign debt.

II. THE VALUE

This Part further explores the value of studying city-county consolidations alongside sovereign debt. Although, as previously discussed, city-county consolidations, standing alone, do not provide an apt model for a sovereign debt restructuring framework, they do illustrate how effective governmental structural reforms can occur and how these reforms impact governmental fiscal health.

A. Consolidations as a Complement to Municipal Bankruptcy

Consolidations supply a missing component—reform to governmental structure and policy—to the resolution of governmental fiscal distress that a study of bankruptcy does not typically contain. Although both municipal bankruptcies and sovereign debt restructuring processes necessarily involve the restructuring of government debt,⁸⁰ municipal bankruptcy does not address other changes typically necessary to make alongside financial reform. Consolidations, by contrast, involve significant reforms to governmental structure and functions and are therefore valuable to study for ideas about how to effect these changes in the sovereign debt restructuring context.

Like sovereign debt restructurings and municipal bankruptcies, consolidations are often triggered by a combination of fiscal and governance problems. Unlike municipal bankruptcies, however, consolidations focus on government and governance as a means of resolving fiscal distress. Even though the changes resulting from a consolidation generally do not directly target a municipal government's finances, consolidations can nonetheless have a positive effect on a municipal government's financial situation.

realize a weakness or oddity in an aspect of our own legal system only by comparing it to others.”). The same might be said of comparisons of different mechanisms within a legal system.

80. Mooney, *supra* note 36, at 98 (“Municipal bankruptcy under Chapter 9 of the United States Bankruptcy Code is roughly analogous to a sovereign debt restructuring inasmuch as each involves the restructuring of the debt of a government.”).

Consider, once again, the consolidation of Athens, Georgia, with Clarke County.⁸¹ Prior to consolidation, the city and county faced mounting problems.⁸² The county's population increased, and county residents began demanding more urban services closer to home.⁸³ The city's population, meanwhile, decreased as residents moved to the county.⁸⁴ The city of Athens, facing a shrinking tax base, had little ability to raise additional money via property taxes.⁸⁵ The University of Georgia owned a significant amount of property in Athens, and all University-owned property was tax-exempt.⁸⁶

As population changes and demand for services shifted, disputes between the city and county governments grew, notably over recreation services and water rates.⁸⁷ The county water rate was nearly two times higher than the city's rate because the county had to pay to extend water and sewer lines from the city.⁸⁸ Resentful county residents sued a group in the city over the disparate rates.⁸⁹ The city and county also disagreed over how much county residents should have to pay to participate in city recreation programs.⁹⁰

Disputes about who should pay for which programs and how to fund various services motivated the effort for consolidation. Indeed, consolidation offered something for both the city and the county: a larger tax base would provide more efficient services on a county-wide basis.⁹¹ Consolidation proponents argued that changing the structure of the city and county governments would increase governmental efficiency by eliminating duplicate services, generating "more effective economic development," and creating a more streamlined police department.⁹²

A post-consolidation analysis found that the unification of the city and county governments accomplished many of the goals consolidation proponents had articulated. Notably, consolidation increased governmental efficiency by "lowering the real per capita costs" of certain services.⁹³ A post-

81. See Durning & Sanford, *supra* note 5.

82. See generally DOUGLAS E. SMITH, A HISTORY OF THE UNIFICATION OF THE ATHENS-CLARKE COUNTY GOVERNMENT (1997), <https://www.athensclarkecounty.com/DocumentCenter/Home/View/31886> [<https://perma.cc/NUA7-A7VU>].

83. *Id.* at 6.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.* at 7.

89. *Id.*

90. *Id.* at 6–7.

91. *Id.*

92. Durning & Sanford, *supra* note 5, at 220–21 (emphasis omitted).

93. *Id.* at 241.

consolidation study of pre- and post-consolidation expenditures showed that expenditures increased at a lower rate under the consolidated government when compared with the two former governments.⁹⁴

The consolidation of Athens with Clarke County arose due to many concerns that were financial in nature. Post-consolidation, the resulting structural changes brought long-lasting economic reform to the area.

The consolidation of Kansas City, Kansas, with surrounding Wyandotte County provides another example of the way in which consolidations can be used to address financial shortcomings. Prior to the consolidation, both the city and county were suffering economically, and neither the city nor the county had the means necessary to attract new economic development opportunities to the region.⁹⁵ When Kansas City consolidated with Wyandotte County, the newly formed municipality experienced “an economic turnaround.”⁹⁶ Notably, the consolidation contributed to a “reverse in population decline, slowed the loss of rooftops, [and] has helped spur retail sales.”⁹⁷ A post-consolidation study of the region indicated that citizens were also more satisfied with the area’s economic development.⁹⁸ In particular, the unified government created by the consolidation had the “professional capacity” to attract new developments to the region, including a racetrack.⁹⁹ Somewhat counterintuitively, despite these new developments, the unified government was also able to cut property taxes for four straight years.¹⁰⁰ The new government also had a better relationship with the state government in Topeka than either the city or the county government had had prior to consolidation.¹⁰¹ In this case, the unified government was truly more than the sum of its parts. As in the case of the Athens-Clarke County consolidation, the Kansas City-Wyandotte County consolidation offered an approach to resolving economic distress through a focus on governmental change.¹⁰²

94. Smith, *supra* note 82, at 29.

95. Suzanne M. Leland & Curtis Wood, *Improving the Efficiency and Effectiveness of Service Delivery in Local Government: The Case of Wyandotte County and Kansas City, Kansas*, in CITY-COUNTY CONSOLIDATION: PROMISES MADE, PROMISES KEPT?, *supra* note 5, at 245, 250.

96. Thurmaier & Leland, *supra* note 21, at 291.

97. *Id.*

98. *Id.*

99. *Id.* at 295–96.

100. *Id.*

101. *Id.*

102. See also Nicholas J. Swartz, *Does Consolidation Make a Difference?: A Comparative Analysis of Richmond and Virginia Beach, Virginia*, in CITY-COUNTY CONSOLIDATION: PROMISES MADE, PROMISES KEPT?, *supra* note 5, at 57, 58–59 (describing the merger of Virginia Beach with Princess Anne County, which resulted in long-term economic progress and improvements in metropolitan possibilities); Anthony J. Nownes et al., *An Assessment of the City-County Consolidation of Nashville and Davidson County, Tennessee*, in CITY-COUNTY CONSOLIDATION: PROMISES MADE, PROMISES KEPT?, *supra* note 5, at 25, 26–27 (discussing the merger of Nashville with Davidson County, Tennessee, where the unified

How might a focus on changing government structure help address problems that arise in a sovereign debt crisis? Scholars have long recognized that the way a government manages its sovereign debt, including and especially during a restructuring, directly impacts the sovereign state's economy and citizens.¹⁰³ Thus, a focus on the incidental effects of a debt restructuring is demonstrably important. Despite the centrality of a sovereign government's actions with respect to debt, however, scholars have noted that international business and human rights standards are insufficiently integrated into sovereign debt restructuring processes.¹⁰⁴ In particular, creditors of sovereign debtors have human rights responsibilities that are sometimes downplayed.¹⁰⁵ For example, in the looming Venezuelan sovereign debt crisis, discussed in Part I, it is worth asking whether the country's creditors should continue to accept money that could be used inside the country to provide much-needed basic supplies to its struggling citizens.¹⁰⁶ "Vulture" hedge funds, which purchase distressed sovereign debt at a severe discount in order to collect a large profit later by insisting on repayment at all costs,¹⁰⁷ are becoming a concern.¹⁰⁸ Yet, with bankruptcy as the primary model for a sovereign debt restructuring, the emphasis for reform is nearly exclusively on the financial aspects, with the risk that government structure, policy, and non-financial concerns will take a back seat.

In short, a bankruptcy-based model for a sovereign debt restructuring framework necessarily lacks insight for addressing related, non-financial triggers and consequences of fiscal distress. Studying consolidations can remind us that these factors are present in the sovereign debt context and must be resolved along with financial concerns.

government quickly and successfully eliminated city-county financial inequities and the problem of double taxation).

103. Daniel D. Bradlow, *Can Parallel Lines Ever Meet? The Strange Case of the International Standards on Sovereign Debt and Business and Human Rights*, 41 YALE J. INT'L L. ONLINE (SPECIAL EDITION) 201, 202 (2016) (discussing the example of Greece).

104. *See id.* at 237.

105. *Id.* at 205.

106. *See* Kohut & Herrera, *supra* note 73 (discussing the plight of Venezuelan citizens, particularly children).

107. *See* Christopher K. Odinet, *Of Progressive Property and Public Debt*, 51 WAKE FOREST L. REV. 1101, 1115 (2016) (describing vulture funds in Puerto Rico).

108. Landon Thomas, Jr., *Venezuelan Debt Now Has the Vultures Circling*, N.Y. TIMES (Nov. 14, 2017), <https://www.nytimes.com/2017/11/14/business/venezuela-debt-investors.html> [http://perma.cc/395B-AGYC] (noting that, although "a vanguard of dedicated vulture funds has not yet formed," many vulture investors believe that "Venezuela could become the most profitable of all").

B. A Holistic Picture

Consistent with the concerns discussed above, many scholars have recently been pushing for further attention to the more holistic picture surrounding a sovereign debt crisis. Although it is necessarily critical to address the financial aspects of sovereign debt, it is also important that any restructuring ultimately lead to a stable situation for the debtor state and the citizens that depend on the state for essential services. In 2015, the United Nations' Ad Hoc Committee on Sovereign Debt Restructuring Processes released non-binding Principles on Sovereign Debt Restructuring Processes.¹⁰⁹ The Committee's "Sustainability" principle provides that a sovereign debt restructuring should preserve creditors' rights while *also* "promoting sustained and inclusive economic growth and sustainable development, minimizing economic and social costs, warranting the stability of the international financial system and respecting human rights."¹¹⁰ The Sustainability Principle thus contemplates a wide swath of issues to be addressed during a sovereign debt restructuring, issues that go beyond the mere mechanics of paying back debt.

Studying consolidations as a response to governmental fiscal distress can provide insight into how to achieve long-term stability through a comprehensive response to fiscal and non-fiscal problems. Consolidations result in lasting change: no successful consolidation has ever been unwound or "deconsolidated."¹¹¹ Further, whereas a key focus of bankruptcy law is on the protection of creditors' rights, consolidations illustrate the effectiveness of focusing on other consequences stemming from financial fallout, including those affecting basic human needs, sustainable development, and social costs.

In this way, consolidations provide guidance on how to think about the holistic picture surrounding governmental fiscal distress. Existing frameworks for sovereign debt restructurings do not always adequately explain how to balance provision of basic services with debt repayment, even though lack of this balance is often a key problem in many sovereign debt crises.¹¹²

109. Basic Principles on Sovereign Debt Restructuring Processes, U.N. Doc. A/69/L.84 (July 29, 2015); *see also* G.A. Res. 69/319, Basic Principles on Sovereign Debt Restructuring Processes (Sept. 10, 2015).

110. G.A. Res. 69/319, *supra* note 109, ¶ 8.

111. Leland & Thurmaier, *supra* note 23, at 2, 19 (noting forty consolidated governments and "40 referenda successes").

112. *See IMF Survey: IMF Launches Discussion of Sovereign Debt Restructuring*, INT'L MONETARY FUND (May 23, 2013), <https://www.imf.org/en/News/Articles/2015/09/28/04/53/sopol052313a> [<http://perma.cc/A8HA-TZAV>] (discussing the need to balance flexibility and consistency).

Consolidations, by contrast, often occur precisely because the governments concerned are struggling to maintain this very balance.

Some have criticized proposals for addressing sovereign debt crises as failing to consider the larger environment in which they will be introduced.¹¹³ Whether and how a sovereign state will address its debt depends on who is in charge—the government actors that have the ability to make the changes necessary to pull the sovereign state out of crisis mode.¹¹⁴ Consolidations, which necessarily focus on governmental actors, can provide guidance about how this larger environment might be conceptualized.

Thus, studying the way that consolidations address both economic and governance problems lends a new perspective on what a sovereign debt restructuring can accomplish as well as ideas for effecting lasting change.

III. SPECIFIC INSIGHTS

This Part will discuss some specific insights that can be gleaned from a comparison of city-county consolidations to sovereign debt restructurings. Notably, consolidations shed light on the importance of considering governance changes as part of a restructuring, the role of a framework for sovereign debt restructurings, and the value of amassing political will for significant changes.

A. Governance as a Consideration

The international community has yet to come to an agreement over whether and how a framework could be instituted to address sovereign debt crises.¹¹⁵ City-county consolidations demonstrate that, perhaps, such a framework is not necessary. If a framework is pursued, however, it should be a flexible one, designed to encourage considerations of non-financial aspects of reform, such as governance changes.

As discussed above, a sovereign debt restructuring framework based solely on U.S. bankruptcy law may be overly rigid. Consolidations show that significant governmental structural and financial reform can occur in the absence of an established framework. Although this Article does not take a position on whether a sovereign debt restructuring framework should be adopted or abandoned, it does contend that if a framework for sovereign debt

113. STEPHANIA BONILLA, *ODIOUS DEBT* 107 (2011).

114. *Id.*

115. Skylar Brooks & Lombardi Domenico, *Governing Sovereign Debt Restructuring Through Regulatory Standards*, 6 J. GLOBALIZATION & DEV. 287, 287 (2015).

restructuring is introduced, it should be flexible enough to allow for consideration of governance issues. As consolidations remind us, the governmental and political aspects of reform are just as important as the financial aspects.

Scholars have repeatedly expressed concern about imposing too much rigidity in the sovereign debt restructuring process, and the value of a flexible approach to restructuring sovereign debt is evident from the field. For example, the IMF has stated that it needs flexibility to address sovereign debt restructuring cases because it has to be able to provide large amounts of money quickly in critical situations.¹¹⁶ It is thus difficult to set up a rigid framework for compliance.¹¹⁷ More recently, the United Nations' technical study group report, released in 2017, stresses the importance of using flexibility in approaches to creditor engagement.¹¹⁸ Consolidations support these contentions by demonstrating the value of flexibility and freedom when engaging with complex, multi-faceted governmental entities.

Although a sovereign may resist the idea of forced change to its government, bailout lending policies often have such a coercive effect on sovereign debtors. Lending institutions such as the IMF likely already recognize that financial changes are inextricably linked with governmental structure and policy.

Consolidations illustrate that substantial governmental reform need not occur within the existence of an established framework. This is because state law is used to effectuate a consolidation, and the laws of the fifty United States differ greatly in terms of how a consolidation may be achieved.¹¹⁹ Consolidations thus occur on something akin to an ad hoc basis, resulting in a process that is less formal and less rigid than a municipal bankruptcy.¹²⁰ In contrast, in a bankruptcy, the same basic plan confirmation standards are applied nearly universally to businesses and municipalities alike.¹²¹ These general principles are “not structured for application to . . . specific, complex problems.”¹²² Debtors in bankruptcy are varied in numerous ways in terms

116. *IMF Survey: IMF Launches Discussion of Sovereign Debt Restructuring*, *supra* note 112.

117. *Id.*

118. Benu Schneider, Fin. for Dev. Office, U.N. Dep't of Econ. & Soc. Affairs, *Sovereign Debt Restructuring: Further Improvements in the Market Based Approach*, at 5 (Aug. 30, 2017), http://www.un.org/esa/ffd/wp-content/uploads/2017/09/EGM_sovereign-debt_Technical-study-group-report-30Aug2017.pdf [<https://perma.cc/BWK4-D53B>] (“[M]aintaining maximum flexibility (with an awareness of relevant guidelines) may be more pragmatic and feasible.”).

119. *Cities 101—Consolidations*, *supra* note 8.

120. See Laura N. Coordes, *Formalizing Chapter 9's Experts*, 116 MICH. L. REV. 1249 (2018).

121. *Id.* at 1262

122. *Id.*

of structure, governance, and the legal constraints under which they operate.¹²³ If bankruptcy is too rigid a framework to use as a sovereign debt restructuring model, consolidations, in contrast, offer a demonstration of flexibility and increased capability to address non-financial aspects of reform.

The consolidation process thus has built-in flexibility, and consolidations demonstrate that substantial structural change need not occur under a rigid framework. Just as in the sovereign debt context, “the success or failure of consolidation . . . depends largely on local context” and the decisions policymakers make when implementing needed reforms.¹²⁴

Despite the limitations of a framework, in the sovereign debt restructuring context, a framework of some sort may be valuable for purposes of creditor coordination.¹²⁵ But there is no doubt that a one-size-fits-all approach to sovereign debt restructuring would be too limiting, as each sovereign debtor is unique, and each debtor’s circumstances vary from the next.¹²⁶ Thus, any framework proposed to address sovereign debt restructuring practices should allow the sovereign and its bailout lenders flexibility to address governmental structural reform on a more tailored basis.

Consolidations remind us of the role politics can play in financial reform. Indeed, politics are involved in every governmental debt adjustment or restructuring. Observers have noted that the “politics of sovereign debt restructuring” were direct contributors to the problems that occurred in Greece.¹²⁷ After multiple bailout lenders imposed stringent conditions, Greek citizens endured years of “agonizing austerity.”¹²⁸ In the end, however, the Greek government had a higher debt-to-GDP ratio in 2017 than it did when it received its first bailout in May of 2010.¹²⁹

Greece is a salient lesson that politics cannot be ignored when navigating the world of sovereign debt. After the IMF’s SDRM proposal was rejected in favor of the “contractual approach” preferred by, among others, U.S. Treasury officials, the IMF introduced new lending rules that prohibited

123. *Id.*

124. DAGNEY FAULK ET AL., IND. POLICY REVIEW FOUND., THE EFFECTS OF CITY-COUNTY CONSOLIDATION: A REVIEW OF THE RECENT ACADEMIC LITERATURE 3 (2005), <http://www.in.gov/legislative/interim/committee/2005/committees/prelim/MCCC02.pdf> [<https://perma.cc/UY9T-J8L2>].

125. *See generally* Mooney, *supra* note 36 (advocating for a framework for sovereign debt restructurings).

126. *Id.* at 91–92.

127. Skylar Brooks & Eric Helleiner, *Reforming the Sovereign Debt Regime*, OUPBLOG (Sept. 24, 2017), <https://blog.oup.com/2017/09/reform-sovereign-debt-crisis-regime/> [<https://perma.cc/CPT9-8UUC>].

128. *Id.*

129. *Id.*

it from making significant loans to countries with unsustainable debts.¹³⁰ These lending rules were designed to encourage struggling countries to proactively restructure their debts.¹³¹ Yet, when Greece began its downward spiral in 2010, the IMF simply ignored its own rules and allowed a loan to Greece without requiring a restructuring upfront.¹³² When Greece embarked on its own debt restructuring in 2012, the collective action clauses (CACs) that many had advocated for proved to be largely worthless.¹³³ CACs were either missing or ineffective due to design flaws that holdout creditors could easily exploit.¹³⁴ The example of Greece illustrated that the IMF could simply change its rules when those rules became inconvenient for powerful states. In short, in the sovereign debt context, much work remains to address issues of global financial governance.¹³⁵ Studying city-county consolidations can provide scholars and policymakers with fresh ideas for filling the governance gap.

It is well recognized that reforms to the sovereign debt restructuring process can be hampered by politics. Although efforts to create a multilateral legal framework for sovereign debt restructurings are likely to continue to face “enormous political obstacles,” studying consolidations may lend a fresh perspective to this problem.¹³⁶

In short, debtors—and their lenders—have a demonstrated need for flexibility to deal with the challenges of fiscal distress.¹³⁷ Studying consolidations serves as a reminder of the importance of taking into account a debtor entity’s unique context, leaders, and political environment. Indeed, as explored further below, there is no other route for a consolidation to be achieved.

B. Political Will for Change

Consolidations also illustrate the importance of amassing necessary public and political support to achieve major change. Evidence from the sovereign debt field suggests that externally imposed austerity measures may be neither effective nor justified. In fact, as Greece’s example illustrates, such

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.* (“[T]he quest to fill the ‘gaping hole’ in global financial governance . . . remains a very incomplete project.”).

136. *Id.*

137. Brooks & Domenico, *supra* note 115, at 306–07.

austerity measures may backfire, producing more problems than they resolve. Consolidations, which require the support of the voting public in order to occur, can thus provide insight into how, exactly, public support can be amassed to back significant structural and financial changes. The efforts made to encourage and rally citizens behind a consolidation can be studied to glean techniques that can be used in lieu of the status quo in sovereign debt restructurings.

Imposed austerity has come under significant criticism in recent years.¹³⁸ If debt becomes unsustainable, the austerity measures that may follow as conditions of bailout funding replace the will of the governed in democratic societies.¹³⁹ Austerity does not come without consequences, however, and if a society is opposed to the measures imposed by a bailout lender, the people may resist implementation of these measures in visible ways.¹⁴⁰ Recently, commentators have called for the auditing and democratization of debt in sovereign nations, so that citizens may be informed about the identity of their nation's debt holders and so that they may participate more fully in resolution of any debt-related issues.¹⁴¹ Notably, some proposed frameworks for sovereign debt restructuring mechanisms, such as the Jubilee Framework, actively sought avenues for citizen participation.¹⁴² Yet, using municipal bankruptcy as a model, which in practice does not provide for much room for citizen participation, is not helpful in spurring ideas for how to get citizens involved in a positive way in resolving debt crises. Consolidations, which are built on citizen involvement and reliant on citizen approval, provide insight into how to accomplish this task.

The unilateral imposition of austerity measures onto sovereign debtors has sometimes led to disastrous results. Although it is often difficult to predict public behavior, particularly during an economic crisis, experience has

138. See, e.g., Razmig Keucheyan, *The French Are Right: Tear Up Public Debt—Most of It Is Illegitimate Anyway*, GUARDIAN (June 9, 2014, 12:17 AM), <https://www.theguardian.com/commentis-free/2014/jun/09/french-public-debt-audit-illegitimate-working-class-internationalism> [http://perma.cc/2CZ7-HFUW] (“Debt audits show that austerity is politically motivated to favour social elites.”).

139. *Id.* (“Debt, rather than popular will, is the governing principle of our societies, through the devastating austerity policies implemented in the name of debt reduction.”).

140. *Id.* (“Debt was also a triggering cause of the most innovative social movements [sic] in recent years, the Occupy movement.”).

141. *Id.* (“[D]ebt should be democratised.”).

142. See PETTIFOR, *supra* note 40, at 4 (“Fundamental to the Jubilee Framework is *public participation* in the proceedings of the court, and in the resolution of crises involving public money. Accountability to the electorate of government officials responsible for reckless borrowing in *debtor* nations; and for lax and corrupt lending in *creditor* nations, will, we believe, introduce discipline into the lending and borrowing processes, and challenge corruption.”).

shown that lack of attention to public consequences can lead to dire situations. As discussed previously, the IMF routinely conditions crisis lending on sovereign borrowers' adoption of specific reforms. However, these conditional lending policies are sometimes viewed with suspicion, as illegitimate measures imposed externally and without the knowledge or consent of the sovereign's citizens.¹⁴³

For example, the austerity measures imposed by the Troika as a condition of loans to Greece contributed to lowering GDP, increasing unemployment, and encouraging "talented young people" to leave the country.¹⁴⁴ Some economists argued that austerity measures made little sense in Greece because the Greek economy was already sinking.¹⁴⁵ After the IMF publicly predicted that Greece's predicament would improve as a result of austerity, the IMF lost credibility when the situation worsened.¹⁴⁶ In all, the imposed austerity measures for a time threatened "the stability of the Greek government."¹⁴⁷ Public backlash against the austerity measures and the perceived damage they were inflicting on Greek society was swift and severe.

Sovereign debt restructuring framework proposals often focus on creditors, and indeed, creditors are often powerful players deserving of significant attention.¹⁴⁸ Yet, a sovereign's citizens should not be ignored. If the sovereign fails to account for provision of public services, or if creditors or lenders of last resort ignore or downplay the interests of citizens, a sovereign government's compliance with austerity measures in the future may be jeopardized. Consolidations serve as a reminder of the need for public support for significant changes. Indeed, without such public support, significant structural reforms cannot occur.¹⁴⁹

143. See Susan Block-Lieb, *Austerity, Debt Overhang, and the Design of International Standards on Sovereign, Corporate, and Consumer Debt Restructuring*, 22 *IND. J. GLOBAL LEGAL STUD.* 487, 495 (2015).

144. *Does Austerity Work? Or Does It Make Things Worse?*, KNOWLEDGE@WHARTON (Aug. 19, 2015), <http://knowledge.wharton.upenn.edu/article/does-austerity-work-or-does-it-make-things-worse/> [<https://perma.cc/YW77-HVYL>].

145. *Id.*

146. *Id.*

147. *Id.*

148. See Mooney, *supra* note 36, at 99 (proposing that creditors have the ability to determine whether a restructuring is feasible and in their best interests).

149. Leaving matters in creditors' hands may also not work well because of the rise of distressed debt investors. See, e.g., Mitu Gulati & Mark Weidemaier, *Venezuela's Debt: Is the Game Afoot?*, CREDIT SLIPS (Nov. 17, 2017, 9:42 PM), http://www.creditslips.org/creditslips/2017/11/venezuelas-debt-is-the-game-afoot.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+creditslips%2Ffeed+%28Credit+Slips%29 [<http://perma.cc/BNU9-DNYZ>] (describing the arrival of distressed debt investors to the Venezuela sovereign debt crisis).

Because consolidations require the support of the voting public, they are worthy of further study to identify best practices for building public consensus and support to back a major change. Successful consolidations demonstrate that when significant changes have the support of the public, they can last. By contrast, experience with externally imposed austerity measures as a means to creating long-term sustainable debt levels and in-country stability suggests that reforms imposed without public consent do not often achieve the results their proponents desire.¹⁵⁰

A few examples of successful consolidations illustrate these points. The 1967 consolidation of Jacksonville, Florida, with surrounding Duval County garnered significant citizen support.¹⁵¹ Despite occurring over fifty years ago, the consolidated government has endured quite well, to the point where Jacksonville is still discussed as a success story.¹⁵² Today, the unified Jacksonville-Duval County government is noted for the high quality of its public services, its racially and economically inclusive neighborhoods, and its well-protected natural environments.¹⁵³ Citizens and observers alike are always quick to note that the consolidated government's success is a direct result of "an engaged citizenry that is willing to pay the cost and also with pride enjoy the benefits."¹⁵⁴ In fact, citizens have supported tax increases on multiple occasions in order to support the initiatives of the consolidated government.¹⁵⁵

The 1990 consolidation of Athens, Georgia, with Clarke County is another example of successful structural change occurring due to active solicitation of citizen input. The process of consolidation, or "merger," as it was referred to in Georgia, was initiated and led by "prominent citizens," rather than elected officials.¹⁵⁶ These citizens engaged in extensive efforts, throughout the process, to invite residents "to participate in writing and marketing the new charter."¹⁵⁷ The new, unified government worked off of this charter, which was designed to guarantee fulfillment of promises made by

150. See Block-Lieb, *supra* note 143, at 490 ("[The] commitment to find sustainable sovereign debt levels through policies of austerity faltered.").

151. Milan J. Dluhy, *What Difference Does City-County Consolidation Make? A Historical Analysis of Jacksonville and Tampa, Florida*, CITY-COUNTY CONSOLIDATION: PROMISES MADE, PROMISES KEPT?, *supra* note 5, at 83, 92 (characterizing the vote in favor of consolidation as "overwhelming" and including "all major segments of the Jacksonville community").

152. *Id.* at 99-100 ("People in Jacksonville are proud of the attention their city has received nationally.").

153. *Id.* at 100.

154. *Id.*

155. *Id.*

156. Durning & Sanford, *supra* note 5, at 216.

157. *Id.*

consolidation supporters.¹⁵⁸ Today, the consolidated government has proven more efficient than the previous, separate governments.¹⁵⁹

The examples of Jacksonville and Athens illustrate that putting in the work necessary to garner public support for significant governmental change can produce long-term beneficial effects. Studying the process of consolidations, which is often led by and for citizens, can therefore provide ideas for ways to engage a sovereign nation's citizens in support of significant change.

In providing ideas to engage with the public on a broader scale, consolidations may also help address one of the critical problems in any debt restructuring: timing. In bankruptcy, as well as in a sovereign debt crisis, individuals in a position to act are often hesitant to take proactive measures to address or contain a problem before it reaches crisis levels.¹⁶⁰ But if the "right people"—perhaps a mix of influential citizens and government officials—are involved and motivated, and if a compelling narrative can be created to tout the benefits of any significant action, a crisis may be averted rather than inevitable. In practice, consolidations have sometimes functioned as proactive forms of intervention, meaning that governments have consolidated to prevent or reverse an impending crisis.¹⁶¹ Consolidations may therefore provide insight into how to motivate proactive action in the face of a looming crisis. In this way, consolidations are a counterpoint to the more reactive techniques of bankruptcy and most sovereign debt restructurings.

CONCLUSION

Sovereign debt restructurings are complex, multi-faceted affairs with wide-reaching effects.¹⁶² The aim of this Article is to showcase the myriad aspects and impacts of governmental fiscal distress and to encourage the study of consolidations and other alternative measures of addressing fiscal distress alongside the more traditional responses of municipal bankruptcy and sovereign debt restructurings. Although bankruptcy law, and municipal bankruptcy in particular, is a valuable model for a sovereign debt restructur-

158. *Id.* at 240.

159. *Id.* at 241.

160. See, e.g., Coordes, *supra* note 41, at 1214 (describing this problem in the context of municipal bankruptcy).

161. See, e.g., Susan Keim & Justin Marlowe, *From Company Town to Consolidated Government: The Western-Style Consolidation of Butte and Silver Bow County, Montana*, CITY-COUNTY CONSOLIDATION: PROMISES MADE, PROMISES KEPT?, *supra* note 5, at 161, 161–77 (noting that the city of Butte was "practically bankrupt" and that this motivated the success of the consolidation effort).

162. Block-Lieb, *supra* note 143, at 506 (noting that sovereign debt crises "might have systemic implications").

ing framework, it need not be the primary nor the sole point of focus. Studying the processes and effects of city-county consolidations and other models of structural government reform can help scholars better recognize and address some of the less appreciated aspects of a sovereign debt crisis and restructuring.