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INTRODUCTION

"Hard Numbers vs. House Rules:
Uniformity in the Bankruptcy Code and Its Application"

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I've always thought that good bankruptcy lawyers and good poker players have a lot in common. Both groups are masters of procedures, probabilities, and psychologies. But both also know that the formal rules of their system, whether set down in the Bankruptcy Code or "according to Hoyle," are inevitably supplemented by "house rules" that evolve from the interactions of the players themselves.

In different ways, each of the articles in this Symposium confronts the policy conflicts between standardization and differentiation. As Jean Braucher points out in examining the National Bankruptcy Review Commission's approach to consumer bankruptcy, the lack of bankruptcy uniformity can be attributed in part to the options permitted by and the ambiguous standards set by the Code itself. (The statute's ambiguities are the subject of David Gray Carlson's article on the Code's theory of property and my own analysis of the Code's "fuzzy logic.")

Braucher also discusses the "local cultures" spawned by repeated interactions among the members of the bankruptcy bar and bench in each jurisdiction. In his empirical examination of local legal cultures both in the United States and Europe, Jay Westbrook suggests that the broad discretion apparent in the laws of both areas stems from the drafters' fear that consumers will abuse their right to be discharged from debt. Yet Bruce Markell observes that in the business context the creditors' fear of a debtor's discharge is leading to an emergence of "supply chain financing," quietly creating a separate culture that will be an alternative to traditional business bankruptcies.

Juliet Moringiello agrees with Braucher that a leading cause of divergencies is the incorporation into federal bankruptcy law of the individual states' own rules on bankruptcy exemptions. Similarly, Nancy Rapoport proposes a uniform code of ethics for bankruptcy lawyers to replace the patchwork quilt of states' ethics codes.

No discussion of local legal culture in this context would be complete without mentioning the recent death of Barry Zaretsky of Brooklyn Law School. In many ways Barry shaped the perspectives and insights of his colleagues both in academia and in practice. He will be missed.

FOOTNOTES:

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these articles were prepared. [Back To Tex](#)