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FOREWORD

Over the years, bankruptcy has only intermittently engaged the serious and sustained attention of more than a narrow segment of the legal profession. Its marginality has historically been reflected in the relative spareness of its literature, the modesty of enrollments in its academic course offerings, and the traditional insularity of its practice. Brief flurries of general interest and legislative activity in the area that have largely tracked the troughs of the business cycle have been interspersed with long periods of apparent dormancy. And so it should occasion no great surprise that the last issue of *Law and Contemporary Problems* to treat any aspect of bankruptcy was "Railroad Reorganization," which appeared in the spring of 1940.

Recently, however, bankruptcy seems to have experienced a rejuvenation. The patently obsolete and dysfunctional old Bankruptcy Act was superseded in 1979 by a new Bankruptcy Code that promised more effectively to respond to the needs of the business community to which it was addressed; and the consequent greater appeal of this remedy, coupled with its growing public notoriety and acceptance, has moved bankruptcy out of the backwater and into the mainstream of the nation's commerce and consciousness.

It was in this light that the editorial board of *Law and Contemporary Problems* concluded that bankruptcy, after an almost half-century hiatus, merited a fresh review—not so much to elucidate the more arcane details of the new Code as to explore some of the directions in which the law in this area has been or should be developing. To this end, a conference was planned at the Duke Law School for the spring of 1986, at which a panel of established scholars was invited to present and discuss papers on subjects of broad bankruptcy concern. From this undertaking, this symposium has emerged.

Professor Theodore Eisenberg's paper examines the complex interfacing of bankruptcy and administrative regulation and clarifies the manner in which this interrelationship may both conduce to the economic distress and affect the prospect of successful reorganization of a debtor in a regulated industry. Professor Douglass G. Boshkoff was the principal conference discussant of this paper.

Professor David M. Phillips's paper describes the discordant interplay of two bodies of separate but related law—the Bankruptcy Code and article 9 of the Uniform Commercial Code—and proposes their integration (possibly as a precursor to the federalization of all commercial law) as a means to achieving a greater uniformity and certainty in business transactions. Professor Vern Countryman was the principal conference discussant of this paper.

Professor Raymond T. Nimmer's paper analyzes the amorphous concept of consumer bankruptcy abuse, identifying the several themes that appear generally to define it, and distills an overarching standard that would accommodate the competing policy objectives in this area. Professor Philip Shuchman was the principal conference discussant of this paper.

Professor David Gray Carlson's paper inquires into the uncertain treatment in bankruptcy of "servitudes"—personal obligations that are imposed upon the owners of property owing only to their ownership of that property—and suggests criteria that fairly should govern the foreclosure of these servitudes in the different contextual settings in which this issue has most significantly arisen. Professor Lynn M. Lopucki was the principal conference discussant of this paper.

Professor Douglas M. Baird's paper emphasizes that bankruptcy operates in a larger universe of other rights and duties and argues that these must be appropriately recognized in the formulation of any sound bankruptcy policy. Professor John C. McCoid was the principal conference discussant of this paper.

And finally, Professor Elizabeth Warren's paper, in which Professors Teresa A. Sullivan and Jay Lawrence Westbrook have collaborated, explains the reasons why empirical research has in the past figured only peripherally in the development of bankruptcy policy and describes how such research could play a more central and valuable role in the future. Professor Marjorie Girth was the principal conference discussant of this paper.

The current high level of interest in bankruptcy—professional and otherwise—shows no sign of imminent abatement. Accordingly, it is fair to assume that this symposium will not be this journal's last word on the subject, but rather that *Law and Contemporary Problems* will again come full circle and revisit bankruptcy—and probably well before the lapse of the next half century.

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