Public-Private Partnerships and Bankruptcy Policy: A Comparative Analysis of the U.S. and Europe

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4th Annual International Public-Private Partnership (P3) Symposium

New York City

September 14-16, 2015

Presentation Outline

- Introduction
- Scope of the presentation
- Methodology
- Relevance of bankruptcy legislation
- Case studies
- Discussion
- Conclusions and Q&A

Introduction

Hypothesis

- U.S. bankruptcy framework (law and practices) is the key to protecting the government and the public in the case of P3 bankruptcies.

Questions

- What are the similarities and differences in the experiences of surface transportation P3 bankruptcies in the U.S. and Europe?
- Is the U.S. bankruptcy legal framework potentially better at protecting the government and the public in the case of P3 bankruptcies?

Scope: Understanding Bankruptcy

Default

- Situation when the SPV stops paying its debt service
- If the firm continues in this situation it may lead to two potential outcomes: debt restructuring or foreclosure

Debt restructuring

- When, after debt service is not paid, the debtor acts to pay debt, through the selling of assets or through the restructuring of the debt.

Foreclosure or liquidation

- When, after debt service is not paid, the lender acts to sell the asset to receive its money back.

Scope of Presentation: Focus and Limitations

Focus

- Bankruptcy procedures
  - Debt restructuring
  - Foreclosure or liquidation

Some limitations

- Preventive actions before bankruptcy
  - Government bailout before bankruptcy is filed
  - Debt restructuring before bankruptcy is filed

Relevance of bankruptcy legislation (1)

First, the legal framework

- Common law, compared to civil law
  - Less formal judicial procedures and more judicial independence
  - Better contract enforcement
  - Better security of property rights

	Common Law	Civil Law
Countries	UK, US, Canada, Australia, India, South Africa	France, Luxembourg, Portugal, Spain, Swiss cantons, former Portugal and Spanish colonies
Dispute resolution	Dispute resolving What do the parties want?	Policy-implementing What does the State want?

Relevance of bankruptcy legislation (2)

Second, the bankruptcy framework

- Debt restructuring
  - Judge approves a plan that has been approved by the company and the minimum amount of creditors
- Foreclosure
  - The company or its assets are auctioned

	Debt restructure	Payment to creditors
Countries	US	European tradition (UK and the Continent) until 1987 Slow convergence with the US
Implications	Firm continues delivering services Potential recovery in the long-term of some of the losses	Firm is liquidated Losses are completely realized in the short-term

Relevance of bankruptcy legislation (3)

Predictions and P3 bankruptcy scenarios

- Expected findings from P3 bankruptcy cases:
  - Common law: higher proportion of bankruptcy cases with low or no government involvement
  - Common law: higher level of adaptability to changing socioeconomic conditions in common law countries
  - US: higher proportion of bankruptcies going through debt restructuring

Methodology

Data Source

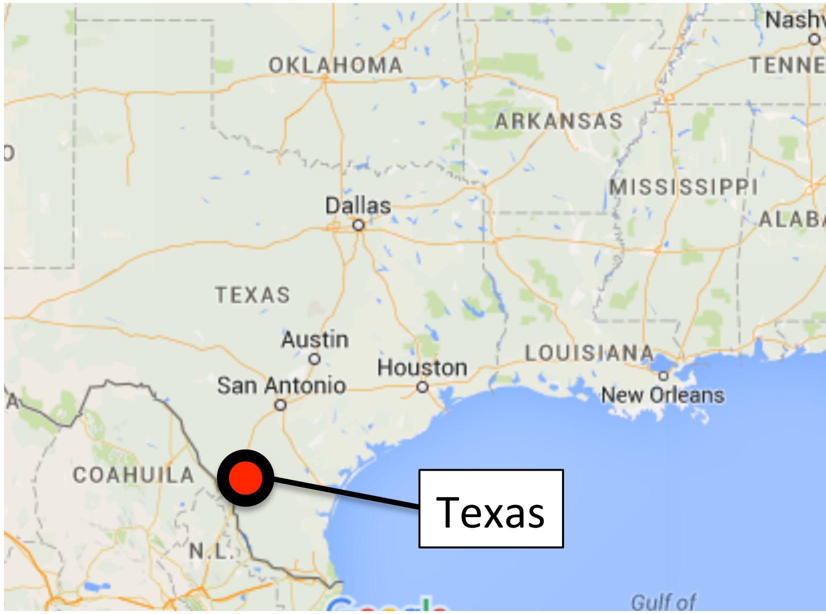
- The Public Works Financing Database was used as a primary source to identify Highway P3 projects that filed for bankruptcy

Case Selection Criteria

- Top eleven European countries, per total amount of invested were selected
- Keyword searches for terms like “bankruptcy,” “insolvency,” and “safeguard”
- Resulting cases: 3 European countries (UK, France, Spain) and 6 U.S. states that had experienced with P3s filing for bankruptcy between 2004 and 2014

U.S. Case 1 – Camino Columbia Bypass

Operation began:	2000
Revenue source	Tolls
Contract type	DBFOM
Original cost	$85 million
Project attribute	21-mile road
Year bankruptcy filed	2004
Bankruptcy filer	John Hancock Life Insurance and New York Life Insurance
Law	Texas Property Code Title 5



In brief: causes & aftermath of bankruptcy

- Cause: Demand lower than projected
- Actions: Sold in auction for $12 million to John Hancock Financial Services Inc.
- Current Status:
  - Toll road is open
  - New owner holds-up TxDOT and gets $20 million for selling the road
  - Road is currently managed publicly by TxDOT

U.S. Case 2 – Las Vegas Monorail

Operation began:	2000
Revenue source	Fare
Contract type	DB/Equip+O&M
Original cost	$650 million
Project attribute	3.9-mile elevated dual-guideway monorail
Year bankruptcy filed	2012
Bankruptcy filer	Las Vegas Monorail Corp.
Law	U.S. Bankruptcy Code Chapter 11

In brief: causes & aftermath of bankruptcy

- Cause:
  - Demand lower than projected--Demand drops due to the Great Recession
  - No-skin-in-the-game (63-20 nonprofit corporation)
- Actions: Reorganization plan approved in May 2012
- Current Status:
  - Monorail is open
  - Toll is restructured and debt reduced to $13 million

U.S. Case 3 – Southern Connector

Operation began:	2001
Revenue source	Tolls
Contract type	DBF
Original cost	$191 million
Project attribute	16-mile road
Year bankruptcy filed	2010
Bankruptcy filer	Connector 2000 Association
Law	U.S. Bankruptcy Code Chapter 9

In brief: causes & aftermath of bankruptcy

- Cause:
  - Demand lower than projected--Demand drops during Great Recession
  - No-skin-in-the-game (63-20 nonprofit corporation)
- Actions: Reorganization plan approved in Aug. 2012
- Current Status:
  - Toll road is open
  - Debt is restructured
  - The $200 million bonds are replaced with a new issue of $150 million bonds
  - Tolls are increased

U.S. Case 4 – South Bay Expressway (SBX)

Operation began:	2007
Revenue source	Tolls
Contract type	DBFOM
Original cost	$635 million
Project attribute	9.2-mile road
Year bankruptcy filed	2010
Bankruptcy filer	California Transportation Ventures, Inc.
Law	U.S. Bankruptcy Code Chapter 11

In brief: causes & aftermath of bankruptcy

- Cause:
  - Environmental permit delay
  - Community opposition
  - Demand lower than projected--Demand drops due to the Great Recession
- Actions: Purchased by San Diego Association of Governments for $341.5m in Dec. 2011
- Current Status: Toll road is open; tolls were decreased

U.S. Case 5 – Foley Beach Expressway

Operation began:	1999
Revenue source	Tolls
Contract type	DBFOM
Original cost	$44 million
Project attribute	1-mile bridge + 5 mile road
Year bankruptcy filed	2013
Bankruptcy filer	American Roads, LLC
Law	U.S. Bankruptcy Code Chapter 11

In brief: causes & aftermath of bankruptcy

- Cause:
  - Demand lower than projected--Demand drops due to the Great Recession
  - Parent company went bankrupt as the City of Detroit filed for chapter 9 bankruptcy, where it operated a tunnel.
- Actions: American Roads LLC changes hands, from Alinda Capital Partners to Syncora, Alinda´s major creditor, under allegations of fraudulent traffic and revenue studies
- Current Status: Toll road is open

U.S. Case 6 – Indiana Toll Road (ITR)

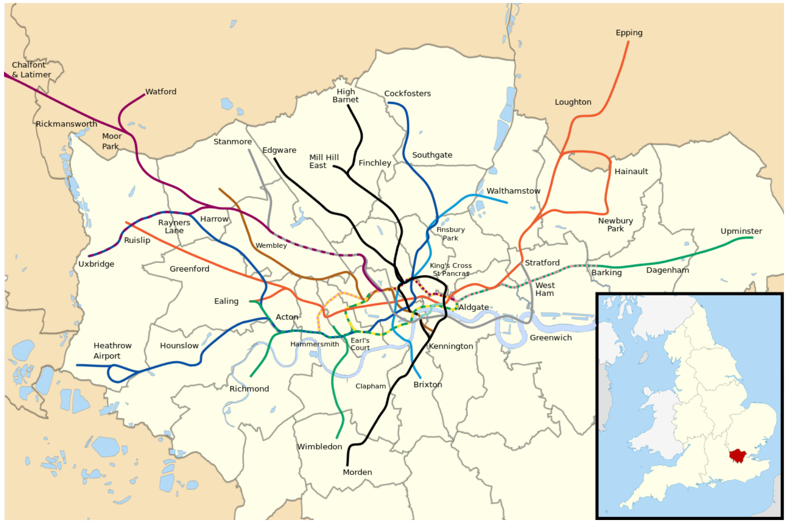
Operation began:	2006
Revenue source	Tolls
Contract type	DBFOM + OM
Original cost	$3.8 billion
Project attribute	157-mile road
Year bankruptcy filed	2014
Bankruptcy filer	ITR Concession Co. LLC
Law	U.S. Bankruptcy Code Chapter 11

In brief: causes & aftermath of bankruptcy

- Cause:
  - Great recession decreases interest rates playing against interest-rate swaps
  - Demand lower than projected--Demand drops during Great Recession
- Actions: Purchased by IFM Investors for $5.72b in March 2015
- Current Status: Toll road is open

UK Case – London Underground Infrastructure

Operation began:	2003
Revenue source	Performance based contract
Contract type	Concession (Finance and Maintain)
Original cost	$ 4,816 million (£2,950 million)
Project attribute	Maintenance and upgrading of 4 tube lines and 5 sub-surface lines
Year bankruptcy filed	2007
Bankruptcy filer	Metronet BCV Ltd and Metronet SSL Ltd
Law	U.K. Insolvency Act 1986



In brief: causes & aftermath of bankruptcy

- Cause: Deficient management; Cost overruns
- Actions:
  - Ernst & Young handles the administration of Metronet
  - Transport for London guaranteed 95% of the debt
  - UK government paid £1.7 billion in debt in 2008.
- Current Status: Responsibilities are back under the control of Transport for London

France Case – Channel Tunnel

Operation began:	1994
Revenue source	Fare
Contract type	Concession
Original cost	$15.5 billion
Project attribute	31-mile tunnel (pax/freight rail and car shuttle train) connecting England and France
Year bankruptcy filed	2006
Bankruptcy filer	Eurotunnel
Law	France Insolvency Law (Law No. 2005-845)

In brief: causes & aftermath of bankruptcy

- Cause:
  - Cost overruns (from $10 billion to $17.5 billion)
  - Demand lower than projected
  - Growing competition
- Actions: 87% of ownership is transferred to lenders in exchange for halving debt; Debt is slashed from £6.2 billion down to £2.9 billion.
- Current Status: Tunnel is open; After the restructuring plan, the company in charge is Groupe Eurotunnel

Spain Cases

	A-70 Circunvalación de Alicante	AP-7 Alicante-Cartagena	AP-7 Cartagena-Vera	AP-41 Madrid-Toledo
Operation began:	2007	2001	2007	2007
Revenue source	Tolls	Tolls	Tolls	
Contract type	n/a	n/a	Concession	Concession
Original cost	$612 million	$234 million	$779 million	$720 million
Project attribute	21-mile road	48-mile road	71-mile road / 3 tunnels	50-mile (tolled) road +13-mile (free) road
Year bankruptcy filed	2013	2013	2013	2012
Bankruptcy filer	Concessionaire	Concessionaire	Concessionaire	Concessionaire
Law	Spain Bankruptcy Law (Law 22/2003) – After the 2014 reforms			

In brief: causes & aftermath of bankruptcy

- Main Cause: Demand lower than projected--Demand drops due to the Great Recession
- Actions: Bankruptcy law is reformed.
- Current Status:
  - Government proposal still under judicial review
  - Different bankrupted P3 road projects are grouped. Their debt is halved. A state-owned enterprise is created, to absorb roads and issues bonds to pay to lenders

Spain Cases

	Radial 2 Madrid-Guadalajara	Radial 3 Madrid-Arganda / Radial 5 Madrid-Navalcarnero	Radial 4 Madrid-Ocaña	M12 Eje Aeropuerto
Operation began:	2003	2004	2004	2005
Revenue source	Tolls	Tolls	Tolls	Tolls
Contract type	DBFOM	Concession	DBFOM	BOT
Original cost	$900 million	$1.2 billion	$1.094 billion	$600 million
Project attribute	55-mile road	58-mile (tolled) road + 13-mile (free) road	61-mile (tolled) road + 25-mile (free) road	5-mile (tolled) road + 11-mile (free) road
Year bankruptcy filed	2013	2012	2012	2013
Bankruptcy filer	Concessionaire	Concessionaire	Concessionaire	Concessionaire
Law	Spain Bankruptcy Law (Law 22/2003) – After the 2014 reforms			

In brief: causes & aftermath of bankruptcy

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Spain Case 2 – AP-36 Ocaña-La Roda

Operation began:	2006
Revenue source	Tolls
Contract type	DBFO
Original cost	$806 million (USD)
Project attribute	73-mile (tolled) road + 37-mile (untolled) road
Year bankruptcy filed	2012
Bankruptcy filer	Inversora de Autopistas de Levante y Autopista Madrid Levante
Law	Spain Bankruptcy Law (Law 22/2003) – After the 2014 reforms

In brief: causes & aftermath of bankruptcy

- Cause:
  - Expropriation costs
  - Demand lower than projected--Demand drops due to the Great Recession
- Actions: Bankruptcy law is reformed.
- Current Status:
  - Judge rejects government proposal (mentioned above)
  - Judge mandates to liquidate concessionaires

Analysis – Lessons learned from P3 bankruptcy

Common themes

- Overestimation of future demand in most projects
- Most bankruptcies occurred between 2004 and 2014
  - Period of low interest rates and thus lower cost of capital

Differences

- Creditor compensation: UK and Spain (expected)
  - Government debt guarantee main culprit
  - Lower interest rates, but high cost if bankruptcy occurs
- France and U.S. did not bailout creditors
  - Merits of Chapter 11 and the Safeguard provision
- US exception
  - Camino-Colombia foreclosure and holdup

Analysis – Why only one foreclosure in the US?

Potential explanations

- It was the first P3 bankruptcy in the US
- The fiscal and political outcomes were negative
- Chapter 11 is available for other P3s and there is experience using it
- SPV has the incentive to use it
  - Managers may not lose their Jobs
  - For future employers, a manger dealing with restructuring debt is more attractive tan a manager dealing with foreclosure

Conclusion

Goal

- To understand the similarities and differences in surface transportation P3 bankruptcies across the Atlantic

Findings

- The cases support the relevance of bankruptcy laws that favor the continuous operation of the firm through debt restructuring
- European countries have started to incorporate legal frameworks that mimic Chapter 11
- Debt guarantees may lower interest rates but they increase the fiscal cost of bankruptcy

Center for Transportation Public-Private Partnership Policy
George Mason University

Expanding the evidence base, enhancing agency capacity, educating the workforce and community about P3s

For more information:

Visit us at: p3policy.gmu.edu

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