The major questions facing bankruptcy scholars and policymakers likely include these: (i) Should bankruptcy judges or the Code impose additional constraints on 363 sales in order to prevent fire sales? (ii) Can the Chapter 11 process be made less vulnerable to hold-up and destabilizing shifts in creditor identities and alliances? (3) Will ongoing changes in financial market and bank regulation affect the dynamics in bankruptcy cases?

For us at this conference, however, the major question is this: Can we develop convincing tests (“identification strategies”) that permit causal claims about the effects of capital structure, the Code, judicial discretion, or market developments on bankruptcy dynamics? I have begun thinking about identification strategies with respect to question (3) above.

(1) Bank Regulation and Creditor Control: Practitioners hypothesize that changes in bank regulation during the late 1980s and early 1990s caused important change in bank behavior during large corporate Chapter 11s. Following the Savings and Loan crisis, the federal government imposed new, more stringent capital requirements and accounting rules on banks (e.g., FIRREA). I have been told that the new regulations—some of which forced banks to accelerate recognition of loan losses—made banks substantially less willing to cooperate with a distressed debtor during a Chapter 11 case. Because the regulatory changes can be dated with precision, and because some institutional lenders may have been unaffected by the regulatory changes (e.g., investment banks), it seems possible to test a causal relationship between bank regulation and bankruptcy outcomes.

(2) Bank Liquidity and Bankruptcy Filings: During the early 2000s, defaults by Enron and Worldcom were unexpected shocks to the liquidity of their lending banks (“exposed banks”). Lin and Paravasini (2010) find that the Enron/Worldcom defaults caused exposed banks to reduce lending (through syndicated loans) by 25 percent. This finding points to the possibility of a contagion effect by which defaults by one debtor can destabilize other debtors. Exposed banks provide the pathway of contagion. It would be interesting to test whether the Enron/Worldcom defaults triggered distress in other large corporations or, more likely, in small businesses with close relationships to (branches of) the exposed banks. Because the defaults can be dated with precision, and because some but not all commercial banks were exposed to the Enron/Worldcom defaults, it seems possible to test a causal relationship here.

(3) Financial Derivatives and Bankruptcy: Financial derivatives are thought to alter both the probability of a bankruptcy filing and case outcomes. Bolton and Oehmke (2010), for example, show that CDS contracts provide a means by which lenders can credibly commit not to restructure debt in the event of a (possibly strategic) default. This suggests that, when CDS have been written on particular debtors, those debtors are more likely to file for bankruptcy (rather than achieve a workout) in the event of distress. Other scholars, particularly legal scholars, have stressed the opportunities for debtors to structure ordinary loans or supply agreements as “financial contracts” that benefit from the Code’s safe harbors. When debtors do this, they may obtain credit on more favorable terms, but undermine their ability to reorganize in the event of distress. It would be interesting—to academics and policymakers—to know whether financial contracts have these hypothesized effects on filing probabilities and case outcomes. I am still thinking about possible identification strategies.