



LEGAL STUDIES AND BUSINESS ETHICS
SPEAKER SERIES PRESENTS

“THE JANUS FACES OF REORGANIZATION LAW”



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The Supreme Court’s judgment last Term in *Czyzewski v. Jevic Holding Corporation* exposes a curious fact about modern reorganization law. In large measure, two distinctive paradigms now color interpretation of the Bankruptcy Code. One paradigm governs during the early stages of a case and is oriented toward the importance of debtor and judicial discretion to use estate assets for the general welfare. The other paradigm governs a bankruptcy’s conclusion and is oriented toward the sanctity of creditors’ bargained-for distributional entitlements. In combination, they produce practical uncertainty as well as what appears to be policy incoherence. After identifying the Janus faces of reorganization law, this essay explores their significance for modern bankruptcy practice and theory. Most strikingly, it argues that, under the conditions of modern corporate finance, the two paradigms might actually cohere in service of a more general norm of investor wealth maximization. What appear on one level of analysis to be contradictory postures may prove, upon reflection, to be but two faces of a single god.

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