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REVIEWS

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REVIEWS


The law of corporate reorganizations is outstanding among those legal fields in which flourish new ideas, new controversies, new growths, new problems, new solutions. To write a treatise purporting to cover its beginnings, evolutions, and frontiers, its practice and theory, requires high courage; to succeed as have Moore and Oglebay in these volumes requires, in addition, such scholarly ability and legal insight as are seldom found.

Corporate reorganizations originated in the ingenuity of those lawyers and judges who, late in the last century, evolved the consent receivership from the unsatisfied judgment creditor's suit in equity as a means of preventing the dismemberment by creditors of bankrupt American railroads. Use of the equity receivership, an alternative far preferable in most cases to liquidation, later spread to ordinary business corporations. Nevertheless, like most Topsy-grown methods, reorganizations by receivership suffered grave defects: procedures and theory were cumbersome and indirect; courts were either hampered by or were indifferent to a lack of control over essential parts of the reorganization process; and consequently, abuses were numerous and varied.1 The limitations of the equity receivership as a vehicle for preserving going-concern values became so evident in the rush of corporate failures following 1929 that in 1933 Congress enacted Section 77 of the Bankruptcy Act for railroads and in 1934 Section 77B for business corporations. Both statutes sought to provide a comprehensive procedure for efficient and equitable reorganizations. In operation, however, Section 77B proved inadequate to the task, and in 1938 Chapter X of the Bankruptcy Act, though retaining the basic patterns of Section 77B, replaced it as a revised, amplified and improved means of reorganization.

The authors properly view Chapter X both in its historical setting as an effect of preceding causes, more economic than legal, and in its legal setting as a complex statute to be construed with the aid of all available tools.2 Their approach is section-wise, rather than according to topics. They state each section's derivation, its relation to other parts of the act, and then pro-

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1. While the equity receivership's faults cannot be minimized, see New England Coal & Coke Co. v. Rutland R.R., 143 F.2d 179 (C.C.A.2d 1944), the success attained by using a legal form designed for a purpose entirely different from reorganization is remarkable. Such improvised methods of reorganization are disparagingly called "versions of the 'one hoss shay'" by the authors of the volume under review. See p. 25. It must be remembered, however, that the one hoss shay "was built in such a logical way it ran a hundred years to a day."

2. See Frankfurter, Some Reflections on the Reading of Statutes, 47 Col. L. Rev. 527 (1947).
ceed to analyze with particularity its terms. This sectional method necessitates
in some instances much cross-referencing in order for one fully to grasp a topic,
but repetition or synopsis of material placed elsewhere is used to mitigate the
difficulty, especially when dealing with major subjects, such as jurisdiction. 8

Moore's predilection for the procedural point of view 4 and its concomitant,
practicability, is felt throughout the work. Theoretical discussion is always
tied to purposes and results, 5 and concepts never gain sufficient altitude to
cause either authors or readers, in craning their necks, to forget their feet.
The cases, for example, are usually analyzed in terms of their facts and hold-
ings rather than the legal reasoning linking the two. Only rarely, such as
when discussing the effects of corporate dissolution upon a debtor's capacity
to petition for reorganization, 6 do the authors do more than distill a case to
its practical meaning and apply it as a logical premise toward a practical end.
This is a virtue to the reader, however, for the method of Chapter X reor-
ganizations is thus explained with utmost clarity and precision, undisturbed
by flights up spiral staircases. In fact it would be impossible to do more
than this in view of the broad scope of subject matter and the necessity of
keeping the book's length within bounds. 7

The positions taken and maintained by Moore and Oglebay demonstrate
their more than intimate knowledge of the statute and the interpretations so
far made by the courts. When courts have apparently strayed, the authors do
not hesitate to act shepherd, although the decisions of the Second Circuit
and the positions adopted in these volumes are notably inter-harmonious. Sim-
ilarly, as to problems which have not yet been presented to the courts, but may
well be anticipated, Moore and Oglebay offer guiding views, a valuable charac-
teristic usually found only in larger works of more leisurely pace. 8

This is a book for practitioners and scholars alike. It is clearly the most
important work on Chapter X at the present time, and it will prove increas-
ingly valuable as the law of corporate reorganizations continues to expand.
Need for such a body of law comes to us as part of the era of corporations:
some business entities may fail and be dismissed without loss; others may
fail, but because of their economic worth must be sustained and preserved.
This treatise is an indispensable aid to performing that function.

John Gerdes†

5. See, e.g., pp. 2879-89.
7. The 5837 pages stated at the head of this review to be the length of the book
need not frighten potential readers; there are sizeable gaps in pagination, some two or
three hundred pages long, to enable later insertions into the text.
8. Such as Paul and Mertens, Federal Income Taxation (1934); Wigmore,
Evidence (3d ed. 1940); Williston, Contracts (rev. ed. 1936).
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Judge Charles E. Clark's book on Code Pleading, published in 1928, has become a classic of its kind. The new and revised edition will be eagerly welcomed by the legal profession.

I never thought it could be said that a book on code pleading would make enjoyable reading. I do not venture to go as far as Baron Parke who, when a legal friend of his was ill, went to his bedside, taking with him a special demurrer which had been submitted to him. It was so exquisitely drawn, Baron Parke said, that he felt sure it must cheer the patient to read it. What I do say is that those who take up Judge Clark's book will find they have never learned so much about a subject so agreeably.

True, pleading today hardly occupies the unique position it did in England when Tidd, the great Special Pleader of his time, wrote his magnum opus and when budding barristers competed and paid well for the privilege of being initiated into the mysteries of the art in his chambers. Today interest in pleading is no longer confined to a small group of specialists. Much of the abracadabra has been cleared away. However, although an error in pleading may no longer be fatal as it was at common law, the subject is still greatly misunderstood, and it is still enveloped in many misconceptions, some of which are traceable to inadequate and obsolete methods of instruction.

The second edition of Judge Clark's textbook was long overdue. As the author says in his Preface to the new volume:

"A second edition of this book has been made imperative by the quite amazing resurgence of interest in pleading and procedure which has had a profound effect upon procedural ideas and objectives in practically all American jurisdictions, culminating in the complete reform of civil practice in the courts of the United States and of several of the states."

Though the general outline of his book has not been greatly changed, the old edition has been thoroughly revised and brought completely up to date. It is really a remarkable book—one not only to read, but one to keep and to study. If I had to limit myself to a single volume on code pleading, this is the book I should choose. Indeed, I consider it indispensable to student, teacher, practicing lawyer, judge and reformer. This is a very broad assertion but I have no hesitancy in making it.

The editors of Maitland's Lectures on Equity are reported to have said that after hearing them, "equity, in our minds a formless mystery, became intelligible and interesting." It would be no exaggeration to make the same observa-
tion about Judge Clark's treatise. Within the compass of a single volume of some 750 pages it presents comprehensively, clearly, concisely and accurately the present-day principles and rules of code pleading in the various jurisdictions, their evolutionary history and background, new developments and trends and suggestions for improvement and reform.

The book is well produced, has large clear type and contains an extensive table of cases and a helpful index which is skillfully prepared. The leading cases in the various jurisdictions are considered and analyzed, and the authorities are collated in the notes, which are most detailed and comprehensive. An invaluable feature of the book is the reference to pertinent articles in the legal periodicals. The importance of these law review articles, many of them trail-blazers in the field, can hardly be over-emphasized. Much time and effort went into the research involved and Judge Clark gives full credit to the two young lawyers who assisted him in this work.

Despite the compression necessary to cover the material within the limits of a single, compact volume, the subject matter is presented in a lucid, attractive and authoritative manner. Complicated propositions are treated with astonishing ease and clarity. Brevity is sometimes baffling, but a master of his subject (and Judge Clark has given a lifetime of study to it) attains conciseness without yielding to generalization and ambiguity. One marvels at the skill with which the salient points are often crystallized in a single, simple sentence. A captious critic might regret the failure to expand certain of the more economically expressed passages, but the great merit of the book is that it does not purport to be encyclopaedic in character. True, for the active practitioner, it might be well to supplement it with a form book, as Judge Clark himself suggests, or with a book on local practice and procedure such as, for example, the new edition of Carmody's Manual of New York Civil Practice by Carr, Finn and Saxe. In the last analysis, however, and in spite of minor variations of local practice, the basic problems of code pleading remain the same.

Modern code pleading may be said to date from the enactment of the Field Code in New York in 1848. The most distinctive reform effected by the Field Code was that "relating to the abolition of the common law forms of action and to the union of legal and equitable remedies in a common system," with provision for a single form of action, "the civil action of the code." Notwithstanding this great reform, it is most discouraging, as Judge Clark so trenchantly points out, that one hundred years later we still find cases in New York which throw a suitor out of court because he has mistaken his remedy and has sued in equity when he should have sued at law.

All of us would sympathize with Judge Clark's plaint that after a century of pleading reform, lawyers and judges are still engaged in the vain task of distinguishing between allegations of fact, law and evidence. Even here Judge Clark does not seek refuge in sweeping generalizations but grasps the nettle firmly and makes a helpful analysis of the cases.

It is to be expected that there will be differences of opinion concerning
some of the views expressed by Judge Clark. For example, it may be urged that perhaps he states the rule too broadly when he says that the adequacy of another remedy does not bar an action for a declaratory judgment. It is so provided in the Federal Rules and the cases in other jurisdictions seem to uphold that view. The true question, it would seem, is whether the other remedy is really adequate for the party seeking relief, and if so, the court in the proper exercise of its discretion should not entertain the action for declaratory judgment.

Again, some will believe that his stricture on the use of bills of particulars in New York and the method of obtaining them, particularly in negligence cases, is much too severe. My own experience has been that the rules on this subject have had beneficial results (New York Rules of Civil Practice, 115–117). Of course Judge Clark’s emphasis on the broad use of discovery, as it is permitted under the English and the Federal Rules, tends to minimize the importance and perhaps the necessity of bills of particulars. But under the procedural law of New York, as it stands at present, the bill of particulars has an essential place.

In the course of years, Judge Clark has developed an attitude towards pleading which might well be called a philosophy of pleading. There is, however, nothing of the dogmatic doctrinaire about him. He waves a friendly hand at what he calls “notice pleading,” which is in general a very brief statement giving some facts, presenting a very broad issue and designed merely to give notice of the claim to the opponent. At the same time he is careful to point out that “it is perhaps doubtful if we are now prepared to go to the complete lengths of brevity urged by the proponents of notice pleading, except in isolated cases. But without so doing,” Judge Clark says, “we may properly put the emphasis where they do. This, it seems, is in effect the modern tendency. The aim of pleadings should be therefore to give reasonable notice of the pleader’s case to the opponent and to the court. This does not go as far as the technical notice pleading, since it requires notice of the pleader’s entire cause, not merely that he has a claim.”

Some may not prefer “notice pleading,” as distinguished from “fact pleading,” but we bear in mind Judge Clark’s “prophetic alignment with tendencies which have become increasingly dominant” in this field of the law.

Judge Clark is a firm believer in the principle that a party coming to trial should not be taken by surprise and he has no sympathy with the American fear and distrust of disclosure before trial. The English rules on this point were substantially adopted in the revision of our Federal Rules of Civil Practice, in the formulation of which Judge Clark played so large a part, as member and reporter of the committee appointed by the Supreme Court of the United States.

He urges the value of pre-trial procedure as it is employed under the English and under the new Federal Rules. Surprisingly enough, that procedure is

2. P. 57.
not resorted to in the New York Supreme Court, First Judicial District, where it is especially needed because of the congested jury calendars. And, finally, he emphasizes the importance of placing the rule-making power, with respect to pleading and procedure, in the hands of the judges, as is done in England and under the federal practice. In New York we have endeavored to obtain legislation to give this rule-making power to the Court of Appeals, where it properly belongs. The effort thus far has been unsuccessful, but it is the right thing to do and it is bound to come.

This book is the rich product of Judge Clark's broad experience and deep concern with problems of pleading. His many pioneering and penetrating articles on various phases of that subject have exercised a formative influence on the development of that important branch of the law. With necessary revisions at regular intervals, this textbook will stand as the authoritative work of reference on the subject; it will serve as an accurate, helpful, practical guide to the existing law. It will also stimulate an interest in pleading and intelligent, enlightened procedural reform. It will do much to help improve the administration of justice.

BERNARD L. SHIENTAG†


THOMAS ERSKINE is usually rated as the most accomplished advocate before a jury ever to appear in the British or American bar. The lawyers and historians, who do not often agree on interpretations of history, are generally agreed on this. Erskine was a younger son of the Earl of Buchan, a Scotch noble of long lineage but short purse. He was born in Edinburgh and lived in the period of Sheridan, the younger Pitt, Jefferson, Madison and Marshall. He was born as the French and Indian Wars began and he lived to see Napoleon rise and fall.

He entered the bar late, when twenty-eight years old, after many years as a very junior officer in both the navy and army of Britain. He managed, however, to meet the costs of two years at Cambridge and a contemporaneous three years' enrollment in Lincoln's Inn, in spite of having a family to support and no fortune. Erskine rocketed to prominence in the bar almost at once.

It happened that a libel case involving the treatment of naval veterans was in the public eye. Erskine by chance fell in with the defendant, impressed him with his enthusiasm and knowledge of the position of sailors and was employed as one of the counsel. This accident accelerated his career but Erskine

† Justice of the Appellate Division, State of New York, First Department.
was, of course, freighted with success. He had been writing since childhood, was a tireless reader of Shakespeare and Milton and was used to discussing public affairs. He was soon out of debt, and earning $50,000 a year. The fees of his whole career totalled nearly a million dollars, a sum previously unknown in London. He was not a precise lawyer or indeed a legal scholar at all; practically the whole of his work was before juries at the King's Bench. Except in his late years, when he served briefly as Lord Chancellor, he had little to do with appeal cases and less with equity. His own recognition of this is shown by the curious motto he chose for his coat-of-arms when given a peerage—"Trial by Jury."

Erskine's practice was predominantly in three types of common law trials, namely, criminal cases, adultery charges (then politely phrased as "criminal conversation") and commercial questions. In the last named class, he played a large part in Lord Mansfield's famous adoption of commercial custom into the common law. The adultery cases made his material fortune, but the criminal cases made his fame and left us in print a large number of jury addresses which remain today among the finest models in any language of the advocate's art. Erskine's career is notably free from suspicions of trickery which so often shadow the life of the advocate. In spite of years in Parliament his political activities were not of much consequence, and his Chancellorship was so short it left little impression. Our hero was a specialist in talking to twelve men in a box.

In the book before us, Mr. Stryker, himself a well known New York advocate, has chosen to pick out one strand in the cord of Erskine's life and use it as a thread on which to string many bright beads of London history and London personalities. His book depicts Erskine almost exclusively as the knight errant of free speech in England, particularly during the years when the younger Pitt was trying to suppress all expression of sympathy for revolutionary France. Then was a period appallingly like our own, for Britain was seeing in the French Revolution and Napoleon not only all the hostility and danger we see recently in Soviet Russia but also the same sort of effort by a foreign enemy to undermine a nation from within. Erskine's service as a defender of men, mostly of good will, who had a word to say for the merits of the French Revolution, is a legitimate side of his life to select and exploit. The theme rolls smoothly in today's current of public philosophy which gets much comfort out of defending freedom of expression, when other checks on arbitrary government are weakening. The result is not a rounded life of Erskine, but an account of one role woven into a texture of pleasant digressions into the story of his times and friends.

There have been many biographies of Erskine, perhaps as many as of any lawyer in English history. None have been widely read. The full account of a professional specialist, even one with a famous clientele, is of interest mostly to readers who work with the same tools. Mr. Stryker might have written a skillful and analytical account of the advocate's professional meth-
ods. Some of us who are fascinated by such figures as Erskine, William Pinkney, Luther Martin, Joseph Choate and other histrionic lawyers might have enjoyed such a book. He has instead written a pleasant and discursive book in which George III, George IV, Beau Brummell, Queen Caroline, Napoleon, Tom Paine and other entertaining people emerge almost as carefully depicted as Erskine himself.

A number of his trials are described, sometimes with license for imagination now granted popular biographers, but so far as this reviewer's knowledge goes, never unfaithfully. The case already mentioned as Erskine's first chance (King v. Baillie)\(^1\) is succeeded by accounts of the court martial of Admiral Keppel, and then the defense of Lord Gordon for his part in the terrible Gordon Riots. In both Erskine successfully defended. He entered Parliament but historians agree he was strangely ineffective in that forum. In 1784 he defended the well-known case against the Dean of St. Asaph, which led nearly a decade later to Fox's libel law, giving the jury at last the right to pass on the question of the libel itself, and not merely on its publication.

The book goes on to give a brief account of the Stockdale libel case which arose out of Warren Hastings' long prosecution. We are then carried off into French events and to Erskine's attempt to defend the circulation of Tom Paine's Rights of Man. The trial of Frost for sedition and of the "Morning Chronicle" for circulating criticism of the government, of Walker and of the shoemaker Hardy, all are recounted as all were part of the same official effort to suppress criticism colored by events of the French Revolution. Erskine is shown as increasingly successful in defense for even in the picturesque trial of Tooke he helped the defendant to acquit himself and in the case of Hadfield obtained the release of the defendant on a plea of insanity after he had unsuccessfully shot at George III in a theatre, much as Booth murdered Lincoln.

Erskine soon was appointed Lord Chancellor, for in 1806, his party, the Whigs, were recognized in the Grenville government. The equity bar protested the appointment of a jury barrister to the chancery bench but the new Baron Erskine was conscientious in his work and did quite well. His day as a barrister was now closed forever, of course. He was Chancellor only fourteen months; the rest of his public career was in the House of Lords. Nearly all the last third of the book is given to the personal history and trial of Queen Caroline, in which Erskine's part was not very considerable. Her story obviously fascinates the author as it has so many literary men.

The great barrister lived on after his chancellorship for nearly fifteen years, an actor almost without a role, much in society, speaking now and then in the House of Lords, drawing his substantial pension as an ex-Chancellor but getting poorer day by day. "Counsellor Ego" was no longer pulled through London streets by cheering mobs. At 68, he was married a second time to a former servant girl after years of life as a widower.

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1. 21 How. St. Tr. 1 (1816).
The book is written with verve, sparkle and clarity and the author has read widely in the chronicles of the period. He ranges over so vast a field of British, European and even American history that slips must inevitably occur. Even this reviewer notices some. For example, "tunics," so often mentioned in connection with Erskine's military service as a youth were not introduced into the British army until after Napoleon's era. Soldiers wore longtailed coats, as the prints of our Revolutionary War reveal. Wellington was not a "spare, tall soldier," but five feet nine. "Lord Bacham" is a missprint for "Lord Barham" as any British schoolboy would know. But these are trivia; the lawyer with an interest in his professional history has a book here long enough for many a pleasant evening and the citizen concerned about a contest between America and the Soviet will find meat to chew in the account of the reaction of England to revolutionary France.

James Grafton Rogers†


The sponsoring Committee is careful to define the scope of their initial publication. Its "principal purpose . . . is to emphasize the need for regional planning, both in New England and throughout the country, and suggest the outlines of an administrative organization which will permit the pooling of all the powers and resources necessary to effective regional planning, without an overconcentration of power in the federal government or a dampening of local and private initiative. It is not an effort to offer a specific plan for New England but rather to suggest how New England, or any other region, can achieve and implement appropriate plans."¹ The book is therefore not a "plan", and must not be judged as such.

Essentially it is a statement of philosophy, endeavoring to divest the word "planning" of some of the bogey-man draperies with which it has recently been clothed and to show that the planning process has always been utilized in one form or another, is quite compatible with democracy, and indeed that it is now "impossible for the people of the United States to achieve their traditional democratic values, to any reasonable degree, without the most foresighted and vigorous action at all levels of governmental and voluntary activity."²

Broad definitions and working classifications are attempted, among them

² P. 398.
† President of the Foreign Bondholders Protective Council.

¹ P. 4.
² P. 4.
identification of the region as "the community which offers the greatest opportunity for taking advantage of the vast potentialities, made possible by modern technology and institutions, for moulding the material environment to the satisfaction of human needs." Considerable space is devoted to establishing that New England is indeed such a region.

To quote further from the introductory summary, "the problems of New England, and of any region, are defined as the disparities between the optimum basic human values that it can afford and the actual state of achievement of such values; and some indication is made of the type of question which must be asked and answered if New England, or any other region, is to take, and maintain, an adequate inventory of its potentialities, its achievements, and its efficiency. Some of the more obvious existing disparities in New England are mentioned."4

Finally, a strong case is made for "the establishment, through concurrent state and federal action, of a Regional Development Administration, with the states pooling their powers and resources by interstate compact and with the federal government adding the appropriate powers of a federal public corporation, such as are exercised by the Tennessee Valley Authority."5 This argument is reinforced by a valuable and detailed study6 by Asa D. Sokolow which appears in the appendix.

Handsome diagrams dramatize the classic steps in the planning process from the initial "pilot study" hypothesis, through detailed analysis of all conditioning factors (classified as "people and their values", "institutions and resources", "design", and "government") to Diagnosis, Synthesis, Design and Action. And some of the components which prove New England a region and illustrate its planning problems are clearly and beautifully mapped in color.

With the general purpose of this book everyone interested in the planning field, or in New England per se, must be in hearty sympathy. Its philosophic approach is also welcome in a country whose planning literature too often neglects any statement of principle, purpose or process, submerging the reader directly in a welter of minute facts and statistics. This habitual neglect of social theory on the part of American planners, whether from allergy, ignorance or "practicality", is indeed a major reason for their vulnerability to the onslaughts of anti-planners like Hayek and Robert Moses. The reactionaries at least have a point of view which they consistently defend. If this reviewer questions some aspects of the planning philosophy of Yale's Directive Committee on Regional Planning, it is a virtue that the book promotes such discussion.

4. P. 5.
5. P. 5.
One welcome cornerstone of their argument is the unqualified assumption that "planning without points of control is mere drafting and dreaming." The long and barren succession of advisory city plans, for the most part filed away and forgotten as soon as the bills were paid, should have made this idea a truism by now. But the planning profession is still largely unconvinced and David Lilienthal's classic exposition of the theme that effective planning cannot be divorced from responsibility for action has been well-nigh unique in the field.

The fact that planning is most urgently needed for areas which do not coincide with present state and local government boundaries—regions, metropolitan districts, neighborhoods—is of course under wide discussion today. But the amount and quality of research into the knotty political and administrative problems arising from this fact is still surprisingly thin and gives special significance not only to this book but also to much additional work at Yale under the leadership of Professor McDougal, particularly on the question of metropolitan reorganization.

Despite these virtues, however, the study seems to me vague and unrealistic on several points so fundamental to the question of how "New England, or any other region, can achieve and implement appropriate plans" that they should have been clarified even at this frankly introductory stage.

The Committee predicates a fiat regional agency with the broadest kind of overall planning purpose and powers, coupled with an advance "commitment by the states, as well as by the federal government, to abide by, and assist in the development of, all plans which may be brought forward by an agency of their joint creation."  

Stated as they are in terms of abstract logic, the steps outlined sound entirely plausible. New England needs a "central intelligence", hence a regional planning agency with overall jurisdiction and powers. Careful and minute Analysis by the agency of all conditioning factors leads to Diagnosis and Synthesis—to "the selective focus and the ordered emphasis upon relative importance that are indispensable to effective planning"—thence to Design and Action.

Stated in terms of the dynamics of a democracy still devoted to private enterprise, nothing could be more unthinkable. An effective planning agency must have power, yes, but such powers must be clearly delimited, above all for an agency dealing with an area such as a region or metropolitan district unlikely within the visible future to have either direct representative government or unified taxation. The average American citizen is little likely to develop a sudden religious passion for "planning" in the abstract, particularly by an agency removed from direct regular check by voters. What he can

7. P. 72.
8. LILIENTHAL, TVA—DEMOCRACY ON THE MARCH 199-201 (1944).
9. P. 70.
10. P. 53.
understand are such concrete needs as cheaper power, better housing, more efficient communications, or whatnot. The specific responsibility for meeting such needs he may be willing to delegate to a regional authority. But to concoct an agency, several steps removed from the voters in the area, with open-ended powers to devise and carry out plans, is both administratively unsound and politically impossible.

TVA is our classic example of successful regional planning in the sense of both political acceptance and visible achievement. But it is perhaps not always recognized how extremely concrete and limited are its actual powers: the control and development of water resources in the interests of navigation, flood control and cheap electricity. Its success as an overall planning agency is simply due to an extraordinary will and ability to make these key activities the "fulcrum . . . for many changes"—changes achieved largely by education and demonstration rather than coercion.

If TVA needs more power some delegation from the states might well be in order, but certainly other regions will require a quite different set of powers. The principle of selection and clear delimitation, however, remains the same, a principle which, incidentally, is as thoroughly borne out by Mr. Sokolow's appended study as it is neglected in the text.

If this be true, then the whole process is necessarily reversed, and the would-be planners' responsibility thereby becomes much greater and more immediate. Before legislation can even be drafted to set up the agency to make the surveys and carry out the plan, it is necessary to discover, isolate, and focus attention on those few concrete issues which, on the one hand, are capable of galvanizing public interest and demand, and, on the other, would provide effective handles for broader regional reform and reorganization.

Another weakness of this study is its failure to define the basic generic difference between the regional problems of New England and those of, say, the Tennessee Valley or the west coast, a difference so great that it may well affect the entire pattern of strategy and process.

It is one thing to plan for a backward or relatively new area still to be enriched by full development of industry and commerce. The worst enemies in such a situation are ignorance and inertia. Vested economic interests are a lesser obstacle since it can usually be shown that almost all groups stand to gain in the long run, even in purely private profit terms and without serious sacrifice or upheaval along the way. Yet the job is notwithstanding difficult enough politically, as the planners of the Northwest will testify.

But to plan for New England, the first and for a long period the principal center of manufacturing in the country, heavily capitalized, thickly populated, its skills and resources highly developed and its institutions organized to the point of rigidity—a region moreover which finds itself increasingly off-center as population and production move westward—is quite another thing.

11. Lilienthal, op. cit. supra note 8, at 87.
New England has more parallels with Old England than it has with the Tennessee Valley or the Northwest.

Here it is not just a question of planning new development providing maximum benefit for everyone. Painful readjustments are essential before a period of fresh development can get under way. Obsolete plant and equipment must be written off, inflated property values written down by owner, lender and tax-assessor, and traditional skills must be transformed into new ones. Cherished privileges, and values long taken for granted, social as well as economic, may be lost or redistributed in the process.

It is quite possible (despite the soothing but unsupported optimism of the Yale Committee on this point) that New England should still lose some of her population to newer regions, but shrinkage is an art yet to be mastered gracefully or happily within a capitalist economy. It is an art, however, which must be learned in many other areas and urban centers before very long, perhaps in the country as a whole. There is no issue providing a greater challenge for renewal of creative Yankee leadership in modern terms.

The job can be done. New England still has real resources in its people, its land, its history. It is still a vital region whose efficiency and well-being are essential to the nation. As the Yale Committee rightly emphasizes, it can still sell quality in many forms to the rest of the world—special skills in production and management—and, they might have added, prestige in education and culture and magnificent recreational resources. But "quality" is a precarious and evanescent form of capital, requiring not only conservation but constant dynamic renewal from within.

It can be done: in fact England herself is doing it at this moment. But the big question is: can it be done without just such a conscious majority will for drastic political-economic change, such hopeful zeal for turning adversity into creative social progress, as underlie the new British programs for land and resource planning?

The Yale Committee does not pose this question. Its bold proposals are curiously coupled with a political philosophy akin to that of the old-time city planners. According to this view, planning is a kind of manna beneficial to all alike, hence above crude right-left controversy. Order, pure reason, scientific progress and enlightened self-interest will triumph in the long run: no need to irritate the powers that be with vulgar political agitation.

The truth is that even the smallest reform, any attack on the status quo, every increase in public responsibility in the public interest, requires a considerable degree of just such agitation to get started, however respectable it may become later. A century ago it was public education, then public health, now cheap power, social security, housing.

It is sheer nonsense to state as a working principle that there is in this country "a fundamental agreement, which transcends all groups and occupations, about the basic democratic values involved in sharing power, respect, knowledge, health, income, and safety and an agreement which can be re-
duced to relatively concrete goals in terms of voting, nondiscrimination, schools, medical care, nutrition, homes, clothing, and so on." When it comes to the test of public action or expense to implement them, there is no such mystic universal agreement on any of these values or goals. There is, however, a potential majority agreement on many of them, shifting and uncertain yet capable of fruitful action—if the people are politically educated and organized. And I am afraid that this book contributes little toward that education.

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The Editors take pleasure in dedicating this issue of the JOURNAL to Judge Swan, former Dean of the Law School, on the occasion of his seventieth birthday.