REVIEWS

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Recommended Citation

REVIEWS, 60 Yale L.J. (1951).
Available at: http://digitalcommons.law.yale.edu/ylj/vol60/iss6/8

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One of the paramount problems of our time is how law, including international law, can be made best to serve the purpose of maintaining a free society. In this comprehensive and insightful study Professor Lauterpacht brings to finest conception and expression his many distinguished contributions to meeting this problem. Within its much controverted domain, his book is unique for its clarity in statement of goals, for the realism with which it describes trends in international doctrine and practice and in conditioning factors in international society, and for the specificity and cogency of its recommendations. The author's stated purpose is to study and appraise the human rights provisions of the United Nations Charter, and subsequent efforts to make these provisions effective, against "the wider background of the problem of the subjects of international law and of the interaction of the law of nations and the law of nature in relation to the enduring issue of human government—the securing of the natural and inalienable rights of man," and he breaks his task into three parts: The Rights of Man and the Law of Nations, Human Rights under the Charter of the United Nations, and The International Bill of the Rights of Man (comprising the author's own detailed recommendations for content and implementation).

To establish that human rights are an appropriate concern of international law and organization, Professor Lauterpacht begins by surveying "The Subjects of the Law of Nations" and demonstrating that individual human beings have long been "subjects" of both rights and duties in international doctrine and practice. The shibboleth that only nation-states can be subjects of international law he disposes of by pointing to the today hardly controvertible position of public international bodies and to the growing participation of private international organizations in important power decisions.

1. Such contributions include An International Bill of the Rights of Man (1945); The Subjects of the Law of Nations, 64 L.Q. Rev. 97, 438 (1948); Human Rights in the International Law Association in Report of the Forty-Second Conference, Prague, 1947, 13 (1948); and many related books and articles.


4. It may be noted that the principal attack in this country upon the human rights program has been not so much upon "substantive provisions" as upon the "propriety of such a subject in the field of international relations." Report, supra note 2, at 116.
of the individual, as both beneficiary of doctrine and bearer of duties, is traced through the protection of aliens, agreements specifically conferring rights upon individuals, humanitarian intervention, crimes against humanity in the Nuremberg Charter, offences against the law of nations, treaties for the protection of minorities, the liabilities of individuals as organs of the state, and the doctrine of the incorporation of international law as the law of the land. Strongly insisting that the "fact that the beneficiary of rights is not authorized to take independent steps in his own name to enforce them does not signify that he is not a subject of the law or that the rights in question are vested exclusively in the agency which possesses the capacity to enforce them," Professor Lauterpacht nevertheless reinforces his case by summarizing the historical instances in which individuals have been given direct access to international tribunals for the protection of their rights and he urges that Article 34 of the Statute of the International Court of Justice should be amended to give a measure of such access. The factors offered to account for the increasing concern of international law for the individual include "the acknowledgment of the worth of human personality as the ultimate unit of all law," "the realization of the dangers besetting international peace as the result of the denial of fundamental human rights," the need for the subjection of the individual directly to the rule of international law "in a period of history in which the destructive potentialities of science and the power of the machinery of the State threaten the very existence of civilized life," and recognition of the fact that the international interests and contacts across frontiers of individuals are no longer "rudimentary", as in the beginnings of traditional international law, but are rather such that "the interdependence of States which requires regulation is the interdependence of the individuals who compose them."

From his survey Professor Lauterpacht, therefore, concludes not only that we may have to revise outmoded conceptions of the "subjects" of international law but even that we may have "to become more conscious . . . of the justification and the practical beneficence of proceeding on the basis of a conception of international law as being the law not of the society of States but of international society in all the diversity of its manifestations requiring and admitting of legal regulation by rules other than the municipal law of States."

In his next section on "The Law of Nature and the Rights of Man" Professor Lauterpacht recounts a well-known history of the interrelations of natural law, the doctrine of natural rights, national constitutions, and international law and founds contemporary concern for human rights deep in antiquity and human nature. Though he stresses that "the international recognition and protection of the rights of man is, in strict juridical logic, independent of any doctrine of natural law and natural rights" and agrees

5. P. 27.
7. P. 66.
8. P. 73.
that the law of nature, like any other form of justification, can be “an instrument of reaction” as well as “a lever of progress,” he still insists that conceptions of natural law can serve as useful sources of inspiration and sanction for men of goodwill. The generalizations of “that law of nature which, throughout the ages, proved to be the principal bearer of the idea of the indefeasible rights of man” were not speculative, fanciful products, but “were generalizations from actual experience.” The authors of these generalizations “endeavored to form laws of conduct by reference to the nature of man, to his physical and mental constitution as they saw it, and to his station and purpose in the scheme of creation as they perceived it from the contemplation of the world around them.” Transcending all the vagaries of the philosophers, as “objective factors” and “productive of laws,” are “the social nature of man; the generic traits of his physical and mental constitution; his sentiment of justice and moral obligation; his instinct for individual and collective self-preservation; his desire for happiness; his sense of human dignity; [and] his consciousness of man’s station and purpose in life.”

The degree to which the founders of contemporary international law, such as Vitoria, Grotius, Vattel, Wolf, and Puffendorf, drew upon concepts of natural law and concerned themselves for the individual suggests again a conception of that law as not merely governing the mutual relations of states, but “as being above the legal order of sovereign States,” as being “the universal law of humanity in which the individual human being as the ultimate unit of all law rises sovereign over the limited province of the State.”

Coming to his main theme, the analysis of “The Law of the Charter,” Professor Lauterpacht takes a strong position that the several clauses on human rights in the United Nations Charter are “no mere embellishment of a historic document” but add up to legal obligation. The human rights provisions “figure prominently in the statement of the purposes of the United Nations” and members “are under a legal obligation to act in accordance with these Purposes.” The author finds “a mandatory obligation implied in the provision of Article 55 that the United Nations ‘shall promote respect for, and observance of, human rights and fundamental freedoms’” and “a distinct element of legal duty in the undertaking expressed in Article 56 in which ‘All Members pledge themselves to take joint and separate action in co-operation with the organization for the achievement of the purposes set forth in Article 55.’” The “legal duty to promote respect for human rights includes,” he elaborates, “the duty to respect them” and “in addition, the obligation to further the adoption of means and establishment of agencies for the effective

10. P. 98.
12. P. 120.
13. P. 147.
international enforcement of these rights." In support he invokes among other authorities "judicial pronouncements, including those of Justices of the Supreme Court of the United States," in which "these provisions of the Charter have been treated as a source of self-executory legal obligations affecting private rights."

The impact of the "domestic jurisdiction" clause of the United Nations Charter—Article 2(7) which reads "nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter . . ."—Professor Lauterpacht minimizes by insisting upon a technical meaning for "intervene" and a lack of any clear meaning for "matters which are essentially within the domestic jurisdiction of any state." Intervention is interpreted in the sense of traditional doctrine as implying "a peremptory demand for positive conduct or abstention—a demand which, if not complied with, involves a threat of or recourse to compulsion." This obviously does not refer to "the procedures of investigation, study, report, and recommendation" by organs of the United Nations. Matters "essentially within the domestic jurisdiction of any state" are few if the reference is to matters which "cannot have international repercussions" and it is generally agreed that international agreement can make matters of international concern. The United Nations Charter itself makes "the observance of fundamental human rights and freedoms" a matter of international concern; the "reservation of domestic jurisdiction" cannot be made to "accomplish the impossible and combine the acceptance of obligations with freedom from obligation." To support his position Professor Lauterpacht offers a careful survey of the history of argument and practice about "domestic jurisdiction" in the United Nations.

In other chapters Professor Lauterpacht reviews the measures taken in implementation of the Charter and deplores their timidity and inadequacy. "The various proposals for a 'Covenant' of Human Rights, the Covenant itself when adopted, the Universal Declaration on Human Rights, and similar drafts and instruments must be regarded," he suggests, "as stages in the adoption of an International Bill of Human Rights conceived as an effective part of the law of nations commensurate with the ideals of the charter, the en-

15. P. 152.
17. P. 167.
18. P. 214.
19. P. 175.
during aspirations of mankind and the requirements of international peace.”

He presents his own revised draft of such a Bill and explains and justifies both its substantive and procedural provisions in great detail. He makes a particularly strong case for “recognition of the effective right of petition by private individuals and groups.” His recommendations and discussion should be of inestimable value and inspiration to the workers and negotiators presently engaged with these matters in the United Nations and elsewhere. In two concluding chapters he appraises the Universal Declaration of Human Rights and the Proposed European Court and Commission for Human Rights. Because apparently of concern for future efforts, he offers a low estimate—perhaps much too low—of the probable influence of the Universal Declaration on future decisions.

The summary above is but the barest indication of the content of a rich and powerful book. The reviewer is so much in accord with Professor Lauterpacht’s major purposes and conclusions that he hesitates to indicate reservations. It may not, however, weaken general agreement to suggest that some of the themes of the book could be made even more persuasive. Thus, the whole controversy about the “subjects” of international law might be more explicitly recognized as a verbalistic quagmire. The important facts are that not only nation-states, public international bodies, and individuals but also transnational political parties, pressure groups, and private associations are all participants in a world power process; that policy is continually being formulated and applied on behalf of and for the control of all these participants on a global scale; and that all of these participants are afforded varying degrees of access to international and national fora for the protection of their interests. Whether an observer labels any one of these participants as a “subject” of international law or not is entirely a matter of preference in verbal esthetics or a function of the argument he is trying to win. The support that the great tradition of natural law gives to community measures for protecting human rights could, for a second example, be considerably strengthened by a detailed demonstration of how the findings of contemporary social science about man’s nature and community processes augment and reinforce the wisdom of the philosophers. The position that Article 2(7) the “domestic jurisdiction” clause, of the United Nations Charter offers no impediment to the human rights program might, once again, be strengthened by emphasizing two points: first, that whatever the clause means it imposes no limits on the power of.

22. P. 302.
23. An analysis of this type could be made to show the irrelevance and anachronism of such critical reviews as that of Green in 4 Int’l L.Q. 126 (1951).
24. A few examples of the relevant literature are: Adorno & Associates, The Authoritarian Personality (1950); Chisholm, The Psychiatry of Enduring Peace, 6 Psychiatry 3 (1946); Dollard, Frustration and Aggression (1939); Lasswell, Power and Personality (1948); Kardiner & Ovesey, The Mark of Oppression (1951); and Malinowski, Freedom and Civilization (1944).
nation-states to make new agreements; and, secondly, that for ascertaining any possible limit on the powers of the organization, meaning can only be given to the phrase "domestic jurisdiction," as a functional equivalent of "sovereignty" and "independence" and the polar opposite of "international concern," by locating one's problem in the realities of the contemporary world power process, which include inescapable interdependences with respect to human rights. It may be added, finally, that some of Professor Lauterpacht's comments on United States constitutional law, such as the suggestion that "the bulk of the provisions of an International Bill of Rights fall, according to the Constitution, within the province of the States," do not accord with the best critical thinking in this country. These reservations are, however, in sum but minor. Professor Lauterpacht has given us a book which will do much to promote a "primary political goal of humanity," the "further transformation of the law of nations from a law of States to a law of international society with the individual human being at the very center of its constitutional structure."

MYRES S. MCDougAL†

PARTNERS IN PROGRESS, A Report to the President by the International Development Advisory Board, 1951. Pp. v, 120.


It is now some two and one-half years since President Truman in the famous "Point Four" section of his Inaugural address warned of the threat to American security from poverty and discontent in the backward areas of the world. In the brief period since that address much has happened to justify the President's anxiety: the 600 million people of China have fallen under the control of a hostile Communist regime; aggression in Korea has cost thousands of United Nations casualties; unrest in Iran has jeopardized Western access to the oil of the Middle East; and the tempo of Communist infiltration and military activity has increased all along the continent of Asia. In view of the speed and gravity of these events, one is prompted to ask what

25. For elaboration see McDougal & Leighton, supra note 2, at 77 et seq.
27. For a comprehensive survey of the impact of the proposed Covenant on federal and state powers, see Chaee, supra note 2. It is not suggested that Professor Lauterpacht's comments are without support in this country. One from abroad may perhaps be forgiven a choice of false prophets.
†William K. Townsend Professor of Law, Yale Law School.
has become of the President's appeal for a "bold new program" to improve conditions in the underdeveloped areas and of his suggestion that this be "a cooperative enterprise in which all nations work together through the United Nations."

A partial answer to this question is supplied by two recent reports which explore some of the problems involved in the Point Four idea and attempt to chart a course of future action. The first, under the somewhat optimistic title, *Partners in Progress,* is the contribution of President Truman's International Development Advisory Board, a group of thirteen advisors headed by Nelson Rockefeller who were appointed under the Act for International Development passed in 1950. The second, *Measures for the Economic Development of Under-developed Countries* is the work of five experts employed by the United Nations under the authority of the Economic and Social Council. The "Rockefeller Report," as it is generally called, is designed to suggest the nature and size of future programs of American overseas aid. The United Nations Report formed the basis for discussions which took place last summer in the Economic and Social Council and which will continue this fall in the General Assembly. Together, therefore, the two reports provide useful insight into current national and international planning for foreign economic development.

The Rockefeller Report is a strange document which inspires mixed emotions of hope and disappointment. It seems to have been written in an attempt to please everybody. It includes a certain amount of statistical material on foreign trade and investment that is helpful to the specialist; yet the use of cliche and generality reveal a strained attempt to catch the eye of the mass audience. Worse still, the Report makes a painfully unsuccessful effort to reconcile inconsistent viewpoints on foreign development—the view that Point Four can only be carried out by large-scale government action and the view that it is primarily a job for private enterprise. No wonder the Report has been attacked on one side as "a master Government 'plan' for directing American trade and investment" and on the other because "it makes private investment the focal point in economic policy.""2

In proposals for public action, the Rockefeller Report goes up to and beyond any of the official statements that preceded it.3 It accepts the proposal in the Gray Report for $500 million annually in American grants to finance development in basic services (such as health and education) and in essential public works. In addition, it proposes the creation of an International Development Authority with a capital of $500 million, $200 million to be subscribed by the

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2. The Nation, June 30, 1951, p. 611, at 613.
3. It also goes considerably beyond current programs actually in operation. Congress appropriated only $35 million for technical assistance for 1950-51, although with ECA assistance counted in, aid to the backward areas totalled $280 million. *Partners in Progress* 61.
United States, which would initiate "projects of economic and social importance which cannot be financed entirely on a loan basis." Moreover, the Report urges the centralization of all overseas aid activities under a single Overseas Economic Administrator who would be a member of the President's National Security Council, the group which advises on highest strategic policy.

The most hopeful aspect of these proposals is the recognition that a serious attempt to accomplish the major purposes of Point Four will require a substantial increase in public outlays; that these funds must be employed in coordinated fashion as an instrument in a total foreign policy; and that international cooperation, with the United Nations as its focus, offers a useful and important alternative to unilateral action. One wishes, however, that the Rockefeller Board had suggested an even greater proportion of the proposed expenditures for international rather than national aid. Bilateral programs, such as those carried on by the Institute of Inter-American Affairs, have often proved successful, but in parts of the world where American influence and prestige are not so high aid of this type may be applied more effectively through international institutions. One could also criticize the lack of realism in expecting other UN members to manage as much as $300 of the International Development Authority's proposed $500 million. But above all, the Report is seriously deficient in failing to justify with concrete arguments its proposal for a new international financial institution, a failure which is already being seized upon by those who think development can be adequately handled by existing UN agencies.

Another side of the Rockefeller Report's split personality becomes apparent when one reaches the section on the role of private enterprise. The production and distribution of goods, as opposed to the direction of basic services and public works, the Report calls "primarily the function of private investment." It does not make clear what is to happen if a recipient of Point Four aid prefers socialization of the entire economy. Instead, it suggests a number of "incentives" to stimulate the flow of private investment abroad. These include complete exemption of foreign earned income from United States taxes, a guarantee of the transfer risk to purchasers of foreign securities, an International Finance Corporation to help along local capital, and the appointment of an Assistant Administrator for private enterprise. The Board expects that taken together the incentives "would at least double the present annual flow of private United States investment to foreign countries bringing it from $1,000,000 to $2,000,000."

4. Partners in Progress 73.
5. Last year, the United States gave $12 million of its $35 million technical assistance fund for UN programs. Other nations were hard put to match this with $10 million of their own.
6. Partners in Progress 64.
7. Id. at 86.
This last estimate seems rather unrealistic and more than a little misleading. Private foreign investment in the postwar years has averaged around $800 million, three-fourths of it in petroleum. Outside the oil industry, private investment averaged only $128 million in Latin America and $28 million in other underdeveloped areas.\(^8\) Nowhere in the Rockefeller Report does there appear any mention of these facts or any analysis of the real obstacles to private investment abroad, such as war anxiety, political instability, native nationalism, and government intervention in economic life. These obstacles are not likely to be overcome by the kinds of incentives proposed by the Board. This is particularly true of tax exemption as an incentive device, a proposal championed by the National Foreign Trade Council but rejected by a number of studies, national and international, as being of little value and of considerable potential harm.\(^9\)

The exaggerated optimism about the future magnitude of private foreign investment is aggravated by the failure to explain that this magnitude is in itself only a very inadequate measure of the success of Point Four. The real need is not to increase the overall flow of private investment, but to channel it into particular localities and particular industries where it will do the most good—and to see that it serves the major purposes of economic development once it gets there. This is the serious problem which concerns all of us who share with Mr. Rockefeller a basic preference for the use of private initiative in achieving policy objectives. Failure even to mention this problem is a strange omission in a Report which shows such a clear appreciation of the economic and social benefits that can be achieved by government action.

The inability of the Rockefeller Board to present a careful and well-integrated set of specific proposals is probably connected with another failure—the failure to present a balanced and comprehensive statement of the political, economic and humanitarian goals that Point Four is meant to achieve. Instead, the Report hammers away insistently at two favorite ideas: that development of the backward areas will assure the United States a steady supply of raw materials for defense and that it will provide an antidote to Communist subversion. These arguments do a service in pointing out the intimate connection between Point Four and the defense effort; they are also designed to soften up a mobilization-minded Congress. But there is a danger that the disproportionate emphasis on military considerations may result in incomplete understanding of the problems facing Point Four and even in a serious misdirection of the program's basic aims. Raising raw material exports and preserving the status quo while serving immediate military needs may block

\(^8\) Report to the President of Gordon Gray 61, 121 (1950).

\(^9\) See, e.g., Department of State, Point Four (Rev. ed. 1950); United Nations, The Effects of Taxation of Foreign Trade and Investment (1950); Share, Taxation of American Business Abroad in N.Y.U. Seventh Annual Inst. on Fed. Tax (1949). For the reasons why "incentives" are of limited value in overcoming obstacles to private investment abroad, see Comment, Point Four, 59 Yale L.J. 1277 (1950).
the achievement of balanced development and social reform. There is a
dilemma here which no amount of press-agentry can ever disguise.

The United Nations study, *Measures for the Economic Development of
Under-developed Countries*, is also to be criticized for its failure to state
in satisfactory terms the major goals of economic development. Nevertheless,
it does make good some of the omissions of the Rockefeller Report. It con-
tains an excellent summary of the psychological and social "pre-conditions"
which must be achieved in the backward areas if economic development is to
succeed. The first "pre-condition" is the recognition on the part of the back-
ward peoples that the possession of wealth is desirable for its own sake and
also as an avenue to power, respect, enlightenment and other major values.
The second "pre-condition" is the access of the broad mass of the population
to a comprehensive program of education and to the benefits of the new tech-
nology. Here the experts are admirably forthright in calling attention to what
is undoubtedly a major barrier to Point Four:

"In our judgement there are a number of under-developed countries
where the concentration of economic and political power in the hands
of a small class, whose main interest is the preservation of its own
wealth and privileges, rules out the prospect of much economic progress
until a social revolution has effected a shift in the distribution of income
and power."

The Report offers a number of recommendations to the governments of the
underdeveloped countries to promote their economic development. Each gov-
ernment must abolish privileges of all kinds, institute programs of land reform,
and generally make clear "its willingness to remove the obstacles to free and
equal opportunity which blunt the incentives and discourage the efforts of its
people." In addition, it must take a number of active measures to insure the
success of national development: establish institutions to mobilize domestic
savings; control the size and direction of consumption and investment; estab-
lish central economic planning; and take steps to improve health, education,
and other basic services. To some, this may add up to undue emphasis on gov-
ernment-control of economic life. But the UN experts believe state interven-
tion in the early stages of economic development to be inevitable and it may be
well to face this fact frankly when evaluating the estimates of the Rockefeller
Board for large scale private participation in Point Four. The UN Report,
it is important to note, attempts only to chart a minimum program for govern-
ment action; beyond this, it emphasizes, "every country must decide for itself
where it wishes to draw the limits of the public sector."

10. *Measures for the Economic Development of Under-developed Countries*
15-16.
11. *Id.* at 93.
12. *Id.* at 20.
In its proposals for international action, the UN experts, like the Rockefeller Board, combine imaginative proposals with inadequate or slipshod documentation. The size of the job to be done is undoubtedly great, but the experts seem to have gone rather high when they set the annual need of the backward areas for investment at $19 billion a year, $10 billion to come from outside sources. These estimates are based on a number of arbitrary and somewhat questionable assumptions; on the whole, the estimates seem less reliable than those of the Food and Agriculture Organization which put investment needs at $17 billion, all but $4 billion of which could be supplied by the underdeveloped countries themselves.

The specific proposals for international action show this same tendency to overstatement, though most of the proposals can be generally endorsed. The International Bank "has not adequately realized that it is an agency charged by the UN with the duty of promoting economic development." It is urged to increase its lending to $1 billion a year. It should be given the adjunct suggested by the Rockefeller Report, an International Finance Corporation. Lending activities, moreover, should be supplemented by grants to the extent of $3 billion a year. For this purpose the experts propose, as does the Rockefeller Board, an International Development Authority to distribute and "verify" the use of investment funds.

This common proposal for a new international institution to energize and coordinate foreign development is probably the most significant feature of the two reports. There is agreement that loans limited by purely commercial considerations are not enough; that additional grants are needed to finance basic services in health and education and long-range public works. As both reports suggest, but fail to spell out, an International Development Authority is the best way to assure the direction of national resources toward international objectives and to induce recipient governments to undertake certain indispensable measures of domestic reform.

13. The experts select one per cent per annum as the proportion of the population of the backward areas that has to be moved into industry and $2500 as the cost of transferring each worker. To this cost is added 4% of the national income of backward areas, an estimate of what must be spent on the development of agriculture. The experts find that present domestic savings in the backward areas now fall short of these total needs by $14 billion, and estimate without further explanation that this gap will be $10 billion when development gets underway. Id. at 75-8.


15. Id. at 95.

16. Id. at 95.

17. See, e.g., the UN Report, pp. 86-7: "Some countries are ruled by corrupt or reactionary cliques whose regime might be overthrown by the people if there were no foreign aid, and who may be settled in their rule because foreign grants have become available. Members of the United Nations will not wish to have any hand in fastening such governments on peoples. They might therefore wish to lay down certain minimum conditions before an under-developed country was admitted to the list of those eligible
further to point out that the Authority could initiate far-reaching and imaginative programs of regional development and by a record of solid accomplishment add new power and prestige to the United Nations structure.

These specific proposals of the UN and Rockefeller Reports were discussed last June, by members of the United Nations in the Economic, Employment and Development Commission. One of the most notable features of these discussions was the almost hysterical attack by the Soviet representative—an involuntary admission that a bold international program to improve conditions in the backward areas would be a shrewd maneuver to combat further Soviet expansion. Unhappily, the United States missed a great chance to seize the initiative. The American representative expressed "considerable skepticism as to whether new international financial institutions will be feasible and could serve a useful purpose in the foreseeable future." Moreover,

"The proportion of resources that have to be devoted to military defense are very substantial and have to have the highest priority. We shall do what we can to see that, subject to this priority, essential civilian needs, including economic development needs, are equitably treated."

The above statement, if it means that economic development will get only those funds left over after defense expenditures, seems particularly unfortunate. Such a position would represent a retreat from the Rockefeller Report's emphasis on the joint importance of simultaneous action in the military and economic fields, and from the emphasis in the Gray Report on "a balancing process, an understanding . . . of the importance to ourselves and to the free world as a whole of continuing and accelerating programs in the underdeveloped areas which contain a major part of the world's population and natural resources." In all likelihood, however, this statement by the American representative represents no loss of faith in the continued importance of Point Four. What it does represent is something equally serious—the inability of the American delegation to take world leadership in international development for fear that any major commitments will be repudiated by an unsympathetic Congress. Fortunately, there is reason to hope that the American position can still be changed.

to receive grants. This is a most controversial matter, on which we do not make any recommendation."


19. According to Mr. Chernyshev, the Soviet representative, the proposal for an International Development Authority flouted national interests and the principles of the United Nations. Summary Record of the One Hundred and Eleventh Meeting, E.CN. 1/SR.111. p. 5 (June 4, 1951).


21. Ibid.

22. GRAY REPORT, note 9 supra, at 73.
Perhaps the most useful way to conclude this necessarily hasty and incomplete review of the present state of Point Four planning is to suggest at least three main obstacles which have to be removed if all the talk about significant international development is not to be in vain:

First, the American people must select a Congress that will support a substantial program of international economic aid and an Administration that has the capacity for leadership to carry it out.

Second, a way must be found to induce the governments of the underdeveloped countries to undertake domestic reforms so that economic development will be enjoyed by the broad mass of the population.

Third, there must be reasonable assurance that large international aid programs will be carried out in an efficient and useful manner. This requires an international secretariat of the highest calibre. It requires men who can supply not only vision and good instincts but a high level of intellectual discipline and technical competence. Perhaps the most disappointing thing about the Rockefeller and United Nations Reports is that they do not yet reflect this precise combination of qualities which is so essential to the realization of the Point Four dream.

Richard N. Gardner†


This Case Book deals with the reorganization of both solvent and insolvent corporations, involving modification of the rights of shareholders, creditors or both. The focus of attention appears to be the permissible scope of plans, including questions of fairness and feasibility under such varying statutory procedures as Section 77 and Chapter X of the Bankruptcy Act, Section 11(e) of the Public Utility Holding Company Act and state statutes relating to charter amendments, mergers and sales of assets. Insight as to reorganization techniques and procedures is provided primarily as a by-product of study of the case material arranged in relation to the question of what a plan may provide. This is supplemented by descriptive notes by the authors, excerpts from Reports of the Securities and Exchange Commission, and references to the law reviews.

There is thus afforded a rounded presentation of the leading cases in the field of reorganization with an introduction to the voluminous non-case material which is so important to an understanding of the decisions. Not infrequently a published opinion deals only with a single skirmish in a campaign

†LL.B. 1951, Yale Law School.
to accomplish or thwart a plan of reorganization. Read in isolation it may give a distorted impression of its impact upon the reorganization process. The authors have contrived to give perspective by sequence decision relating to the same reorganization and by notes which tell what happened after the reported decision. The book presents in compact form the minimum general background to an appreciation of typical reorganization problems and points the way to a more detailed study of special problems. It is designed for use in either a seminar or a formal course in corporate reorganization, and appears well suited to this combined purpose.

Roger S. Foster†


This book is the work of a bitter man. The gloom of Mr. Norton's ideas, is matched only by the sweep of his lamentations, and the disorder of his style. Here is a fairly typical sample:

"As big a thing as the great American Republic could not have been put on the skids without years of steady work. Beginning with 1933, Socialism (control by government of production, distribution and exchange), Fascism (Socialism by corporations) and Communism (confiscation by government of private property through graduated taxes and by abolition of inheritance), all forbidden by the Constitution because in no way authorized, and in many ways condemned by implication, spread with the rapidity of a fire on the prairie."

Mr. Norton's principle thesis, (and this is no easy matter to discover), seems to be that the increase in federal activity since 1933 has violated the "spirit and letter" of the American Constitution. The effects of this are to be deplored. Just what these effects are, and why they are to be deplored is nowhere specified. The conclusion that there has been widespread violation of the Constitution, and a magnificent hoax played on the American people (by themselves), is based on principles of constitutional interpretation which, if generally accepted, would have strangled American government at the outset. These principles, in turn, rest on the erroneous belief that the broad language of the Constitution has an absolute meaning making interpretation unnecessary.

Mr. Norton's thesis would have been more persuasive had he recognized that there can never be "some one real or absolute meaning. In truth there

†General Counsel, Securities & Exchange Commission.
can only be some person's meaning." The results of Mr. Norton's pseudo-objectivism stand in striking relief in his discussion of the true meaning of the Fourteenth Amendment to the Constitution. His position is that "freedom of religion, freedom of speech, and freedom of the press" fall beyond the ken of the "liberty" this Amendment protects. For Mr. Norton "liberty" has a precise meaning, and its coverage, as far as the federal government is concerned, is limited to Negro slaves liberated after the Civil War. In contrast, he makes no objection to the use of this Amendment by private enterprise to protect property and profits. The answer of course is that the meaning of the Amendment is flexible, and its content depends on society's view of justice at any given point in time.

There is no point in listing the Federal government activity Mr. Norton opposes, for he has quite adequately summed it up: "The New Deal is thoroughly unconstitutional." Nor is his attack limited to the traditional whipping boys of the New Deal. "When the heavy snows and low temperature came in the winter of 1948-49... the army was sent out. It kept the roads open and saved most of the herds.

"Caesar too, helped the people, but they lost their liberty to him."

Mr. Norton's explanation for the rise of American Caesarism is the departure from republican government which attended the passage of the Seventeenth Amendment. By providing for direct popular election of Senators (instead of by State legislatures) power shifted, according to Mr. Norton, from the States to the Federal Government. If the fuzzy logic of this be grasped, the increase in federal activity and invasion of the domain of the States becomes clear.

Of course the logic of this isn't easy to see, but the idea is important because it reveals the two principal grains of sand in Mr. Norton's oyster. Clearly Mr. Norton has no use for democracy. "A review of over half a century of tinkering with constitutional representative government makes plain that 'democracy' is unsuited to the United States." The second major irritant is what Mr. Norton believes to be an historical diminution of State power. In reality has not state government activity grown in both scope and volume since 1789?) The uniqueness of his states' rights position lies not in the freshness of his idea, but rather in their extraordinarily archaic quality. In 1948 the Supreme Court struck down an Illinois law providing for religious instruction in public school buildings. The objection of the Court was that the law violated traditional conceptions of the separation of church and state. Mr. Norton's comment was: "The Republic of Illinois... was highly competent to manage constitutionally its own affairs, and the Republic of the United States should have kept out of its jurisdiction."

There are many weaknesses in this book. Chief among them is the author's total failure to recognize any of the changing circumstances in American life since 1789. Somewhere along the road of Mr. Norton's education he must have made a U-turn and has failed to resume a forward course. All of the more
plausible explanations for the growth of federal activity are completely ignored. Nowhere in the book is mention made of the problems attending the growth of industrialism, big-business, big-labor, the depression of the 1930’s, or the war of 1939-45, as legitimate causes for the expansion of federal government.

Illustrative of Mr. Norton’s position is his attitude toward federal labor legislation. Labor relations should be “taken out of government,” the reader is told. It is here that Mr. Norton makes his only original contribution. That is the suggestion that wage demands present legal questions, and the courts should decide (by common law and equity) whether or not employee demands can be satisfied while management meets its obligations to the public and to the investors. (But, above all, there is no right to strike.)

Mr. Norton calls his book a “study”. This does much violence to that word. Rather, the book is a battery of poorly supported contentions dignified by a liberal, but unconvincing array of legal case citations and legal doctrines, all designed to call back history 150 years. Perhaps the writer’s popularity with his promoters is explained by this fact. He had produced a volume which provides a wealth of legal cliches to the arsenal of anti-New Dealism.

It is probably safe to predict that Mr. Norton will win no new adherents to his cause as a result of this new effort. As a brief for the cause of conservatism it is heavy on premise and light on logic. Its fatal weakness is the insult to the American people implicit in his thesis. All but the true cynic will take offense at Mr. Norton’s conviction that democratic government has been a miserable failure in the United States.

Donald G. Agger†


Essentially a statistical compilation, with explanatory text, this book purportedly surveys current trends in urban mortgage lending activities of life insurance companies. It is one of a group of eight related investigations of the practices, costs, losses, yields and risks of urban real estate financing. These studies aim to improve public understanding of this area of finance and thereby promote more constructive policy making.

Four of the studies survey the organization, needs, characteristics, and behavior of the urban mortgage market, and the impact of Government lending on that market. Three describe the principal private mortgage lending agencies: insurance companies, commercial banks, savings and loan associations; and one describes the public home financing agency: the Home Owners Loan Corporation. Since these studies, designedly interrelated, are still to be

†LL.B. 1951, Yale Law School, Member of the Connecticut Bar.
published, a reading of one can in no way suggest an appraisal of the whole. Thus the purpose of this review, which can not aspire to comprehensiveness—is possibly best served by outlining the technique of discovery and appraisal followed in this particular study. It is assumed that in these respects this book is representative of the total investigation.

Mr. Saulnier proves no thesis, discloses no fraud or oppression, sounds no call to the vigilant. His book is simply a disciplined survey of the behavior of the major source of private investment capital in a narrow field of investment opportunity.

The book contains: 1) an appraisal of the historical roll of the life insurance company as an investor in the urban mortgage market; 2) a sketch of the legal framework within which life companies lend on mortgage security; 3) the institutional location of decision: organization of mortgage loan departments and administration of loan portfolios; 4) a description and classification of loan contracts reflecting change in the economic behavior of the urban real estate market during the past thirty years; 5) a measure of operating costs; 6) an analysis of the mortgage investment experience of life companies measured by such indices of credit quality as (a) foreclosure rates, (b) gain or loss ratios, and (c) loss rates.

The importance of life companies in the urban mortgage market is self-evident. At the end of 1945, they held approximately 40% of total dollar value of commercial mortgages outstanding, 14% of all residential mortgages and 16% of all farm mortgages. Not so evident, however, is the relative importance of urban mortgage lending as an investment outlet for company funds. Although currently still an important portfolio asset, mortgage loans have not retained their 19th Century pre-eminence. In 1860 mortgage loans represented 59.2% and United States bonds 3.1% of the total assets of the twenty-nine largest life insurance companies. In 1946 United States bonds represented 46.3% and mortgage loans 13.2%. Within the long term trend of business investment the cycle of mortgage loan activity, as might be expected, roughly coincides with the cycle of building activity.

Companies with assets of less than 500 million dollars are proportionately the heaviest investors in urban mortgage loans; however, there is no consistent pattern of relationship between company size and the relative importance of mortgage investments. At the end of 1945, for example, companies with assets of less than 1 million dollars and those with assets of 1 billion dollars and over invested about 10% of their assets in urban mortgages, while the companies falling between these extremes had roughly 20% of their assets so invested. Because statutes, admittedly oriented towards policy holder security, limit the amount of single property investment to a small percentage of the investor's assets, smaller companies are denied investment opportunities legally available to companies of the largest assets. Therefore if profitability of investment is a function of size of investment, which of course remains to be proved, the larger companies have a legally protected edge.
Superimposed upon this background is a detailed study of the urban mortgage market served by life insurance companies during the period 1920-46. This carefully tabulated information was drawn from a controlled sample of twenty-four large insurance companies representing, in 1944, 65% of the total amount of urban mortgage loans held by life insurance companies. Each company drew records from its active and inactive files covering every 100th loan made since January 1, 1920; pertinent information on each sample loan was transcribed onto a "loan experience card", these forming the factual matrix of the study. No data was requested that would identify the mortgagor or the property securing the loan. The sample provided 8,931 loans with an original face amount of $92,141,000 and for purposes of analysis the loans of all cooperating companies were combined into one group.

Clearly a study based primarily on representative statistics is no more valid than the techniques of selection by which the evidence analyzed is separated from the unanalyzed mass. It is therefore necessary that the tutored reader be told not only the broad base of underlying evidence but also the process through which a purportedly representative selection is achieved.

The coordinates of the charts against which the collected information is plotted are necessarily in terms of the loan characteristics on which data was available in the records of the lenders. Thus loans are tabulated in terms of their geographical location, type of property, original loan amount, type of contract, contract interest rate, contract length, costs, and yields.

To list more than the most general findings would be to repeat verbatim the verbal analyses of the graphs. Geographically, the scope of the market served by all companies combined is nation wide, the distribution of loans coinciding both in number and amount with the distribution of urban population. There has been a relative shift away from the North Central region and towards the South West Central. For example, insurance money is going to Texas, and from large metropolitan districts to medium and smaller sized urban centers. Average interest rates have fallen from a nearly uniform 6% to a grouping spread between 4.1-4.9%. Although there is no significant geographical variation of interest rates, strangely the rates generally prevailing in the South, are slightly lower than those in the North. Rates charged by large companies dealing in a national market are generally uniform and coincide with the average. Those of companies dealing in local markets tend to spread both above and below the average. For better or for worse, the smaller companies are more sensitive to the vagaries of local markets. As of the period 1940-46, over 90% of the number of loans sampled were made on one to four family dwellings but only 51.2% of the total amount; 22.3% of the original amount of loans on all property were loans of less than $5,000; 23.7% between $5,000 and $10,000; but the loans of over $100,000 although 1.1% in number were 33.4% in amount. At this point a comparative analysis of life insurance saving would be of interest, for as correlation between policy concentration and loan con-
centration was negative, different income groups hold different stakes in the saving-lending cycle.

As for the contracts themselves, the trend in non-insured loans, anticipated by liberal terms prevailing in insured loans, is towards lower interest rates, longer period of payment, and higher loan to value ratio; so that now the typical loan is a fully amortized straight mortgage contract running 15 years or over with a loan-to-value ratio of nearly 80%. The larger loan through a longer period of time serves to offset the decline in interest rates.

The study of lending costs and net return on loans indicates that although the companies with smaller holdings tended to have a higher gross return, average operating cost ratios declined as loan portfolios increased in size. Thus average net income per loan increased slightly as the total value of loan investments increased.

The pattern of foreclosures is too indistinct to be readily summarized. Generally, however, there were fewer foreclosures and less loss on foreclosure where the terms of the loan were liberal. This is but to state a financial truism. Liberal loans are made on sounder properties; sounder properties are foreclosed less often, and when they are, they bring better prices on sale. Foreclosures were more frequent and resulting losses greater on loans made during the peak of building cycles. Appraisals of the present value of expected future use made at the crest of a real estate boom being often, in the light of realized future events, more optimistic than accurate. Conversely, loans made during the trough of a depression cycle show fewer foreclosures and less loss.

Of what significance are these facts and figures is difficult to estimate. Standing alone as it does, a part of an incomplete whole, this study permits few conclusions and less criticism. Perhaps the techniques of collection and evaluation are more significant than the statistics themselves, the latter shortly to become obsolete. Certainly modern life insurance companies acting as a conduit for the funds of millions of small savers into hands of millions of small borrowers, represent an important collectivized force operating in the field of private saving and investment. For the economist and ultimately for the lawyer, the impact of this collectivization must be measured in terms of investment markets, interest rates, business cycles, and public regulation. To others, however, it may be of ironic cultural significance that the housing of the living should in a large measure be financed by funds paid to secure the decent interment of the dead.

JAMES F. THACHER†

†Member of the New York Bar.