the suit fails the defendant's prestige is enhanced. And if it succeeds the defendant could still publish new material not "substantially equivalent" to the old. Such pitfalls spotlight the inefficacy of the injunction device.

Another suggested method for undermining the force of group libel is "dislosure."47 Designed to expose hate groups to informed criticism, disclosure proposals would prohibit the publication of anonymous defamatory matter,45 and require governmental registration of officers and financiers of groups "which attempt to influence public opinion."40 But revealing the rarely familiar names of those responsible for the literature would accomplish little. Only a small minority of hate publications are anonymous.50 Disclosure in the few cases of anonymity might lend authority to the calumny by eliminating the possible impression that the author fears to be known. Moreover, past experience with the administration of Registration Acts has not been encouraging.51 And always disquieting is the possibility of undue imposition on those who attempt to influence public opinion without defaming anyone.

The dangers and administrative pitfalls of group libel laws and alternative proposals discourage the enactment of further measures, and call for the repeal of existing legislation. It should not be concluded, however, that the government has no affirmative duty to assist in combatting Beauharnais and


48. One state has such a statute, protecting only "any religious group" from libellous "printed material," and requiring that the name and address of the publisher and distributor be "clearly printed or written" on the publication. Fla. Stat. Ann. § 836.11 (Supp. 1950).

49. See To Secure These Rights, Report of the President's Committee on Civil Rights, 164-5 (1947), recommending the enactment of "legislation requiring all groups, which attempt to influence public opinion, to disclose the pertinent facts about themselves through systematic registration procedures."

50. For an indication of the slight effect that "disclosure" enactments would have, see Forster, op. cit. supra note 3, at 230-9. He lists the 49 major hate periodicals, and in not one instance is the publisher, the editor, or the sponsoring organization unknown. He also lists the 51 major examples of books, pamphlets, and leaflets. In only 13 cases was the author unknown, and in only 2 cases was the publisher unknown.

his ilk. Every desirable counter-propaganda technique should be employed. Restrictions which seriously limit the effectiveness of government propaganda activities should be removed. Government education programs should be instituted to supplement present efforts of politically and financially limited private organizations. Such measures will aid in the formation of a wholesome and enlightened public opinion—an audience before which hate tracts and soap-box calumnies would be ineffectual.

POST-CONFIRMATION MODIFICATIONS IN A CHAPTER X REORGANIZATION PLAN*

Corporate reorganization under Chapter X of the Bankruptcy Act seeks equitable adjustment of creditor claims and financial rehabilitation of the debtor corporation. Proceedings are initiated when an insolvent corpora-

52. See generally Institute of Living Law, Combatting Totalitarian Propaganda: the Method of Enlightenment, 27 Minn. L. Rev. 545 (1943), for a discussion of the nature and extent of existing government propaganda techniques. Biddle, supra note 48, at 894-5, discusses a meeting called by the “Association of Governors, the Association of Attorney-Generals, and the Interstate Commission on Crime,” held under the auspices of the Department of Justice, in 1940, at which all but a few states were represented. The one unanimous recommendation by the group was for the organization of a federal bureau of propaganda to analyze and review current propaganda, its objectives, effects, and extent, and to take positive action in the form of counter-propaganda.

53. See Institute of Living Law, supra note 52, at 562-72, discussing the more important statutory restrictions on government publicity. Among others, there is a prohibition on the use of publicity experts, on any publication by a department of the government departing from the “ordinary business transactions” of the department concerned, and on any publication not specifically authorized by Congress. Furthermore, any printing outside of the Government Printing Office is forbidden, causing delays, unwarranted expense, and other administrative barriers to effective propaganda.

54. For an outlined educative program against anti-democratic forces, see Riesman, Government Education for Democracy, 5 Pub. Op. Q. 195-209 (1941), describing the need for widespread and repeated public meetings designed to foster a “democratic spirit.” See also, Riesman, Democracy and Defamation: Fair Game and Fair Comment II, 42 Col. L. Rev. 1282, 1318 (1942).

*Prudence-Bonds Corp. v. City Bank Farmers Trust Co., 186 F.2d 525, (2d Cir. 1951).
2. The chief objectives of a workable plan are: (1) to provide the rehabilitated enterprise, so far as possible, with a capital structure and cash resources which will afford a reasonable chance of financial success as a solvent, going concern; (2) to reconcile the various conflicting claims and interests involved with a minimum of friction and delay. 6 Collier, Bankruptcy ¶10.02 (14th ed. 1947). For general discussion of the function of the reorganization plan, see Gerdes, General Principles of Plans of Corporate Reorganizations, 89 U. of Pa. L. Rev. 39 (1940).
tion or its creditors petition for reorganization. A judicially appointed trustee of the debtor’s property then submits a reorganization plan. Alternative solutions may be proposed by any interested party. If the plan fairly adjusts the debtor’s obligations and soundly recapitalizes the debtor corporation, it is confirmed by the court. When the debtor’s property is conveyed and outstanding claims adjusted according to the plan, the court may enter a final decree ending the proceedings.

Between confirmation and final decree, however, one of the competing interests in the reorganization may request a modification in the plan. For example, a creditor may ask that the debtor’s business not be liquidated, but continued in operation to secure greater returns. Or a security holder unable to meet a filing date may request a time extension for submission of his claim. And any party may desire reallocation of securities in light of unforeseen market developments. In short, a petitioner wants

3. “A corporation, or three or more creditors . . . or an indenture trustee . . . may . . . file a petition under this chapter”. 52 STAT. 885 (1938), 11 U.S.C. § 526 (1946). 6 COLLIER, BANKRUPTCY ¶ 4.02 (14th ed. 1947). Under 52 STAT. 886 (1938), 11 U.S.C. § 530 (1946) the petition must allege the insolvency of the corporation in either the bankruptcy sense (assets insufficient to pay debts) or equity sense (inability to pay debts as they mature).

4. “Upon the approval of a petition, the judge shall, if the indebtedness of a debtor . . . is $250,000 or over, appoint one or more trustees.” 52 STAT. 883 (1938), 11 U.S.C. § 556 (1946). Where the indebtedness is less than the stated amount the judge may appoint a trustee or continue the debtor in possession. Ibid. If the debtor is left in possession, 52 STAT. 890 (1933), 11 U.S.C. § 568 provides for the appointment of an examiner with the duty of preparing and filing a plan of reorganization.

5. [T]he trustee shall prepare and file a plan . . . and . . . such amendments or plans as may be proposed by the debtor or by any creditor or stockholder [will be considered].” 52 STAT. 890 (1938), 11 U.S.C. § 569 (1946). See FINLETT, PRINCIPLES OF CORPORATE REORGANIZATION 375 et seq. (1937); 6 COLLIER, BANKRUPTCY ¶7.25 et seq. (14th ed. 1947).


7. “Upon confirmation of a plan— . . . (2) the debtor and every other corporation organized or to be organized for the purpose of carrying out the plan shall comply with the provisions of the plan and with all orders of the court relative thereto and shall take all action necessary to carry out the plan.” 52 STAT. 898 (1938), 11 U.S.C. § 624 (1946). See FINLETT, PRINCIPLES OF CORPORATE REORGANIZATION, 453 et seq. (1937).

8. “Upon the consummation of the plan, the judge shall enter a final decree—— . . . (4) closing the estate.” 52 STAT. 899 (1938), 11 U.S.C. § 628 (1946).

modification in order to get more favorable treatment than the confirmed plan has provided.

Although courts have statutory authority to modify reorganization plans before and after confirmation,\(^{12}\) they generally hold that the confirmation order fixes all rights. No modification is permitted unless the court reserves specific jurisdiction in the confirmation order or plan over the particular portion of the plan to be modified later.\(^{13}\) A general reservation of jurisdiction over the entire proceedings is held insufficient by itself to support subsequent modifications.\(^{14}\)

The recent case of Prudence-Bonds Corporation v. City Bank Farmers Trust Co.,\(^{15}\) however, rejects this limitation and sanctions a modification in the plan after its confirmation although only general jurisdiction had been reserved. Under the reorganization plan of Prudence-Bonds as confirmed by the district court, the reorganized corporation assumed payment of bonds by May 1, 1950. When mismanagement of the bond security made delay in redemption inevitable, the successor corporation petitioned for an extension until May 1, 1952. Although the district court had reserved no specific jurisdiction in the confirmation order, it modified the plan as requested. On appeal, the Second Circuit affirmed that the district court had clear authority to modify the plan until a final decree was entered.\(^{16}\)

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12. "A plan may be altered or modified, with the approval of the judge, ... before or after its confirmation. ..." 52 Stat. 898 (1938), 11 U.S.C. § 622 (1946).

13. See note 14 infra. For a specific reservation of jurisdiction, see In re Standard Gas and Electric Co., 139 F.2d 149, 151 (3d Cir. 1943) (court assigned causes of action against former directors of debtor corporation to special trustee and reserved specific jurisdiction over him and his pursuit of litigation). For a general reservation, see North American Car Co. v. Peerless Weighing & Vending Machine Corp., 143 F.2d 938, 939 (2d Cir. 1944) (confirmation order reserved "full right and jurisdiction to make from time to time [proper] orders amplifying, extending, confirming or otherwise modifying this order").

14. E.g., In re Flatbush Ave.-Nevins St. Corp., 133 F.2d 760 (2d Cir. 1943); In re Ambassador Hotel Corp., 124 F.2d 435 (2d Cir. 1942). A general reservation of jurisdiction will, however, sustain orders effectuating the operation of the plan that do not adversely affect parties' rights. E.g., In re 4145 Broadway Hotel Co., 131 F.2d 120 (7th Cir. 1942) (jurisdiction to enjoin interference with plan); In re George F. Nord Bldg. Corp., 129 F.2d 173 (7th Cir. 1942) (jurisdiction to enjoin improper proxy solicitations). For general discussion of court's power to modify a reorganization plan after confirmation, see Miller, Status of Economic Interests in Proceedings Under Chapter X After Confirmation of the Reorganization Plan, 24 N.Y.U.L.Q. 707 (1949).

15. 186 F.2d 525 (2d Cir. 1951).

16. Ibid. Dicta in the opinion indicate that not even a general reservation of jurisdiction in the confirmation order is essential to support the modifications. See id. at 528 (analogy to pre-confirmation modifications in the plan, where no "express" reservation is needed). But since a general reservation can be inserted in every future confirmation order as a matter of routine it makes little difference whether a general reservation or no reservation is required. In practical effect, courts are equally free to modify until final decree.
Earlier decisions to the contrary were considered "erroneous."

The Prudence-Bond rule may prejudice all interested parties to a reorganization. Stability is sacrificed; for exercise of power to modify the plan at any time during the often lengthy interval between confirmation and final decree can radically reshuffle the economic interests of the reorganized corporation's creditors and stockholders alike. Furthermore, if parties dealing with the corporation know that the plan is subject to change, the reorganized corporation may find difficulty in carrying on business operations between confirmation and final decree. Conservative long-term financiers will be reluctant to underwrite, or invest in, securities considered highly speculative because subject to added market risks of later modifications.

17. Ibid. In Knight v. Wertheim & Co., 158 F.2d 833 (2d Cir. 1947), the Second Circuit had allowed a post-confirmation modification not based on specific reservation of jurisdiction. The plan had allocated a large equity by way of stock in the new corporation to bondholders. However, the market value of the debtor's bonds had so risen that bondholders could have satisfied their claims in full. A modification which gave the primary equity in the new corporation to the old stockholders was permitted and affirmed on appeal. The Knight holding, however, could have been limited to situations where security values increase sufficiently to allow participation of junior interests. See Miller, Status of Economic Interests in Proceedings Under Chapter X After Confirmation of the Reorganization Plan, 24 N.Y.U.L.Q. 707, 743 (1949). But the Prudence rule makes it clear that the Second Circuit probably will permit post-confirmation modifications in all meritorious circumstances.

18. "If the date of final decree is taken, as the Circuit Court of Appeals for the Second Circuit apparently did in the Equitable case (Knight v. Wertheim, 158 F.2d 833), creditors extending credit after confirmation and old creditors and stockholders receiving interests under the plan will be unable to determine their rights until entry of the final decree,... This uncertainty will make it difficult to get credit, make contracts, and receive such commitments (which may include the underwriting of securities under the plan) as may be necessary to consummate the plan." H.R. Rep. No. 424, 81st Cong., 1st Sess. 18 (1949).

19. E.g., Reese v. Beacon Hotel Corp., 149 F.2d 610 (2d Cir. 1945) (over 6 years); North American Car Co. v. Peerless Weighing & Vending Machine Corp., 143 F.2d 933 (2d Cir. 1944) (over 8 years); In re Ambassador Hotel Corp., 124 F.2d 435 (2d Cir. 1942) (over 6 years).

20. Cf. Country Life Apartments, Inc. v. Buckley, 145 F.2d 935 (2d Cir. 1944) (proposed modification would change plan from sales of assets and distribution of proceeds to retention of assets and settlement of claims by distribution of stock); North American Car Co. v. Peerless Weighing & Vending Machine Corp., 143 F.2d 933 (2d Cir. 1944) (proposed modification would allow exchange of old bonds for new securities long after the date which the plan originally provided such bonds could be exchanged); In re Deep Rock Oil Corp., 113 F.2d 266 (10th Cir. 1940) (proposed modification would allow subordinated parent corporation to share in any substantial increase in value of the debtors' property).

21. See note 18 supra.

22. Whether the prospect of post-confirmation modifications will in fact unstabilize the securities of the reorganized corporation is open to argument. Possible modifications do introduce an unpredictable element into the market value of the potentially modified securities, and on any other security issues of the reorganized corporation as well. On the other hand, the very economic conditions which cause fluctuation of the market values
Modifications in the plan may also endanger repayment of post-confirmation creditors. For example, a creditor may rely for security on property allocated to the debtor corporation under the confirmed plan. A later modification may wipe out this fund to pay off another class of security holder.\(^2\)

On the other hand, rigidity can result when confirmation is made the cutoff date for modifications. A reorganization plan cannot provide for every contingency, and execution of the plan may disclose unforeseen problems.\(^2\) Moreover, unstable business conditions, whether affecting the entire economy or of more limited impact, can drastically affect the value of security holdings.\(^2\) Any particular class of security holders may suffer, depending on the direction of the fluctuation.\(^2\) The reasonable expectations of some parties to the confirmed plan are thus defeated by business events beyond their control. To preserve roughly the parties' financial status quo over lengthy periods of plan implementation, some post-confirmation flexibility may be desired.

Intended to limit the extended period for modifications now permitted in the Second Circuit, a proposed amendment to Chapter X selects a date between confirmation and final decree as fixing the rights of the parties conclusively.\(^2\) "Substantial consummation," the proposed cutoff date, is achieved when three post-confirmation steps have been taken under the plan: (1) transfer, sale, or disposition of the property; (2) operation of the business, and management of the property by the debtor or the new corporation; and (3) commencement

are those that could justify a modification in the plan. Consequently modifications might stabilize the market value of securities, or at least cancel any unstabilizing effects exerted by their potential exercise.

23. *Cf.* Knight v. Wertheim, 158 F.2d 838 (2d Cir. 1946), where the plan was modified to pay off debenture holders in cash rather than stock of the reorganized corporation. See also note 18 *supra*.

24. *E.g.*, In re Hermitage Bldg. Corp., 100 F.2d 597 (7th Cir. 1938) (non-surrender of stock under the plan by old stockholder and his suit in state court to enforce his rights).

25. *Cf.*, Knight v. Wertheim & Co., 158 F. 2d 838 (2d Cir. 1946). In that reorganization, the value of the debtor's securities more than doubled during the consummation period. The court permitted a modification transferring the equity in the corporation from the debenture holders to the old stockholders. The reorganization was concerned with the building at 120 Broadway, in the financial district of New York. A gradual improvement in business conditions generally, and a shortage of office space in particular, probably accounted for a great deal of this increase in value.

26. For a discussion of the diverse effects economic fluctuation may have on varying types of businesses and their securities, see Dewing, *Financial Policy of Corporations* 239 41, 740-73 (4th ed. 1946).

27. See note 28 *infra*. "In order to limit the period for modifications now allowed in the Second Circuit, and to uniformly establish a definite cutoff date for modifications, the National Bankruptcy Conference is currently sponsoring an amendment to Chapter X of the Bankruptcy Act." Communication to the *Yale Law Journal* from J. W. Moore, Professor, Yale Law School, dated November 14, 1951, on file in Yale Law Library. The National Bankruptcy Conference was founded in 1932 and is composed of outstanding men in the field of Bankruptcy, and members of related groups, such as the National Association of Referees in Bankruptcy, the National Association of Credit Men, and American Bankers Association.
ment of the distribution of the cash and securities to creditors and stockholders.28

The proposed amendment apparently strikes a middle ground between early certainty and flexibility in the reorganization. In less complicated cases the three steps amounting to "substantial consummation" may in fact initiate actual consummation of the plan.29 But more complex situations can delay "substantial consummation" for months. And since plans vary in scope and complexity, no fixed time span will hold true in every case.30 Moreover, appeals from the confirmation order may postpone this date even in simple cases.31 Consequently, the exact date of "substantial consummation" cannot be predicted for any single reorganization.32 Investors, creditors and stockholders are still subject to uncertainty.

If real certainty is to be achieved,33 confirmation is the most effective cutoff date for modifications in a reorganization plan. At that time, the rights and obligations of all interested parties would be fixed beyond reach of unilateral change. If the confirmation order is unsuccessfully appealed, the plan stands as confirmed without modification. A successful appeal, on the other hand,

28. § 229(a), proposed amendment to 11 U.S.C. §§ 501-670 (1946). The proposed amendment further provides: (b) that after the plan has been substantially consummated in accordance with subsection (a), any interested party may apply to the judge for an order to that effect; (c) that whenever a plan has been substantially consummated, or an order entered to that effect on application of an interested party, then thereafter the plan may no longer be materially modified. Copy on file in Yale Law Library.

A similar amendment passed the House of Representatives but was never passed by the Senate. H.R. 3111, 81st Cong., 1st Sess. (1949); H.R. 593, 80th Cong., 1st Sess. (1948). It provided that when the debtor, or the corporation created by the plan, began to operate the business no further modification could be made.

29. "Only when the three steps are simultaneous— which is normal in the less complicated cases— will initiation of consummation also effect 'substantial consummation' under the amendment." Communication to the YALE LAW JOURNAL from George Zolotar, Chief, Reorganization Unit, Securities and Exchange Commission, Regional Office, dated November 21, 1951, on file in Yale Law Library.

30. "Consummation may take place as soon after confirmation as it is possible to prepare and print the formal documents of transfer, the new charter, by-laws, etc., and to print or engrave the new securities. This may vary from a matter of weeks to many months, depending upon the size and complexity of the case." Communication to the YALE LAW JOURNAL from George Zolotar, Chief, Reorganization Unit, Securities and Exchange Commission, Regional Office, dated October 15, 1951, on file in Yale Law Library.

31. The debtor, all creditors, or stockholders have a right to appeal all orders of the reorganization court. 6 COLLIER, BANKRUPTCY ¶ 923 (14th ed. 1946). "[T]he appeal leaves the trial court without jurisdiction to proceed further in the case until it receives the mandate of the appellate court." Rogers v. Consolidated Rock Products Co., 114 F.2d 108, 111 (9th Cir. 1940).

32. See note 30 supra.

33. "The desire for flexibility, in my opinion, is far outweighed by the needs of the reorganized company, its old and new security holders, and those with whom it engages in business following consummation—all of whom should be free to conduct themselves without fear that their rights may be modified in some unexpected way..." Communication, note 30 supra.
returns the proceedings to a pre-confirmation status. The defect in the plan causing reversal of the confirmation order can then be remedied. Moreover, creditors dealing with the distressed corporation are automatically protected. Credit extended after confirmation is secured by known assets not subject to reallocation, and pre-confirmation creditors can be granted priority in payment as an “expense of administration.” As a result, the new corporation’s power to procure credit for operating the business at any stage of the proceedings is enhanced.

Since post-confirmation modifications jeopardize the finality of all parties’ rights for the benefit of a particular class, the debtor corporation should be cut loose from judicial interference at the earliest practicable date. True, confirmation as the cutoff date sacrifices the flexibility that can compensate for shifting economic conditions. But since all rights must be fixed at some time, no matter what the cutoff date, inevitable ups and downs in business circumstances could justify endless modification requests. On the other hand, Chapter X sets up procedures for full consideration of the plan before confirmation. Future business prospects are undoubtedly weighed by all parties

34. The order confirming the reorganization plan is subject to appeal. See e.g., Consolidated Rock Products v. Du Bois, 312 U.S. 510 (1941). Upon reversal alternative plans “should first be considered by the District Court or by the trustee,” Whitmore Plaza Corporation v. Smith, 113 F.2d 210, 212 (6th Cir. 1940), or the District Court may “enter an order either adjudging the debtor a bankrupt . . . or dismissing the proceedings under this chapter.” 52 Stat. 891 (1938), 11 U.S.C. § 636 (1946).

35. “A plan of reorganization . . . (3) shall provide for the payment of all costs and expenses of administration.” 52 Stat. 895 (1938), 11 U.S.C. § 616 (1946). At present debts incurred in the course of business, where the debtor has remained in possession of the property, are allowed a priority as an “expense of administration.” In re Wilt-Low Cafeterias Inc., 111 F.2d 429 (2d Cir. 1940); In re Avorn Dress Co. Inc., 78 F.2d 681 (2d Cir. 1935). Debts incurred in the course of business after confirmation are not allowed such a priority, on the basis that the court has relinquished control of the debtor’s property. Clinton Trust Co. v. John H. Elliot Leather Co., 132 F.2d 299 (2d Cir. 1942). A fortiori, debts incurred prior to confirmation can be given priority, since the court does have full control of the debtor prior to this date. For the treatment of such claims in a Chapter XI Arrangement see Vogel v. Mohawk Electric Sales Co., 126 F.2d 759 (2d Cir. 1942). And cf. H.R. 3111, 81st Cong., 1st Sess. (1949); H.R. 5693, 80th Cong., 2d Sess. (1948), providing that debts incurred before the reorganized corporation began “operating the business” be entitled to priority as an “expense of administration.”

36. That a bankruptcy judge might attempt persistently to shelter the reorganized corporation from business vicissitudes was recognized by the Prudence Bond court. “[I]t is often exceedingly difficult for a bankruptcy court to resist the importunities, usually unopposed, of those who wish to keep the ‘revived debtor’ indefinitely beneath its aegis. . . .” Prudence-Bonds Corp. v. City Bank Farmers Trust Co., 186 F.2d 525, 528 (2d Cir. 1951).