

LAW AND CONTEMPORARY PROBLEMS

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FOREWORD

Railroad transportation is a sick industry. Whether the weight of the capital burden borne by the railroads has played a causative role in their maladies or has become excessive only by reason of weaknesses induced by other causes, it seems clear that many carriers can face the competition and the other hazards of the future only if their capital charges are drastically reduced. Even though surgery such as this may not bring health to the industry as a whole, reorganization on a considerable scale is indicated. Indeed, about 30% of the mileage of American railroads is already subject to this therapy.

But agreement on the necessity for reorganization is only a prelude to disagreement on the host of questions which it presents. Should the technique of the equity receivership still be employed or should it be abandoned for the newer bankruptcy mechanisms of Section 77? To what or to whom should the delays characterizing current reorganizations be attributed, and are these delays harmful, tolerable, or even beneficial? Does effective railroad reorganization require the establishment of a special court, charged with this task only and equipped with an administrative staff, in lieu of the federal district courts now having jurisdiction? How can the enlarging circle of interest groups best be accorded representation? Can procedures short of reorganization be devised for roads whose financial plight does not make reorganization imperative?

Recent and pending legislation has given specificity to these and other questions. Though the present preoccupation of the Congress with urgent defense measures makes unlikely any major alterations now in the reorganization machinery created in 1933 and revised two years later, yet consideration of proposals for change has advanced to a stage that renders eventual action almost certain. In the present interlude, this symposium may be of value as providing a source of both information and opinion relating to the processes of railroad reorganization and the controversies they have inspired.

Traditionally, railroad reorganization has been the preserve of the specialist, but this symposium has been organized on the assumption that current interest in the subject extends beyond the circle of the initiate. Accordingly, two introductory articles are included which trace the development, respectively, of railroad corporate structures and of railroad reorganization law, the former exemplifying the adjustment of economic patterns to legal exigencies and the latter illustrating the converse phenomenon.

There follow two articles focused on what has been taking place in current reorganizations. The first of these—to recur to medical metaphor—examines the charts of the corporate patients in the bankruptcy and receivership wards, notes the impediments to rapid recovery, and observes some evidence of malingering. The second article describes what has been done by the judicial and, especially, the administrative doctors in the task of reducing capital structures to viable dimensions while obeying judicial and statutory mandates as to fairness and equity. But legal considerations are, of course, not the only guides to the framing of reorganization plans, and the succeeding article discusses factors of significance from the financial standpoint.

Differences of opinion as to the proper criteria of reorganization have tended to be overshadowed by the lively controversy centering around the question by whom these criteria should be applied. Dissatisfaction with the present arrangement is prevalent; not so, agreement as to an alternative. Admitted is the desirability of participation by the Interstate Commerce Commission but its precise functions and its relation to the judiciary are in dispute. It is, however, the proposal to create a special reorganization court which has excited the most vigorous argument. The sixth and seventh articles of the symposium are representative of differing views on this cluster of problems.

The new controls introduced by Section 77 have had their repercussions on the representation of security holders in railroad reorganizations, a development examined in the eighth article in the symposium. But the security holder and the debtor are no longer the exclusive parties in interest in the proceedings. Another interest group is railroad labor, and an article by a spokesman for it makes evident the importance which he attaches to the reduction of railroad capital changes. Still another group (heretofore not menaced by, and hence inarticulate in, railroad reorganizations) is comprised of the users of railroad transportation who now fear that hard-pressed security holders will seek to augment their salvage by jettisoning unprofitable, though valued, services. The danger, discussed in an article by a representative of this emerging "consumer" interest, is especially acute in relation to leased lines, the problems of which are, in turn, surveyed in the article following.

Belief that procedures less cumbersome than bankruptcy or equity reorganization would meet the needs of roads whose financial distress is not severe has led to experimentation with one device and the proposal of another. These are discussed in the two concluding articles. The first of these appraises Chapter XV of the Bankruptcy Act, providing for the voluntary adjustment of railroad obligations, and advances suggestions for improvement in the event of its reenactment. The second article examines the proposal that railroads be aided by government credit in the purchase of their own obligations to reduce fixed charges and discusses a major legal difficulty in legislation to this end which is now pending.

The problems of railroad reorganization do not stand in isolation from the many other aspects of "the railroad problem," but the consideration in this periodical of these related problems must await the publication of some future symposium in the transportation field.

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