

Corporate Readjustment and Reorganization (Book Review)

Maurice Finkelstein

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

next to his bed so that he need but turn to see what for him was a symbol—the devotion of youth.”¹⁰

In May, 1938, he left Washington forever. He died on July 9, 1938, in the country home of his beloved friends, Judge and Mrs. Irving Lehman.

The coffin was lowered to its final resting place. His cousins, in their last farewell, gently cast bits of earth to cover their mortal kinsman. Drops of rain were gently falling. Nature pronounced the only eulogy.

IV

The mantle of Justice Cardozo descended upon Justice Frankfurter. Perhaps some day, the successor may, in some grand work, mark out the jurisprudential achievements of his great predecessor. In the meantime, I am grateful to biographer George S. Hellman for resurrecting memories of the nobility of character of Benjamin N. Cardozo.

LOUIS PRASHKER.*

CORPORATE READJUSTMENT AND REORGANIZATION. By Louis P. Starkweather, M.B.A., D.C.S. Copyright by the author, 1940, pp. 99.

This monograph on corporate reorganization should prove extremely useful to the practitioner and of great interest to the student. Those of us who are familiar with old-style reorganizations and equity receiverships, the defects of which were made available to the public in Mr. Lowenthal's book *The Investor Pays*, will realize how much progress has been made in this field in the past ten years. From the closely controlled reorganization proceeding, arranged by committees in most cases designated by the very bankers who had floated the original issues in cooperation with the management that had produced the defaults, to the modern proceedings under Chapters X and XI of the Federal Bankruptcy Act, closely supervised by highly skilled observers in the Securities and Exchange Commission, is a long step. The step could not have been taken by legislation alone although, without it, judges in the United States District Courts and more fair-minded bankers and lawyers were practically powerless to arrest the steady course of activities in reorganization where the main purpose seemed always to be "denuding the bondholders".

Professor Starkweather has undertaken the difficult task of outlining the causes leading to the need for reorganization, both external and internal, and of considering the steps in reorganization and readjustment in the light of these causes. The author shows a close familiarity with the problems involved and is master of the art of making complicated affairs seem very simple. He has, in addition, collected numerous data, both of historical interest and practical utility. For example, he shows that for the eighteen years beginning 1920 and ending

¹⁰ P. 309.

* Professor of Law, St. John's University School of Law.

1937, more than sixteen and one-half billion dollars of claims were administered in bankruptcy on which a little less than one and one-half billion dollars was realized. It has many interesting charts, beginning with the life cycle of industry generally and explaining the receiverships in particular cases. These are of invaluable aid in the study of the causes of the failure.

The second part of the volume is dedicated to an explanation of the steps necessary to be taken under the various systems of reorganization, including valuable data with respect to a variety of effectuated reorganization plans. Not least valuable are the inclusion of specimen reports of the Securities and Exchange Commission with regard to particular plans of reorganization.

Those of us who sat through endless meetings of committees and lawyers arranging reorganizations large and small will recognize in this volume a compilation of experience which should prove a valuable short cut to the student. The volume can certainly serve as an excellent text book in a course on reorganization.

MAURICE FINKELSTEIN.*

THE LAW IN QUEST OF ITSELF. By Lon L. Fuller. Chicago: The Foundation Press, 1940, p. 207.

The function of legal philosophy is, in Professor Fuller's arresting phrase, an attempt "to give a profitable and satisfying direction to the application of human energies in the law."¹ The direction which such human energies shall take depends, of course, largely on our definition of law itself. Shall they be directed to the examination of the law *that is*, as the legal positivists admonish, or of the law *that ought to be*, according to the exponents of the school of natural law? The author's answer is that it is impossible to dissociate law in action from the law of the case books; that there is no "rigid separation of the *is* and the *ought*";² that it is neither the sovereign, in Austin's formal sense, nor the temporary numerical majority of the people, as Hans Kelsen, the leader of the Vienna School, believes, that creates the law, but that there is a field of "autonomous order", in the author's phrase, which so surrounds the positive law that there can be no sharp division between the rule that is and the rule that ought to be.

The author maintains that legal positivism has proved itself entirely inadequate to formulate a true definition of law, and that it is necessary to enlist the services of natural law in order to clarify the goal of legal philosophy as he has defined it. This then is a round to be scored in favor of the followers of natural law. However, natural law has many definitions of its own. The term is used by the author, not in the sense of natural rights, or of divinely created rights, or of Rousseau's goal of ideal perfection, but in the ethical³ rather than

* Professor of Law, St. John's University School of Law.

¹ P. 2.

² P. 5.

³ BOWMAN, ELEMENTARY LAW (1937) 15.