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Book Reviews

BOOKS REVIEWED

Freedom and Responsibility: Readings in Philosophy and Law. Edited by Herbert Morris. Stanford: Stanford University Press. 1961. Pp. ix, 547. $11.50.

As things go, the *juventus cupida legum* has studied philosophy and psychology, economics and sociology, in college with no more than incidental references to law, not always even now helpful, and has studied law in law school with little or no mention in the common-law courses of their relation to or the foundations of their doctrines and precepts in what they have studied in college. When, in 1889, I came from college to the study of law, my father, who was a judge, advised me to begin with Blackstone and with Walker's *American Law.* The second section of the Introduction in the first volume of the *Commentaries* did not edify one who had taken a college course in philosophy taught from Herbert Spencer's *First Principles* and who had read some Plato and a bit of Aristotle under a Scotch Professor of Greek who expounded them in terms of Dugald Stewart. Nor did a college course in political economy, taught from an exponent of Mill, dispose me to assume or seek a foundation for interpretation of law I was to study outside of the law itself. This assumption that law was sufficient unto itself was fortified when I read, in the first lecture of Walker's *American Law*:

When the question is, what is the law regulating a given matter? it resolves itself into two others—who has the law-making power in reference to this matter?—and what has this power in fact ordained? Now you cannot, as in natural science, resolve these questions by analysis or induction. You cannot apply to them the principles of mathematical demonstration. They cannot be reached by reasoning *a priori.* Nor can you, as in ethics, appeal to the monitor within. Conscience may inform you what the moral law is, and what the municipal law ought to be; but it might greatly mislead you as to what the municipal law actually is. To determine this, you must search the voluminous records of law, until you find the positive regulation; in which constant searching chiefly consists the labor of the lawyer.[1]

When one reads this today he can but wonder how the good sense of two generations of American lawyers, brought up under the guidance of such ideas, could on the whole have done so well in administering justice in a great and growing land in an expanding world.

But Anglo-American administration of justice was not as crudely simple as the nineteenth-century analytical jurisprudence in which my generation was brought up professed. Coke's proposition—"reason is the life of the law, nay the common law itselfe is nothing else but reason . . ."[2]—is profoundly true even if Holmes prefers to say the life of the law is rather experience.[3] In truth, law is both reason and experience—experience tested and developed by reason. In what is justly spoken of as "changing law in a changing society" by a leading jurist today, the need of acquaintance with, and ability to make wise use of philosophy, psychology, ethics, economics, the science of politics, and logic becomes increasingly urgent.

How to give these several branches of learning each their proper place in a complete and well-balanced scheme of legal education is not easily answered. Perhaps there must be some differences according to the ultimate direction which the activities of the lawyer will take: whether he is to be practitioner, judge, law-teacher and/or writer, administrative official, or legislator. A little learning is often a dangerous

1. Walker, American Law 6 (11th ed. 1905).
2. Coke, First Institute 97(b) (1642).
3. Holmes, Common Law 1 (1881).

thing. In trying to include all that in perfection could be wished for, we may in the result fail to teach anything thoroughly and achieve harm out of proportion to good. Very likely the way out may be found in the graduate instruction now increasingly afforded in American law schools. But the general course, expected to be supplemented by graduate courses, may prove too thin a foundation for its chief purpose and not strong enough to support special work in other fields of social or political activity.

I make no pretensions of competency to lay out a plan of legal education for America of today, or to pass upon improvements which are being made everywhere on every side. But I feel reasonably competent to appraise an item which meets a real and urgent need in the teaching of criminal law and appeals to me as meeting that need exceptionally well. The criminal law has by no means received from those in charge of legal education the attention it should have. It presents some special difficulties, which, from having taught in three schools for some years, from some experience as a trial lawyer and as judge, from some activity in two surveys of the administration of justice in large cities, and from work in connection with probation and parole in the National Council on Crime and Delinquency, I have been coming to feel very strongly. Accordingly, I have been much impressed by a book which, making no pretension of revolutionary change, strikes at the root of much difficulty in effective teaching of criminal law for any of its purposes. There are ten chapters, taking up ten subjects which are controversial in their relation to criminal law today, namely: responsibility; the will; act; intention and motive; negligence, recklessness, and strict liability; causation; ignorance and mistake; legal insanity; free will; and, punishment. There is added a very full bibliography.

"Strict liability" is a term which came into use when the law of torts was still thought of in terms of the common-law action of trespass *vi et armis*, in which the writ recited an attack with "swords, knives and staves." In the eighteenth century the law got away from that analogy and the idea of moral fault behind the term "tort" became the basic one—the idea of a morally blameworthy act or omission which has caused injury to another. In the nineteenth century, the formative era of American law, personal injury in industrial activities was incurred in one-to-one relations of master and servant, the village blacksmith and his helper, the village grocer and the driver of his delivery wagon, the farmer and his hired man. Here fault of the employer was an adequate ground for holding him liable. But today injuries to life and limb are involved in mechanical operations in which many take part and which are conducted, not by an individual employer but, by corporations under conditions in which, without blameworthy conduct on the part of any particular person, experience shows that there is in the nature of things a certain amount of incidental injury. Hence it has justly come to be felt that reparation for such injury is a proper element in the cost of production of a manufactured product or of carrying on a professed activity. This is achieved by holding enterprises liable, as it has been put, *quasi-ex delicto*. Both *quasi-delict* and strict liability are misleading terms due to persistence of the procedural analogy in our legal terminology.

Likewise, in the treatment of causation confusion has resulted from thinking from procedure to substantive law instead of from substantive law to procedure: not from the substantive basis of legal relief to a logically appropriate category of attaining relief, but from the procedural analogy historically at hand to requirements of just measures of relief to which it had no true relation. Perhaps the author might have added a chapter on philosophical misuse of historical analogy. Where an injury resulted from a succession of incidents of culpable conduct of independent actors, not acting jointly as one, the "swords, knives and staves" analogy led to treatment of

the case as one of a single attack by one person upon another person, and the whole burden of reparation had to fall on some one of the actors. Very likely the injured person might have wished to be able to choose as defendant the one most likely to be able to respond readily to a judgment for damages. But that would have shocked a generation which had faith in formal logic and sought strict logical application of the analogy of the wilful attack. Logical development of the analogy seemed to require us to find one wrongdoer, or a group of wrongdoers acting as one, to be held responsible. So we got a rule or doctrine of proximate causation and one of no contribution among tort-feasors, which in the past have often defeated or much embarrassed the administration of justice in personal injury litigation.

Under each of the ten topics the method of presentation, very well carried out in each case, is a general statement of the problem or problems presented in the administration of justice with respect to freedom and responsibility. As is said in the preface: "Our notions of responsibility are in flux, especially in the law . . . . We wonder whether or not basic attitudes need serious revision . . . ." Accordingly, the first chapter indicates "the main legal and philosophical questions that arise in connection with freedom and responsibility." (p. iv.) The succeeding chapters seek to go over the whole ground with respect to "crucial concepts where responsibility is in some manner at issue." (p. iv.) Thus, fundamental questions of the legal order are subjected to scrutiny of thinkers and teachers of past and present in many different connections.

The method is, in each chapter, a general statement of the philosophical, ethical, psychological, or sociological questions presented to jurist, legislator, and judge, followed by well selected readings from codes or laws, from law reports of special cases, from the writings of jurists, of philosophers, of writers of ethics, of writers on political science, and of sociologists upon the general topic or upon some particular item. These are invariably not arranged in sequence of date of writing, although that sequence is often important and is then followed, and the sequence chosen is evidently carefully chosen for a purpose. Perhaps, because I was brought up on the once orthodox analytical jurisprudence of Austin and Holland and had to unlearn painfully what I had been taught to take for granted, when I first examined the list of readings under the several chapters I had an uneasy feeling that it was somewhat overweighted from the analytical side. But I soon saw the choice of extracts was made not to instruct the reader in what he was to receive and accept, but to show him what had been argued and accepted in the course of juristic thinking in this country in the recent past. It has a legitimate place in teaching those who will be using the writings of yesterday in the courts and law schools of tomorrow. Moreover, the severe thinking of those writers had an influence upon the juristic thought and so upon the development of doctrine on important items. The thoughtful teacher can instruct himself when he reflects upon them.

Of the cases taken from the law reports, *M'Naghten's Case*[4] is still presenting a live question, not yet solved in our courts, and the readings with which it is grouped will lead teacher and student to do some worthwhile thinking and arguing on a practical point of what some contemporary cases that I read of in the newspapers show still is a live problem of our criminal law.

We have here a real contribution to the apparatus of legal education. How is it to be used to the best advantage? I wish I could sit in the author's seminar and argue with him and his students, not only every day questions of applied justice and law, but making the best use to be made of his book. For I am not clear on this

4. 10 Cl. & Fin. 200, 8 Eng. Rep. 718 (H.L. 1843).

point. Is it, perhaps, more a book from which to carry on effective instruction of graduate law students than one for the beginners or even more advanced undergraduates? Is it going to be more useful for those who are to become law teachers than for those who are to go at once into and remain in active practice? Those who shape the law school curriculum to the needs of all around lawyers must take account of what the well-trained lawyer may be called upon to do. Upon graduation he may need preparation for active work in law office or court and may remain in that work for the rest of his professional career. Even so, he will be the better for sound preparation for creative law finding or law making as judge of an appellate court or as a legislator. The law school should so prepare him that he may be able both to use his legal education for his every-day work and also to build upon it by adding experience to training.

I have found in more than a generation of law teaching that when students come from college they often have to be disabused of ideas about law, the administration of justice, and the practice of law, and that there was a certain advantage in the nineteenth-century analytical approach, if not pressed too hard or persisted in too long. When I first opened this book of which I am writing and saw the list of authors from whose writings the extracts had been taken, I feared it had been overweighted from the side of nineteenth-century analytical jurisprudence. I saw four extracts from the writings of Austin, three from Holland, one from Bentham, but nothing from Savigny, Maine, Jhering, or Gény. But for the purpose of the book, as things are, there is no imbalance. The legal order of today calls for both laws and law—for rules for local policing as well as for great principles and universal policies for world peace and justice. In the actual world in which we live neither may be overlooked. Over-insistence upon each is to be avoided.

As I look back over the somewhat more than three score and ten years since I came from college to law school, I feel thankful for the college education we had in my day: Latin, Greek, mathematics, and one foreign language (I had two), a general introductory course in one natural science and one physical science, and also in philosophy, ethics, and economics. History and political science we got through our classical and linguistic training and reading. Our training was narrowly thorough in languages and mathematics—so thorough in those narrow limits that I can recite from memory to this day long passages from the Greek and Latin and modern-language poets. What we knew besides, we got from general reading as we liked. Those were the days of local laws and faith in local law, when we talked of the Massachusetts or New York or Pennsylvania, or Ohio or Michigan or Illinois or California doctrine on points of common law, and were much concerned with, and entangled in details of procedure in "common-law" or "code" states. Today we look toward a law of the world. When my father sent me to Harvard Law School his neighbors, fellow lawyers, shook their heads. Why should a boy who was to practice law in Nebraska go to a law school in Massachusetts? Today, two judges of the highest courts in England got much of their legal education in America; one of the Justices of the Supreme Court of the United States had a great part of his legal education in England, and a judge of the Supreme Court of Canada had his legal education in a law school on this side of the border.

In other words, we are moving toward a law of the world and yet, local policing requires, and because of, if nothing else, local physical conditions may always require, local laws. A complex system of world law in separate states, policed by local laws, calls for more diversified methods of professional training. Langdell adapted the method practised by Socrates in his "thinking-shop" to law teaching and from the case books of his disciples we have moved to the books of "cases and materials"

in use in the American law schools of today. Perhaps the next step will be books of "materials" for study and discussion between teachers and students in which the statutes and judicial decisions and doctrinal treatises and reports of discussions in learned professional associations will serve to train those whose function and duty it will be to "make straight the paths of justice."

ROSCOE POUND*

The Death and Life of Great American Cities. Jane Jacobs. New York: Random House, Inc. 1961. Pp. 458. $5.95.

This book is written by an able journalist who is also a housewife and mother. The author lives in one of New York's unique communities, Greenwich Village, of which her neighborhood, "West Village," still untouched by major blight or consequent renewal treatment, serves as the focal point for the author's observations. Her view of the urban scene is limited, therefore, to the subjective reaction of a lover of a special sort of city life that is far from typical.

This book, nevertheless, merits study by lawyers concerned with the problems engendered by a rapidly changing urban society, if for no other reason than that its author is being so widely publicized.[1] Chapters drawn from the book have been reprinted and reviews of it have been written in journals varying from popular weeklies like the *Saturday Evening Post*,[2] to professional quarterlies like the *Journal of the American Institute of Architects*,[3] as well as in monthly journals and in the daily press. It has set loose a series of stimulating platform discussions ranging from artistic to political audiences.[4] All this proves the interest of a wide-reading and debating public in a subject which has heretofore been treated largely as an administrative, professional matter and discussed only within those circles. By launching a forthright attack on some of the accepted policies practiced, not only by some planning and housing officials, but also by many professionals engaged in the development of large scale projects, Mrs. Jacobs has aroused as much resentment as uncritical applause. The resentment has come from those who are genuinely interested in promoting the very ideas she claims to champion, while the acclamation has been from people in other walks of life who have miscellaneous "gripes" against planning in general, and against large scale renewal projects in particular.

The Death and Life of Great American Cities was not intended as a tome for professionals, but as a tract for general consumption. It will be of concern to the legal mind because the subject matter—cities—has become a source of increasing concern to members of the legal profession. Not only have lawyers and judges been called on to interpret, attack, and defend an increasingly large variety of statutes, ordinances, and regulations of some complexity, but they are now becoming involved in the counseling and creation of new and suitable legal frameworks. The shaping of cities has become a fertile field for the legal mind and its specialized training.

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* Dean Emeritus, Harvard University Law School.

1. Vogue, Jan. 1, 1962, p. 73; The Reporter, Oct. 12, 1961, p. 38; Harper's, Sept. 1961, p. 37.

2. Saturday Evening Post, Oct. 14, 1961, p. 12. See also Architectural Forum, Sept. & Oct. 1961.

3. Journal of the American Institute of Architects, March 1962.

4. E.g., Meetings at the Museum of Modern Art and of the Village Independent Democrats.

As a city is composed of many types of buildings and people, so its study involves many disciplines, some far removed from "pure" law, but all necessary if the lawyer is to assume his full role in the resolution of urban problems.

The book amounts to a general attack on many of the practices of the planning profession that have, in Mrs. Jacobs' opinion, led to a failure of relating current urban renewal procedures to actual human needs. It should not be dismissed however, simply as the piece of sensational "yellow journalism" that it has been called, with some justice, by many of our more respected public officials and planners.[5] Her proposals are well-intended and reveal an unusual insight into certain aspects of urban living that have been overlooked by many architects and planners alike, although they are by no means always novel or original on her part.[6]

The general line of Mrs. Jacobs' arguments presents an excellent analysis of the basic purpose of neighborhood planning[7] as it should be practiced, but isn't, by the purveyors of large scale urban renewal operations. There is no question but that involvement in the fight to prevent such an operation in her own small neighborhood has affected what she has to say in a book written while this fight was brewing. She makes her strongest points in recognizing the importance of retaining old and familiar landmarks, encouraging liveliness of street activity, promoting intimacy of neighborhood contacts and continuity of individual participation at the local level. These are the very things for which the more thoughtful and gifted practicing architects and planners have strived in vain to provide. Their designs, however, so often fail to pass the gauntlet of administrators, both political and financial, who make the final decisions.[8] It seems a shame, therefore, that she should undermine the work of those who share her objectives by throwing them into the same category with those who have misapplied, misinterpreted, or misunderstood the tools of urban rebuilding.

No one will quarrel when Mrs. Jacobs urges more sidewalk and less vehicular roadways in neighborhood areas. (Chapter 18.) The discussion of the relation of vehicular traffic to pedestrian traffic is good, although at times the terms are poorly defined and her points thereby weakened. There can be no disagreement with her oft-repeated argument that cities need more small parks, well located in relation to neighborhoods, rather than large parks difficult to reach, difficult to maintain and police, and far from where people live and work. (Chapter 5.) Her ideas on old buildings being as important in the cityscape as new ones is good, up to a point, as are her comments on the scaling of the size of the buildings and stores to the human users of these facilities. (Chapters 12-13.) The suggestions for combining all types of uses, particularly those providing small-scale shopping and entertainment facilities in residential neighborhoods and housing projects, have received increasing recognition

5. For critical reviews of the book see O'Harrow, Book Review, ASPO Newsletter, Feb. 1962, p. 13; Robbins, Book Review, Village Voice, Nov. 6, 1961; Starr, Book Review, CHPC News, Jan. 1962.

6. Planners and "housers" like Clarence Stein, Henry Churchill, Catherine Bauer, Charles Abrams, and Elizabeth Wood, among others, have for years practiced and fought for many of the measures advocated by Mrs. Jacobs.

7. Neighborhood planning is a concept under which the local grouping of houses, stores, play areas, and schools is considered the basic building block of our cities. Only by creating viable neighborhoods will the larger entities—communities and cities—be ultimately successful.

8. For an excellent analysis of the many administrative agencies having a say in the end product of an urban renewal process, see Morris, The Role of Administrative Agencies in Urban Renewal, 29 Fordham L. Rev. 707 (1961).

from architects and planners, as has her theory of making use of city areas at all times of the day and the week, rather than having dead periods when danger follows emptiness. Her espousal of the cause of better relations between the people living in community-sized localities within the city and the central government of a large municipality is unquestionably a sound proposition. But, again, it must be recognized that Mrs. Jacobs is no pioneer along these paths of thought.

Mrs. Jacobs' oft-repeated theme of diversity was earlier espoused in the writings of Elbert Peets,[9] from whom she quotes at length, and who has been a constant and eloquent critic of the mistakes being made in Washington, D.C. and other capitals. In such cities, governmental functions are physically grouped together in a concentrated precinct, creating "dead" areas, often in the form of a wide sterile plaza surrounded by public buildings, rather than distributed judiciously among the various working and living neighborhoods of the city. This is, of course, the same malady which afflicts many civic centers, to say nothing of the vast, emerging Lincoln Square renewal area in Manhattan. But, Mrs. Jacobs often errs when she places the blame for the location of public buildings on the planners' shoulders; more often the fault lies with the public officials.[10]

Mrs. Jacobs may be on shaky ground with her theory of "unslumming" the slums. (Chapter 15.) She would probably find, by careful examination, in her own neighborhood, that where "unslumming" has consisted of the rebuilding of old houses, it has been done with the taste, ingenuity, and, it might as well be admitted, the ready cash of people who come to a place like "West Village" from the "outside," rather than by the less wealthy inhabitants who have lived there for generations. Mrs. Jacobs' claims regarding Boston's North End and the "unslumming" process there have been challenged by Edward Logue, director of that city's redevelopment program.[11]

Unfortunately, one aspect of Mrs. Jacobs' assertions is correct: bankers are hesitant, if not outright unwilling, to lend money to inhabitants of slum areas who sincerely wish to improve their neighborhoods. Where such initiative does occur, it must be encouraged. The bankers should and must be reeducated as to their lending policies if owner-improvement efforts are to be continued.

By all means, let us save what we can, let live where we can, and make the most of what good is still available in the heart of our great cities. But, at best, this will account for but a small fraction of the total area that has to be either built anew or entirely rebuilt. This is a simple statistical fact that Mrs. Jacobs will, we are sure, recognize.[12]

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9. Elbert Peets is a distinguished landscape architect, planner, and writer, responsible for some of the "greenbelt" town plans in the F.D.R.-New Deal Administration, and a leader of one of the school of planners to which Mrs. Jacobs objects. Since 1950 he has been a member of the Washington, D.C. Fine Arts Commission.

10. For example, would Mrs. Jacobs argue that the location of the Women's Prison, in the heart of Greenwich Village's most active residential neighborhood, is the fault of the planners?

11. See Letter From Edward Logue, Development Administrator, Saturday Evening Post, Nov. 25, 1961, p. 6.

12. The 1960 Census of Housing indicates that 16,000,000 housing units are dilapidated, deteriorating, or lack complete plumbing facilities. In the next ten years an additional 10,000,000 families will have to buy houses. In 1959, only 1,258,000 non-farm units were started. For an excellent analysis of the slum housing problem see 14th Annual HHFA Report, pt. I, § 2. (1960). See also Dyckman & Isaacs, Capital Requirements for Urban Development and Renewal 13-49 (1961).

Here, then, is the nub of the difficulties facing our cities—the vastness of the problem of meeting the housing demands of a growing and increasingly affluent society. Planners (and lawyers too) have sought broad overall means of solving these problems. Through the years, their efforts have not always met with unqualified success. But social problems are not "solved" in the same way as scientific problems. Planning, as planners would be the first to admit, is not a science or even the "pseudo science" Mrs. Jacobs calls it. It is rather, an art, political as well as graphic, and many other things as well; not the least of which, a technical profession. Theories must be evolved, then applied, and if found wanting, modified. Planning concepts themselves are constantly being adapted and enlarged. No longer do planners see the problem in terms of a simple physical reshaping;[13] other tools are being brought to bear on the problem.

In short, Mrs. Jacobs has set up a straw man—the planning profession—only to knock it down with arguments that have little resemblance to the true state of facts today. The Housing Act of 1949, as amended,[14] under which major, large scale projects have been undertaken, has quite different objectives than to preserve the cozy, antique flavor of a few old-city cores. Whatever the shortcomings of this legislation may be, intransigence to new ideas would not appear to be one of them.[15] The statutory tools are broad and varied. But they are but tools! One does not blame the hammer because the house is poorly constructed. The fault, if there be one, lies with the people who use the tools. Where Mrs. Jacobs could have made a case against the misapplication of these policies, she has chosen, instead, to flay the public-spirited citizens, who have conceived the means for regenerating the vast mass of substandard cores of our great cities. Yet these citizens have misused these powerful and often effective tools in a very few instances. Mrs. Jacobs lunges fiercely into the principles and practices of the many distinguished architects and planners whose basic human objectives are the same as her own. She attacks them for using techniques, which these very architects and planners would be the last to use, in the special unique little downtown urban neighborhood by which she measures all things.

To the average reader, living elsewhere than in New York and a few other large seaboard cities, Mrs. Jacobs' attitude toward the neighborhood will seem strange indeed, for the tight, dense, urban living to which New Yorkers are accustomed is something which is almost unknown in most great cities of the United States and Canada. Many of her arguments, therefore, even where relevant to, and convincing

13. E.g., a modern zoning ordinance would segregate use on the basis of performance standards rather than on the basis of categorical elimination. See Regional Plan Ass'n, New York Metropolitan Region Study (1960). This work covers the economic, sociological, governmental, and other aspects of the New York metropolitan region as opposed to their earlier study which was concerned primarily with the need and location of physical improvements. Regional Plan Ass'n, Regional Plan of New York and its Environs (1929).

14. 63 Stat. 413 (1949), as amended, 42 U.S.C. §§ 1441-83 (Supp. II, 1959-1960).

15. The very breadth of Title I, 63 Stat. 414 (1949), as amended, 42 U.S.C. §§ 1450-62 (Supp. II, 1959-1960), has undergone vast changes. In 1949 the statute dealt only with redevelopment, demolition, clearance, and rebuilding. 63 Stat. 414. In 1954 the "redevelopment" concept was replaced by the broader one of "renewal" with its concomitant tools of rehabilitation and conservation. 68 Stat. 590. In 1961 the "renewal" concept was again expanded by the addition of funds for "open space" preservation and "mass transit." 75 Stat. 149. These changes would seem to indicate a constant reshaping of the original ideas underlying this legislation.

for New York, fall short when applied to the semi-suburban, widely-spaced neighborhood that is much more common in the average "USAnian" city. Readers in these other areas may be confused and disturbed by Mrs. Jacobs' book.

While Mrs. Jacobs, in the name of maintaining diversity and an attractive, homey, village atmosphere, argues for freedom from planning, she does recognize that completely unregulated diversity may destroy itself. It is here that she forces herself to adopt a planning tool—zoning, albeit for her own purposes—to maintain diversity. There are two accepted types of zoning restrictions—use and bulk. She would add a third, limiting any one use by the extent of contiguous floor space allowed any particular type of store or shop in a neighborhood retail area in order to prevent the establishment in such areas of *large* commercial enterprises, regardless of the type or use of the size of the actual building.[16] Whether all neighborhoods could or would support such enterprises is a subject into which Mrs. Jacobs does not delve very deeply.[17]

It would appear that Mrs. Jacobs fails to recognize that in slaying the dragon—planning—she may ultimately be destroying the one force that could conceivably save the "diversity" and the other qualities of urban living that she cherishes. The application of "non-planning" principles by well-meaning residents of suburban communities would lead to an overwhelming of the uniqueness they seek to preserve. The only way in which a community standing in the path of metropolitan growth may be able to preserve its individualism is if its residents devise, adopt, and enforce some type of *planned* policy of development. The ostrich-like owners of pretty little homes, in what were formerly farming villages, protest against realty-planning for the future, despite the inevitable population growth and other forces of change. They assume that the present bucolic atmosphere of their town can be made to last forever if they only "wish away" the big bad city that is knocking at their doors in the person of the commercial developer who is so insensitive to "local tradition," and unconcerned with sound conservation and planning procedures. They fail to recognize that what little order a community can and does have results from the *conscious* efforts of competent designers to give aesthetic, as well as social meaning to its various parts as these are renewed, or to the whole community where it is "built from scratch."[18]

A continuation of the *laissez faire* process, when joined with, or imposed upon, the gridiron pattern of our cities (foolishly repeated in many large-scale housing

16. This has been done to some extent in zoning ordinances which allow "neighborhood type" stores in otherwise residential use districts. They are "neighborhood" stores in the sense of being the kind that are purely local and only of a size to service the particular area. There would also seem to be no legal obstacle for only allowing commercial enterprises of a certain frontage as well as floor space in order to insure keeping this "neighborhood" size feature.

17. In making her argument, Mrs. Jacobs overlooks the fact that much of what she would achieve through this type of zoning actually does result automatically from the continuance of nonconforming uses in an area that has been zoned for a more restrictive use than the one previously in effect. Furthermore, the judicious use of the "special exception" technique would also achieve this "human scale" diversity. There is also the theory, often recommended by planners and architects like Arthur C. Holden, that tax abatement incentives should be used to encourage desirable limitations on size, scale, and position of buildings.

18. See Comment, Aesthetic Zoning: Preservation of Historic Areas, 29 Fordham L. Rev. 729 (1961).

projects) continues to account for the lack of diversity about which Mrs. Jacobs complains. Architects and planners are trying to overcome this problem through the application of planning principles, including zoning and other controls. The best defense against the completely inhuman steamroller effect of urban redevelopment projects—which both Mrs. Jacobs and conscientious urban designers deplore—is to create and adopt well-devised community plans and to implement them with reasonable zoning restrictions.

What is most disappointing to professionals in the planning field is the author's total lack of concern for design, as they understand it. A book that seeks to arouse controversy in the field of urban design should not be so unobservant of what constitutes the greatest of all contributions to the good urban life, namely beauty. Even if Mrs. Jacobs were to have thoroughly documented and convincingly expressed the many arguments that make up the twenty-two chapters of her long book, it would still be missing something if the book is to be regarded as a contribution to the understanding of urbanism. Chapter 19, which ostensibly deals with "visual order," reflects the author's lack of understanding of architecture and the architects' approach to planning. She may be forgiven for this, since her occupation is primarily that of journalist and housewife. She has, however, spent a number of years as an associate editor of *Architectural Forum* and has written some excellent pieces on planning that do take into account questions of design. Yet, in this book, Mrs. Jacobs fails to make any connection between the substance and the form of a city.

Mrs. Jacobs does not realize that it is the undesigned character, including the gridiron pattern, of many of our cities which is the cause of the lack of diversity she deplores.[19] The accidental vista, which is characteristic not only of medieval cities but also of such remnants of eighteenth century casual "non-planning" which survives in New York's Greenwich Village or Boston's Beacon Hill, cannot just happen, now, or in the future. There must be conscious creation of a special *design-pattern*, directed toward particular ends such as "landmarks," short blocks, irregular street lines, asymetrical vistas, or diverse shapes and colors as controlled factors. Along with conscious design of the street pattern goes the expression of selective size, type, and position of buildings—which implies *deliberate* diversity, as Mrs. Jacobs may be surprised to learn. It is this very conscious planning of buildings in groups for visual effect that creates the attractiveness of Boston's Louisburg Square, Baltimore's Mount Vernon Place, and other eighteenth and early nineteenth century, *designed* groupings. We can create something of this sort in a modern idiom only through conscious and deliberate planning for urban beauty. Perhaps what Mrs. Jacobs is unconsciously trying to say is that, because so much of current planning is what the furniture designer calls "borax" or tawdry second-rate "kitsch" (an imitation of contemporary forms as well as styles of past ages), we must not, therefore, try to design any good new furniture, but must content ourselves with renovating antiques. This even if most of the old chairs and tables lying around are scarcely worthy of that name. Perhaps Mrs. Jacobs has not seen enough of the good modern neighborhood planning that the very designers she disparages are creating.[20]

19. E.g., the entire island of Manhattan above 14th Street was laid out in the gridiron pattern in 1811. One of the major problems faced by the planners of such old cities as Philadelphia and New Haven, in redesigning the central business districts for contemporary shopping patterns, has been overcoming the archaic street patterns fostered by the unaesthetic use of the gridiron plan.

20. E.g., Forest Hills Gardens, designed by F. L. Olmsted and Grosvenor Atterbury in

Mrs. Jacobs' book can be a rather dangerous thing to put into the hands of the less well-informed. But this does not detract from its importance for those directly concerned with the professional aspects of urban development. It deserves careful detailed study but with care to distinguish the frequent exaggerations and errors of fact from the many interesting suggestions. A number of her observations and criticisms of current routine urban renewal efforts are arresting and have already given planners and architects reason to reappraise their standards. The danger in her book is that in the hands of the layman who is always ready to discredit "expertise," some of her exaggerations and undocumented assertions may be quoted out of context. Furthermore, they may be used to tear down and destroy whatever progress has already been made toward a better environment, which Mrs. Jacobs, at heart, shares with the very planners and architects against whose practices she takes such wild swipes.

ROBERT C. WEINBERG*
ARNOLD H. MAYS**

When Corporations Go Public. Edited by Carlos L. Israels and George M. Duff, Jr. New York: Practising Law Institute. Pp. xv, 391. $20.00.

Not only were more registration statements (a total of 1830) filed with the Securities and Exchange Commission in fiscal year 1961 than ever before, but Chairman Cary reports that for the first three months of the current fiscal year, an increase of sixty-nine per cent over the filings for the same period last year was experienced.[1] (p. 102.) Moreover, seventy per cent of the filings for the first three months of fiscal 1962 were by companies making their first public financing.[2]

The indications are that the general practitioner, whose skills in the field of corporation law may have been confined to the filing of a certificate of incorporation (with or without the assistance of a service company) and filling in the blanks in canned organizational meeting minutes, will not adequately be able to serve the requirements of his clients without an appreciation of the niceties of laws regulating the offering of securities for public sale. The day of the monopoly of the Wall Street or I Street specialist is waning. While perhaps the inexperienced general man would not feel adequate to the preparation of an S-1, or to the discussion of a deficiency letter with the branch chief, nevertheless, even if he retains a firm of securities-law experts on behalf of his client, proper service to the client demands counsel for the corporation to be familiar with basic SEC practice and procedure.

Concerning the law of securities regulation, gain of knowledge begins with Loss.[3]

1911; Chatham Village Pittsburgh, designed by Clarence S. Stein and Henry Wright in 1932; Baldwin Hills Village, Los Angeles, designed by Clarence S. Stein in 1941.

* Adjunct Professor of Urban Planning, New York University.

** Member of the New York Bar.

1. Cary, Book Review, 75 Harv. L. Rev. 857, 858 n.8 (1962). See also 27 SEC Ann. Rep. 5, 29 (1961).

2. Cary, Book Review, 75 Harv. L. Rev. 857, 858 n.9 (1962). Current information rapidly becomes history: a note on page 102 of the instant volume indicates the median period for processing a "new" company registration to be upwards of sixty days. I am informed, at the time of writing, that one hundred days would be more accurate; cf. 27 SEC Ann. Rep. 25-27 (1961).

3. Loss, Securities Regulation (2d ed. 1961).

Competition with Professor Loss' meticulous and indispensable guide to the "whats" and "whys," with its classic analysis of statutory detail, is not the design of the volume under review. Rather, the present production is a supplementary "how to" book, with myriad valuable suggestions as to the custom and procedure of the art, which to the neophyte doubtless seem as esoteric as the law of taxes to the uninitiate (or to the initiate). This volume is well designed to give the lawyer, and perhaps others professionally interested in corporate finance,[4] a practical guide to the registration process.

A word as to the format: the basic text is edited and supplemented material which originally had been presented at forum discussions conducted by the Practising Law Institute. Participants in the symposium were experts in the fields of underwriting,[5] accounting,[6] and the law,[7] a representative of the American Stock Exchange,[8] and three important executives of the division of corporation finance of the SEC.[9] In addition to the pregnant and fruitful discussion, Mr. Israels has prepared a pithy seventy-six pages of advice and comment on drafting a prospectus. This material will be of significant assistance not only to the neophyte endeavoring to follow, for the first time, the instructions and demands of S-1, but to counsel for the corporation assisting others in the preparation of a registration statement.

The discussion material brims with wise counsel. The deceptive and sometimes illusory intrastate[10] and private offering[11] exemptions are exposed, and the novice, who might precipitously be tempted by these phantoms, is well cautioned.

Mr. Hocker's views and experience as to the most common deficiencies in the filings are significant.[12] Gone is the day[13] when a thousand persons will subscribe in one morning to shares in a company "for carrying on an undertaking of great importance, but nobody to know what it is."[14] Today, we tell the investor all he need know to save the "fool from his folly," but we sometimes tell him in such language as prompted that felicitous phrase which describes the modern deficiency—the unreadable prospectus. Scientific and other esoteric phrases, designed to launch the "prospectus-bird" into an "A-OK" orbit, nevertheless may leave contrails so

4. See Robinson, Going Public (1961), a volume which may be of some value as a guide for corporate officers rather than counsel.

5. Marvyn Carton of Allen & Company.

6. Thomas B. Hogan of Haskins & Sells, known to this reviewer not only as a personable expert, but as the kind of accountant lawyers sometimes believe, and often say, does not exist.

7. Carlos L. Israels, the well known lawyer and writer who, along with George M. Duff, Jr., a participant, edited the present volume, and David S. Henkel.

8. Bernard H. Maas, Director of the Department of Securities, ASE.

9. Charles E. Shreve, Chief Counsel to the Division, who is the recipient of many of counsels' requests for a "no action" letter; Ralph C. Hocker, Assistant Director of the Division; and, Walter J. Costello.

10. See pp. 32-34.

11. See pp. 13-17. See also Delaney, The Whys and Wherefores of Investment Letters, 30 Fordham L. Rev. 267 (1961).

12. See pp. 151-52.

13. But quaere as to such viruses as "uranium fever," "electronicitis," et al. See Stadia Oil & Uranium Co. v. Wheelis, 251 F.2d 269, 272 (10th Cir. 1957), involving a process "for making gold out of dirt."

14. Melville, The South Sea Bubble 97 (1921). See also 8 Holdsworth, A History of English Law 214-15 (1926).

luminous that the Letter of Comment will be a tome of sesquipedalian proportions. Further, a corporation named "Supersonic Orbital Oil Explorations and Electronic Bowling Alleys, Ltd.," whose purpose it is to manufacture jelly beans, may evoke a sentence or two in the deficiency memorandum.[15]

Mr. Henkel prudently cautions[16] that in states such as New York, where a voting trust is open to all who wish to transfer shares to it,[17] the voting trust certificates should be registered. However, it should be pointed out that care is indicated in the choice of an alternate type of voting arrangement to ensure that the purpose of the agreement is not frustrated by the courts as it was in *Ringling*.[18]

The appendix, comprising forms, memoranda, a check list, and questionnaire appear to be technically excellent and utilizable. Of particular interest to the unfamiliar lawyer will be the draft opinion letter of counsel for the issuer[19] and the Partial Checklist of Corporate Action.[20]

I endorse, without reserve, this pragmatic yet scholarly and wholly professional presentation.

MARTIN FOGELMAN*

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15. See p. 152.

16. See p. 54.

17. N.Y. Stock Corp. Law § 50. N.Y. Bus. Corp. Law § 621, which will replace the Stock Corporation Law and becomes effective April 1, 1963—unless sooner postponed, amended, or repealed—happily dispenses with the absurd provision that every shareholder may transfer his shares to the same trustee.

18. Ringling v. Ringling Bros.-Barnum & Bailey Combined Shows, Inc., 29 Del. Ch. 318, 49 A.2d 603 (Ch. 1946), modified, Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. Ringling, 29 Del. Ch. 610, 53 A.2d 441 (Sup. Ct. 1947). For another frustration, although here with more logic than in Ringling, see Abercrombie v. Davies, 130 A.2d 338 (Del. Sup. Ct. 1957).

19. See pp. 311-16.

20. See pp. 327-32.

* Associate Professor of Law, Fordham University School of Law.