

Book Reviews

Greening the Grey Flannel Suit

Selling the People's Cadillac: The Edsel and Corporate Responsibility.
By Jan G. Deutsch. New Haven: Yale University Press, 1976. Pp. 261.
\$20.00. \$8.95 (paperbound).

Reviewed by Leonard Chazen[†]

The road between law and economics has long been a one-way street. While lawyers have looked to economic theory for help in thinking about legal issues, economists have rarely found the law a fruitful source of ideas. As a result of this imbalance, economics has acquired a mystique for many lawyers, who relate to economists with the same deference that economists accord the physicists and mathematicians from whom they are said to get most of their ideas.

*Selling the People's Cadillac*¹ is a lawyer's attempt to put economics in its place. Its premises are that economists have failed to develop a useful framework of ideas for thinking about the large industrial corporation and that we must look to law and the humanities for fresh insights into the proper role of big business. These assumptions lead Professor Deutsch to thinkers who are not often cited in seminars on the industrial corporation. Samuel Beckett, Robert Dahl, L.T. Hobhouse, and Herbert Marcuse all appear at one time or another in this book, as Deutsch seeks his own somewhat eccentric path to an understanding of the large corporation. Deutsch does not cut a trail for those who would follow him in this quest. His ideas emerge through a collection of reprinted materials, some written by Deutsch and some by others—magazine pieces, book reviews, law journal articles, and a few unpublished essays—with little editorial commentary. The reader is forced to find his own way through Deutsch's thoughts, inferring ideas as much from the juxtaposition of materials as from Deutsch's few explicit statements. What does seem clear, however, is that Deutsch

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1. J. DEUTSCH, *SELLING THE PEOPLE'S CADILLAC: THE EDESEL AND CORPORATE RESPONSIBILITY* (1976) [hereinafter cited by page number only].

regards law, particularly constitutional law, as the most promising source of ideas about the large corporation. In *Selling the People's Cadillac* the labors of the great 20th-century constitutional theorists to reconcile the power of the Supreme Court with democratic social theory become a paradigm for the effort that must be made to come to terms with the power of big business.

Deutsch's starting point is the description of the advanced industrial corporation in John Kenneth Galbraith's *The New Industrial State*.² Here we have the familiar portrait of the large corporation as a leviathan, seeking growth and security rather than maximum profits, and overcoming consumer sovereignty through product advertising. The real power in the organization is shared by legions of scientists, engineers and systems analysts who comprise Galbraith's "technostructure." Deutsch presents Galbraith's ideas through a filter of book reviews and critical articles which also expose us to the objections that have been made to Galbraith's views. Galbraith appears to have two groups of critics: professional economists, represented by Robert Solow, who quarrel with his generalization that large corporations, free from the discipline of market forces, typify our economy; and lay analysts, represented by Bernard Nossiter and Simon Lazarus, who are put off by Galbraith's complacency about corporate power and his disdain for antitrust and other measures to encourage competition. While Deutsch does not take issue with these lines of criticism, he does not pursue them either. He appears to believe that there is enough truth in Galbraith's description of the American economy, and little enough chance of success for the reforms proposed by Galbraith's lay critics, that he can assume big business will continue to have great economic power. The interesting question then becomes what we think about the way in which corporations use their power. Apparently finding Galbraith's views inadequate, Deutsch sets out to answer this question for himself.

His ideas begin to unfold in the second part of the book, which contains an account, told principally through contemporaneous magazine articles, of the birth of the Edsel. By the time of the Edsel's conception in the mid-1950s, a new management had rescued the Ford Motor Company from near destruction at the hands of its founder and had reestablished Ford as the peer of Chevrolet in the low-price automobile field. But, as one of Ford's vice presidents observed, Ford was still "growing customers for General Motors."³ Ford owners who

2. J. GALBRAITH, *THE NEW INDUSTRIAL STATE* (2d rev. ed. 1971).

3. P. 34.

graduated into the middle-price range found the lone Mercury matched against three General Motors brands and an equal number at Chrysler (remember the illustrious DeSoto?).

The Edsel was intended to fill out the Ford line, enabling Ford to confront General Motors across the medium-price field. To achieve this goal, Ford created a car that reflected the years in which it was designed, the *belle epoque* of tail fins and two-tone hardtops. But the timing of the Edsel designers was wrong. When the Edsel came to market in late 1957, a recession had begun, the Sputnik had inaugurated a national mood of self-criticism, and the Edsel quickly became a symbol of the garish consumerism that was temporarily in disfavor. By 1960 the Edsel was dead.

Deutsch emphasizes the role of Robert McNamara in the Edsel story. McNamara had come to Ford after World War II with a team of management "Whiz Kids" from the Air Force Office of Statistical Control. By 1954 he was Assistant General Manager of the Ford Division, not a key figure in the Edsel decision, but important enough to attend all the meetings. McNamara's austere vision of the American automobile was revealed a few years later in the stripped-down Ford Falcon. He would appear to have been the natural enemy of the tawdry Edsel; and at one meeting he did express what must have been strong latent reservations about the Edsel, arguing against agreeing upon the specifications for the car and asking what the new car was "intended to offer the car-buying public."⁴ But for the most part McNamara remained in the background while the Edsel decision was made. Deutsch's materials suggest two reasons for McNamara's reticence. His faith in systematic and quantitative methods seems to have made it difficult for him to oppose an organizational decision based on market studies and motivation research. Furthermore, there was such a strong moral component to his reservations about the new car that he may have found it difficult to express his misgivings in terms that would count as a good argument at a meeting of Ford executives. Looking back at the Edsel section from the later parts of *Selling the People's Cadillac*, one catches a glimpse of McNamara as the ideal Deutschian businessman, someone with a healthy sense of values and intuitive faculties; but one also sees that McNamara was obliged to set these qualities aside, first as a Ford executive and later as Secretary of Defense.

Deutsch's next step is to give general expression to the ideas he has

4. P. 72.

intimated in his materials on McNamara and the Edsel. Readers who are ill at ease with Deutsch's indirect, casebook style of exposition may find Deutsch elliptical at this point, for he expresses his ideas about the large corporation through his own 92-page law review article about constitutional adjudication. Deutsch appears to have included the law review article, indeed made it the centerpiece of the book, because of an analogy between the Supreme Court and the large industrial corporation. Both institutions are anomalies in a society that is supposed to be based on democratic principles—the Supreme Court because it overturns legislation enacted by Congress and approved by the President, the large corporation because its managers exercise great economic power over people who have had no part in selecting them for the role. In the past, these anomalous powers have been obscured by explanations that focused on external constraints, attributing the decisions of corporate management to impersonal, market-determined objectives⁵ and explaining Supreme Court decisions as expressions of “neutral principles”⁶ or of the “fixed and certain standards”⁷ of the Constitution. Recently, however, thoughts about big business and the Supreme Court have moved in different directions. While apologists of the large corporation have continued their defense of the free market model, constitutional scholars have acquired a more sophisticated understanding of the Supreme Court.

The hero of this enterprise and of Deutsch's article is Alexander Bickel, whose celebration of the “passive virtues” showed the Court's great freedom and flexibility in deciding whether to reach a substantive question that had been presented to it.⁸ Deutsch's only quarrel with Bickel is that he did not go far enough: once he deemed it appropriate for the Court to act, Bickel became as squeamish as the next Harvard lawyer about unprincipled decisions.⁹ Deutsch, by contrast, would allow the Court the same freedom of action on matters of substance that Bickel said was appropriate for procedural questions. While some of Deutsch's arguments are variations on the prudential themes of *The Least Dangerous Branch*,¹⁰ his basic point is that the law cannot realistically aspire to Justice Black's “fixed and certain

5. E.g., Manne, *Mergers and the Market for Corporate Control*, 73 J. POL. ECON. 110 (1965); Peterson, *Corporate Control and Capitalism*, 79 Q.J. ECON. 1, 9-14 (1965).

6. E.g., Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1, 15-20 (1959).

7. *Kingsley Int'l Pictures Corp. v. Regents of the Univ. of the State of N.Y.*, 360 U.S. 684, 691 (1959) (Black, J., concurring).

8. A. BICKEL, *THE LEAST DANGEROUS BRANCH* (1962).

9. Pp. 134, 138.

10. A. BICKEL, *supra* note 8.

standards.” The interaction between our social values and the facts of life is too subtle and complex to be captured by reasoning from constitutional first principles or even, on occasion, by any sort of reasoned opinion. Deutsch’s sense of the limits of rational discourse leads him to the common law as the proper paradigm for constitutional adjudication. Other constitutional theorists have found the common law, with its subordination of logic to experience, too unruly a model for constitutional interpretation,¹¹ but to Deutsch the half-articulated opinions of the common law are as close as judges can come to principled decisionmaking and still retain the flexibility to respond to the boundless variety of circumstances judges encounter in the cases that come before them.

If judges are to be allowed to overrule Congress without even giving the reasons for their decisions, how are we to be protected from judicial tyranny? (This, of course, is the question that started constitutional lawyers in their search for “neutral principles” and “fixed and certain standards.”) Deutsch’s answer seems to be that our shared idea of how a judge should behave is our protection against arbitrary political decisions. When someone who has spent a lifetime as a lawyer in our society puts on the black robes, he tries, with aberrant exceptions, to behave like the model Supreme Court Justice, expressing social ideals rather than his own views in his decisions. The discipline of written opinions and the aspiration towards logical decisions are important, even when judges fail to account for their decisions in terms of general principles of law, for this discipline and this aspiration perform “the function of continually reminding participants in government of the overriding social values our society seeks to impose upon the governmental process, of the ideals in terms of which we desire to be ruled.”¹²

The study of the Supreme Court offers an object lesson to those who worry about corporate power. Corporate executives have no comparable tradition of seeking to accommodate their decisions to a broad range of social values. Indeed, with the encouragement of classical economic theory, businessmen have generally believed that it is their job to seek the greatest possible profits for shareholders, subject to some very broad limits of humane behavior. The weakness Deutsch finds in this approach to the role of the businessman is that when market restraints do not work, because competition is imperfect, the business executive lacks the judge’s gyroscope of internalized values to

11. Pp. 98-99.

12. P. 182.

take the place of the missing external controls. In offering the Supreme Court Justice as a role model for the business executive, Deutsch seems to be saying that we should transcend our old arguments about the accuracy of the free market model and accept the corporate manager as a powerful figure in our society, but that we should also develop in corporate managers an internal commitment to look beyond the size, profits, and stability of the firm.

In a year in which our politics have been dominated by a candidate of spiritual renewal, there is a special timeliness to a book that seeks to establish corporate responsibility through an inner transformation of the business executive. Yet in reading Deutsch's book, I found myself uneasy with the thought of diluting the businessman's commitment to profit and productive efficiency. Despite suggestions that large corporations sometimes seek sales volume, growth, or security, rather than the largest possible profits,¹³ I am convinced that profit maximization remains supreme as the value businessmen think they *ought* to pursue, in much the same way that judges aspire to principled decisions. As Deutsch, with his emphasis upon intangible factors, would recognize, the preeminence of profit maximization among the values of big business gives an important moral advantage to the adherents of that value when they struggle with members of management who represent other points of view—the technology buff, for example, who would spend the company's money on exotic electronic equipment, or those who would trade profits for an easier or richer life for management. The strict profit maximizers often appear as the villains of business fiction—one recalls the accountant in *Executive Suite*¹⁴—but they are villains with a spiritual ascendancy over their opponents, who cannot articulate an alternative view of where the corporation should be going.

The ethic of profit maximization obviously accounts for much of the harshness of American society, but this vice has its corresponding virtues. The exaltation of the pursuit of profit has given us vigorous institutions committed to the goal of productive efficiency. One thinks of Robert McNamara squeezing the last dollar out of the cost of manufacturing a Ford, so that Ford could use internally generated funds to finance a capital investment needed to catch up with Chevrolet. To appreciate the positive contribution that such attitudes make to our society we need only consider institutions, such as the U.S.

13. *E.g.*, W. BAUMOL, BUSINESS BEHAVIOR, VALUE AND GROWTH 45-52 (rev. ed. 1967); R. MARRIS, THE ECONOMIC THEORY OF 'MANAGERIAL' CAPITALISM 46-132 (1964).

14. C. HAWLEY, EXECUTIVE SUITE (1952).

Army, or cultures, such as that of Great Britain, in which efficiency is a moribund value.

Deutsch might reply that he does not propose to eliminate the commitment to efficiency in American industry, but only to balance the pursuit of profit with other values. As a good institutionalist, however, he would recognize that the spirit of a social institution may not survive repeated attacks or reform measures. Who can say what would happen to the American businessman's commitment to productive efficiency if he were to become more sensitive to the psychological toll of life on an assembly line or to the landscape of an industrial suburb? A devotion to getting the job done may require a certain narrowness of vision that is incompatible with the consciousness raising Deutsch has in mind for the corporate executive.

These considerations suggest that a revolution in the values of big business should be avoided if there are other ways in which the behavior of business can be made to comply with the will of society. In considering the availability of such alternatives, one comes upon a crucial difference between the large corporation and the Supreme Court. The Supreme Court is truly a sovereign institution. Other units of government do not review its decisions, nor can they influence its policies except by means that are cumbersome or indirect.¹⁵ Business, on the other hand, is subject to almost unlimited governmental regulation. Admittedly, the history of governmental regulation of business is not one of unbroken success. But if we can contemplate the basic change in the large corporation that Deutsch has in mind as a realistic alternative, it does not seem farfetched to consider the possibility of effective external controls over business, particularly if external controls are broadly conceived to include the non-governmental or quasi-governmental means of external control—such as investigative reporting and public interest litigation—that have grown in importance in the past few years.¹⁶ This gives us a fresh vantage point from which to consider Deutsch's history of the Edsel. Could external controls have prevented the squandering of men and money on the Edsel, or does the Edsel symbolize a spiritual corruption of American business that can only be cured by the inner reform Deutsch proposes?

The most prominent fact about the Edsel is that it was a large, grandiose automobile that came to market at precisely the time consumer tastes were temporarily shifting to cars that were smaller and less ostentatious. This remarkable feat of bad timing has made

15. Deutsch himself notes this characteristic of the Court at p. 107.

16. Deutsch discusses several possible legal standards of conduct for corporate managers and judicial imposition of such standards at pp. 231-59.

the Edsel the symbol of the American automobile industry's attachment to large, overpowered cars. When the industry is blamed for alienating the millions of people who drive foreign cars or for building cars whose prodigious consumption of gasoline has given us a negative balance of trade in oil, the Edsel often comes to mind. Only an industry devoted to size and power, it would seem, could have been so obtuse as to introduce a car like the Edsel in 1957. That, of course, is why the Edsel seems to provide a suitable case study for a book about the values of American business. But as we read about the Edsel event, the American automobile industry's supposed attachment to size and power melts away. Nowhere in the materials Deutsch has assembled is there evidence that the creators of the Edsel resisted or turned their back on a growing demand among automobile buyers for something smaller and simpler.¹⁷ Indeed, the car's functional characteristics played a small part in the Edsel story: the people in charge of the Edsel apparently assumed that all cars were basically the same. Having selected the basic middle-price chassis and engine of the mid-1950s, they proceeded to focus on important things like exterior design and marketing. The only prophetic note in all this was McNamara's remark about doing something for the car-buying public; but there is no evidence that his qualms were based on an intimation that consumers were turning against fancy cars. The real reason the Edsel was oversized and grotesquely overdressed is that it was designed at the end of one era of American automobile tastes and was produced at the beginning of another. At the time it was designed there were no storm signals to warn of the impending shift to austere tastes. (Something similar seems to have occurred in 1976 as Chevrolet brought out the Chevette just when consumers were swinging back to more spacious cars.) The creators of the Edsel can be faulted for not anticipating the trend to smaller cars only if we think corporate management should be a spiritual vanguard, looking ahead and leading their customers to higher values.

Perhaps the venality of the automobile industry would be clearer if we looked past the innocent years in which the Edsel was created to the 1960s and early 1970s when it became evident that many Americans were swearing off large and powerful cars. A good history of the American automobile in this period might reveal a pernicious attempt

17. Any conclusions about the origins of the Edsel should be qualified by a reference to the meager sources available for writing business history. Although the rebirth of Ford after World War II, the rise of the "Whiz Kids," and the Edsel fiasco are, I imagine, as well-documented as any incidents in the history of a corporation, Deutsch was still forced to rely to a great extent on contemporaneous news magazine articles in telling of these events. Such materials obviously give us something other than the inside story.

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to stem the tide of austerity with advertising that glorified speed and power and quasi-sports cars like the Mustang. Certainly, external controls did nothing to restrain the influence of the automobile companies in this period; only after the Arab oil boycott of 1973 did governmental regulation of automobile gasoline consumption begin to appear on legislative agendas. The failure of government to interfere with the automobile companies, however, does not mean that we are unable to implement our social values through external controls. Rather, it may be evidence that at least until the mid-1970s there was no consensus that the size and power of cars should be regulated. Through the 1960s most people believed that these were matters of taste, and even those of us to whom it was a mark of superiority to take advice from *Consumer Reports* instead of *Road and Track* would have blanched, I believe, at the thought of imposing preferences on others. The progress made in the 1960s and early 1970s in establishing safety and environmental controls on automobile design shows the feasibility of regulating the automobile industry through external controls, once a consensus on the need for regulation has been reached. This raises the question of whether corporate responsibility is the real subject of Deutsch's book. Corporate responsibility implies bringing the values of the corporation into line with the values of the rest of society; but the desirability of small, more-efficient, less-ornate cars was not a view on which the rest of society was united in the period covered by Deutsch's book. Indeed, it was the exceptional person who thought that small was better when it came to cars. This may explain why Deutsch seems to brush aside external controls in his call for an internal reform of the larger corporation. For what he seems to be asking of corporate management is not merely conformity to the values of the rest of society, but leadership in the development of new values remote from the values with which big business is generally associated.

Because Deutsch's ideas seem to go beyond corporate responsibility, they are not easily reconciled with the prevailing view of the legal obligations of management to the shareholders of the corporation. Deutsch appears to believe that we can preserve sufficient leeway for corporate managements to do good by defining a proper corporate purpose to include not only maximizing profits, but also furthering broad social aims in which the corporation has a stake. There is some authority for this view in the corporate charitable contribution case that Deutsch discusses.¹⁸ This case, however, involved small sums of

18. Pp. 256-57.

money and is therefore an uncertain guide to how the courts would react if management's act of conscience required a substantial sacrifice by the corporation. Management might be in real difficulty if it forced the company to suffer great loss in order to exceed the requirements of applicable law—for example, by eliminating a product on environmental grounds when the environmental protection agencies had allowed the product to remain on the market, or by halting sales to an unfriendly country with which Americans were still allowed to trade. In cases such as these, the courts are likely to believe strongly that it is not management's job to make social policy with the stockholders' money. Depending on the facts, the board of directors' actions might still be successfully defended on the ground that management is never required to behave in a way it considers immoral in order to increase the profits of the corporation. Nevertheless, I think that a management that wished to eliminate a longstanding, profitable line of business for reasons of conscience would be well advised to get shareholder approval before going ahead with the plan. Short of that, the most prudent course might be to seek the shelter of the business judgment rule by finding a business justification for the moral decision.

It is difficult to avoid an air of unreality in exploring the legal limitations on managerial acts of conscience, because it seems so implausible that the management of a large corporation would have a commitment to a social cause strong enough to compromise the profitability of the corporation. This is also the most obvious, and perhaps the most telling, objection to Deutsch's ideas about reforming business from within: corporate managers seem, on the whole, to be such unpromising subjects for the transformation of values Deutsch has proposed. To find an account of how the greening of big business might be accomplished, one must turn back to the discussion of Galbraith's ideas in the first part of the book. Galbraith's hopes rest with the technostructure, the experts who he believes hold the real power in large corporations.¹⁹ As working intellectuals, these people do not, in Galbraith's view, really share the aims of top management, and he looks forward to the day when, as Bernard Nossiter put it, the technostructure will "throw off its financial chains to the corporations and their allied state and modify corporate goals to allow for the things that make life richer—aesthetic concerns, regard for the environment, a peaceful rather than a militant foreign policy."²⁰ Behind Galbraith's

19. P. 11.

20. *Id.*

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vision of a revolution of the clerks is an idea of the fundamental unity of people who work with their minds; engineers and systems analysts are viewed as secret sharers in the ideas of humanistic intellectuals. It has always seemed to me that, on the contrary, the experts in the technostructure and humanistic intellectuals truly are divided into two cultures, separated by the former group's suspicion of the radical and unconventional ideas of the latter. While the spread of the new consciousness among young people may have brought into the technostructure a larger proportion of individuals who are sympathetic to Galbraith's values, the positive influence of this trend has been offset by a growing conviction among people in larger corporations that they are under siege from the anti-business forces in our country. This attitude has alienated them from many of the ideas that circulate in the rest of the educated portion of our society and has hardened their resistance to any changes in corporate goals. These are not the people who are likely to create a revolution in the values of the American corporation.

In focusing on what I take to be Deutsch's main theme—the need to change the values of big business—I have paid little attention to his secondary and supporting themes, including one that Deutsch develops to a considerable extent: the danger that a highly organized society such as ours will exaggerate the reliability of quantitative analysis and the scientific and systematic modes of thought. In his materials on Ford, Deutsch makes much of the role of motivation research in the Edsel fiasco and of the way in which McNamara's judgment was impaired by his exclusive devotion to quantitative analysis. These ideas are given more general significance by materials later in the book on the incommunicable nature of truth.²¹

Of course, the relationship between systematic analysis and the values Deutsch seeks to cultivate is not a simple one. If Galbraith's technostructure is to be the agent of change within the corporation, it would seem essential that systematic methods of analysis continue to flourish, for it is these methods that provide the technocrats with their jobs and whatever influence they carry. Moreover, the back alleys of the corporation that are still free from systematic methods are often the places where the corporation's worst values flourish. This side of the systematic control issue can be seen in the past year's stories of improper payments: the vehicles for bribes and illegal campaign contributions were often special funds that were free from normal accounting procedures, and the remedies developed for these practices

21. P. 218.

have tended to involve an increase in the amount of systematic reporting and auditing that goes on in the corporation.

These considerations should not deter us from a reexamination of the role of rational analysis in the corporation if rational analysis has become a kind of demigod, exalted to an undeserved importance in business decisionmaking. It is my impression, however, that businessmen generally have a healthy skepticism about these techniques. Even in the managerial, nonentrepreneurial sector of the economy from which McNamara emerged, one of the most honored qualities at the highest levels of business is "good judgment," a compound of the intuitive faculties Deutsch would restore to prime importance. In this connection, one should not forget the history of the Ford Motor Company in which the interregnum of McNamara, the Great Puritan, was followed by a Restoration under Lee Iacocca, a former salesman whom no one has ever accused of being a thrall of quantitative methods.

The McNamara-Iacocca polarity nicely symbolizes the issues posed by Deutsch's book. If mini-McNamaras abound in corporate America, there is indeed a reservoir of conscience in big business waiting to be tapped. If Lee Iacoccas are the norm, however, then business is irrevocably committed to massive consumption and maximum profits; and the way to promote other values in our society is through governmental regulation, consumer education, and appeals to public opinion. Deutsch has written a book with McNamara at its center; but when I look around me, I see more Iacoccas.

Developments in the Law—Legal Citation

A Uniform System of Citation. By Columbia Law Review, Harvard Law Review, University of Pennsylvania Law Review, and Yale Law Journal. Cambridge, Mass.: The Harvard Law Review Association, 12th ed. 1976. Pp. ix, 190. \$1.50 (paperbound).

Reviewed by W. Duane Benton†

The long-awaited Twelfth Edition of *A Uniform System of Citation* (Twelve)¹ has appeared, rendering obsolete at a stroke the Eleventh Edition of *A Uniform System of Citation* (Eleven).² Like the *Commentaries* of Julius Caesar, Twelve commences with the observation that its subject matter “is divided into three parts.”³ In other respects the two volumes are unlikely to be confused, although Twelve’s occasional nostalgic references to the torching of homes and the pillaging of towns⁴ evoke something of the flavor of the old Imperial campaigns.

Torching and pillaging are not, however, within the express competence of this latest in an endless line of guides to legal citation. Rather, Twelve joins Amy Vanderbilt, the Rules of Baseball, and totalitarian regimes throughout history in a modest quest to impose uniformity on more mundane spheres of human activity. Almost all the 150-odd legal periodicals display a devout solicitude for the rules of citation, relegating one or more luckless editors to a slavish scrutiny of all copy for potential violations.⁵ Most opinions, briefs, and memoranda likewise strive for at least substantial compliance. Without Twelve, uncounted first year law students and Supreme Court Justices would have to forego the pages of *Zeitschrift des Bernischen Juristenvereins*, for want of authoritative permission to footnote it as a manageable “ZBJV.”⁶

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1. A UNIFORM SYSTEM OF CITATION (12th ed. 1976) [hereinafter cited without cross-reference as TWELFTH EDITION].

2. A UNIFORM SYSTEM OF CITATION (11th ed. 1967) [hereinafter cited without cross-reference as ELEVENTH EDITION].

3. J. CAESAR, COMMENTARIES 17 (S. De Chair ed. 1951); TWELFTH EDITION ii.

4. TWELFTH EDITION 24.

5. Cf. A. SOLZHENITSYN, THE GULAG ARCHIPELAGO (1974) (any parenthetical commentary would be superfluous).

6. See TWELFTH EDITION 170.

There are other, less-used systems of citation, each of which recommends generally, and acknowledges that it basically follows, the Uniform System; but none so much as men-

Twelve's existence cannot, however, be justified solely by such considerations. For its ascendancy has been achieved at the expense of what many had considered a perfectly adequate Eleven. Praised by one commentator as "the Kama Sutra of legal citation,"⁷ Eleven will be mourned by all who prefer white paperback covers to blue. Yet the rest of mankind will rejoice because the new arrival provides a number of palpably beneficent innovations.

Life under Eleven was nasty, brutish, and interminable. Its tedious pages included a draconian code of typeface strictures which required, *inter alia*, rendering all book titles and authors in large and small capital letters.⁸ Only those with access to sophisticated printing paraphernalia could hope to achieve this feat; the remainder of the profession was relegated to the ignominy of civil disobedience whenever it wished to show that it had read a book. Twelve's first official act is a declaration that large and small capitals are optional,⁹ opening the way for still more courageous future reformers who will root out once and for all an aberration that increases the cost of preparing copy without augmenting the information transmitted.

Not all of Twelve's revisionist fervor is exhausted on questions of typeface. One list of basic citation forms for all varieties of sources is introduced, enabling most readers to obtain in two pages the accumulated wisdom of Eleven's 99.¹⁰ And the addition of a host of minor but useful technical innovations¹¹ in Twelve's Part I more than

tions *Zeitschrift des Bernischen Juristenvereins*. See M. PRICE & H. BITNER, *EFFECTIVE LEGAL RESEARCH* 395-96 (3d ed. 1969); F. WEINER, *BRIEFING AND ARGUING FEDERAL APPEALS* 224 (1967); U.S. DEP'T OF THE AIR FORCE, *LEGAL RESEARCH GUIDE 7-1* (A.F. Mar. 110-1, 1970) (used in all military branches).

7. Lushing, Book Review, 67 COLUM. L. REV. 599, 599 (1967).

8. ELEVENTH EDITION 97-98.

9. TWELFTH EDITION 1.

10. *Id.* at 4-5.

11. The explanation of quotations is much better than Eleven's. Compare *id.* at 20-22 with ELEVENTH EDITION 93-94. Twelve describes more fully the use of "*supra*" and "hereinafter" for authorities repeated throughout a piece. Compare TWELFTH EDITION 18-19 with ELEVENTH EDITION 83-84. Unlike the old book, the new one requires that the introductory signal "*cf.*" "not be used without an explanatory parenthetical." Compare TWELFTH EDITION 7 with ELEVENTH EDITION 87. This requirement should curtail the use of "*cf.*" to introduce various and sundry irrelevancies, such as the most recent Supreme Court case or other articles by the footnoting author.

Where Eleven cryptically mentioned the forms for authority related to, and commentary on, sources, Twelve is forthright. Compare TWELFTH EDITION 11-12 with ELEVENTH EDITION 90. Banning "*et seq.*" after an opening section or paragraph and requiring inclusive numbers also makes sense, because this Latin phrase sometimes means "one more," other times "one hundred more." See TWELFTH EDITION 16.

Anyone who has struggled with foreign language abbreviations will welcome Twelve's new section on foreign language abbreviations. *Id.* at 23-24. Also needed was the rule on use and spacing of symbols (§, ¶, S & %). See *id.* at 24-25.

Twelve authorizes abbreviation of the Uniform Commercial Code to "U.C.C.," which is one's natural instinct; Eleven indifferently required "UNIFORM COMMERCIAL CODE." *Com-*

counterbalances periodic lapses in style¹² and a failure to say anything even faintly disapproving about the addiction to footnotes which mangles all legal writing.¹³

Flushed with these initial successes, Twelve commits an impetuous blunder of major dimensions by introducing a new and improved list of periodical abbreviations.¹⁴ Twelve could have amplified Eleven by listing all periodicals in full and appending the recommended abridgments, but that would have been the easy and popular route. Instead, Twelve tries to economize by providing an alphabetized compendium of all the individual words one might expect to find in a law journal title; the reader is invited to assemble particular citations by excavating each component from different places on the list. The enterprise is fraught with pitfalls, given several omissions and distortions,¹⁵ and

pare TWELFTH EDITION 59 with ELEVENTH EDITION 29. Similarly, Twelve shortens the Internal Revenue Code to "I.R.C.," again the common practice; Eleven demanded "INT. REV. CODE OF 1954." Compare TWELFTH EDITION 59 with ELEVENTH EDITION 27. In contrast to Eleven's silence, Twelve wisely requires that federal bills and resolutions be cited to some source, because few libraries keep this incessant flood of papers for more than a few years. Compare TWELFTH EDITION 62 with ELEVENTH EDITION 32.

12. Twelve suffers from "adverbitis"; "simply," "merely," and "slightly" speckle the pages. *E.g.*, TWELFTH EDITION 1, 2, 5, 6, 53, 58, 87. At times the authors cannot resist telling the obvious: "A term of court currently in progress may be referred to as 'this term.' The immediately preceding term, no longer in progress at time of publication, should be referred to as 'last term.'" *Id.* at 28. Nor can they avoid occasional lapses into murky prose caused by excessive cross-references to their own rules. *E.g.*, *id.* at 3 (rule 1:2:2). Overall, though, the authors have upgraded Eleven's prose by dropping many pompous passive phrases, such as "should be cited."

13. As an authoritative guide, Twelve should have said: "Keep footnotes to a minimum, especially those in the middle of the sentence. They interrupt readers' thoughts and bother their eyes." Even without this statement, Twelve and Eleven should not, as they do, encourage footnotes in general and mid-sentence ones in particular. See TWELFTH EDITION 6; ELEVENTH EDITION 88-89. Twelve itself has no footnotes. Books discussing legal writing often do not even mention them. *E.g.*, E. BISKIND, *LEGAL WRITING SIMPLIFIED* (1971). See generally Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 40-41 (1936) (attacks footnoting; whole article is powerful antidote for those who think about legal writing only in terms of the rules of citation); Rodell, *Goodbye to Law Reviews—Revisited*, 48 VA. L. REV. 279, 289 (1962); Tobin, *Book Review*, 11 STAN. L. REV. 410, 411-13 (1959) (documents over-footnoting but concludes that a moderate number are necessary).

In the same vein, Twelve should dictate: "Unless your piece is especially long (*e.g.*, over 40 law review pages), do not cross-reference from one part to another part. Excessive cross-referencing usually indicates poor organization." Instead, paralleling Eleven, it goes to the other extreme and gives examples including a "*cf.*" (without an explanatory parenthetical) to one's own work. TWELFTH EDITION 18; ELEVENTH EDITION 84. The comment "*passim*" should likewise not be recommended; if "a point is repeated throughout the entire source," simply cite it. See TWELFTH EDITION 15; ELEVENTH EDITION 85.

14. TWELFTH EDITION 89-93.

15. A series of questions bares these problems and shows the chaos this list will create: (1) The *Academy of Political Science Proceedings* was the first example in Eleven's periodical list. ELEVENTH EDITION 45. Because "political" is not on Twelve's all-inclusive guide, what is the citation form now? (The same difficulty holds for "cosmetic" in *Food Drug Cosmetic Law Journal*. See *id.*) (2) The *Texas Law Review* abbreviates itself "TEXAS L. REV.;" Eleven sanctioned this practice. See *id.* at 47. In light of Twelve's rule that geographical names must follow its inside back cover, how is it now cited? (3) Many

could so easily have been averted that one refrains with difficulty from impugning the motives of those responsible.

Twelve is also remiss in neglecting to rehabilitate certain of Eleven's most obvious failings. Congressional hearings will still be cited inconsistently and abominably.¹⁶ Authors will continue to be deterred from mentioning state cases, by virtue of the tiresome necessity of referencing them to the various obscure local reporters¹⁷ which few can obtain and even fewer use, given the ubiquitous West sets. Redeeming Twelve somewhat, however, are improved treatments of statutes,¹⁸ treaties,¹⁹ United Nations sources,²⁰ and topical reporters.²¹

Twelve's most significant triumph over Eleven is reserved for Part

times a periodical is called colloquially both "*Journal of the X*" and "*X Journal*." Eleven made abbreviation possible without a check back to the source, by providing specific examples. See *id.* at 45-47. Does Twelve require checking the title page of each such periodical referenced, if the initial research was not especially diligent?

I could continue. I do not suggest that these shortcomings are intractable. They do demonstrate that nothing substitutes for a periodical-by-periodical list, similar to that in the *Tenth Edition*. A UNIFORM SYSTEM OF CITATION 47-53 (10th ed. 1958). Worries about omitting a publication would fall before careful cross-checking of present lists; new magazines could be assimilated just as easily to a periodical-by-periodical list as to Twelve's apostasy.

16. Compare TWELFTH EDITION 62 with ELEVENTH EDITION 41-42. Eleven and Twelve identify hearings by "the bill number . . . with which the hearings are concerned," but since they often concern several bills, none of which ever becomes law, this is frequently uninformative. The authors tried to combat this problem by adding: "[A]lways retain the first word of the title as it appears on the cover page." TWELFTH EDITION 62. (Their example is better than their reasoning.) Twelve should have said: "Always retain at least the first phrase of the title as it appears at the top of the cover page and retain the whole title if practicable." This would meet the authors' concern over never-ending titles and permit the reader to find the source, something the present rule may make difficult. Other citation systems require this title. See M. PRICE & H. BITNER, *supra* note 6, at 374; F. WEINER, *supra* note 6, at 239. In addition, since all depository libraries catalogue hearings and reports by "serial set" number, including such information in the citation would save endless time.

17. TWELFTH EDITION 37; ELEVENTH EDITION 6. Price and Bitner feebly argue that dual citation provides a "check," since one of the two citations is more likely to be correct than one by itself. M. PRICE & H. BITNER, *supra* note 6, at 371. This proposition rests on two dubious assumptions: that the reader can find both sources and that the author would not be especially careful in citing a sole source (in the spare time made available by not having to search for the dual source). Even a change in the next edition, however, might not save brief writers from those courts which still require dual citation. See F. WEINER, *supra* note 6, at 234.

18. Compare TWELFTH EDITION 50-61 with ELEVENTH EDITION 25-32. A review of Eleven labeled its section on statutes "tortuous." See Lushing, *supra* note 7, at 600-01. Of all the changes in the transplanted part of Eleven, the clarity and depth of the essay on statutes is striking.

19. Compare TWELFTH EDITION 67-70 with ELEVENTH EDITION 33, 66-67, 82. To illustrate: by Eleven's rule, a correct citation would be "Treaty with Iraq on Commerce and Navigation, Dec. 3, 1938, art. III, para. 2, 54 Stat. 1790 (1939), T.S. No. 960"; by Twelve's rule, "Treaty on Commerce and Navigation, Dec. 3, 1938, United States-Iraq, art. III, para. 2, 54 Stat. 1790 (1939), T.S. No. 960." Eleven's version confused many internationally-oriented readers.

20. Compare TWELFTH EDITION 73-77 with ELEVENTH EDITION 79-81.

21. Compare TWELFTH EDITION 94-99 with ELEVENTH EDITION 52-54. The expanded list of examples is of inestimable benefit.

III, a deliciously rational arrangement of individualized rules for citing the statutes and cases of the innumerable states and countries that dot this planet.²² Eleven virtually abdicated this responsibility, remitting the reader to the distasteful requirement of purchasing a separate supplement from the Harvard Law Review Association.²³

Twelve is certain to be widely and painstakingly read. But therein lurks a peril that deserves attention, because an audience disproportionately composed of impressionable young minds and fading old ones will prove especially vulnerable to the dubious ideological predilections which Twelve's editors insert at every opportunity.

The parade of insidious horrors begins on the very last page, in a diabolically warped "list of suggested abbreviations for states, Canadian provinces, and foreign countries" whose offensive omissions will outrage billions around the world.²⁴ Subliminal manipulation does not cease here; Twelve's selection of illustrative material for its demonstration of proper quotation form is hardly random:

In case of the removal of the President . . . , the Vice President shall become President. . . . The Senate shall have the sole power to try all Impeachments.²⁵

Twelve's predecessor had the grace to avoid reference to this and comparable national nightmares in its treatment of the same subject:

So he . . . was ordered hanged.

. . . .
. . . . A man died.²⁶

22. See TWELFTH EDITION 100-70. The next edition should consider a change both in this list and that on the inside back cover. Both abbreviate the states in the traditional way. However, the Postal Service's two-letter abbreviations are short and unambiguous. See U.S. GOVERNMENT PRINTING OFFICE STYLE MANUAL 150-51 (rev. ed. 1973).

23. ELEVENTH EDITION ii. Even when armed with the supplement, Eleven's owners lacked a list of general forms for state cases, federal cases and statutes, and foreign decisions and laws. Hence the added length which this collection causes Twelve is an illusion not to be worried over, especially in light of Twelve's thorough index.

24. Twelve's compendium is virtually identical to Eleven's, despite the passage of 10 years and the intervening emergence of dozens of infant but proud sovereignties. The sole additions are Y.T. (?), P.E.I. (?), and Guam (!); inexplicitly omitted is Lab. Both Chinas are studiously ignored, in a display of diplomatic pusillanimity which would do credit to Prime Minister Trudeau (all of whose dominions are included, with the exception of Lab.). Also consigned to oblivion is the Middle East, with the ominous exception of Egypt (which should be abridged "U.A.R."). India is nowhere to be seen, unless her teeming millions are to be considered merged with the relative handful of Midwesterners who answer to the pseudonym "Ind." Latin America is more kindly treated, although the editors have chosen for reasons best known to themselves and the State Department to disregard the existence of Chile. Finally, in a commendable but unrealistic gesture toward pan-African solidarity, the assembled sovereignties of the Dark Continent are directed to refer to themselves as "Afr."

25. TWELFTH EDITION 21.

26. ELEVENTH EDITION 94.

Then there is the matter of personal titles. Eleven stereotyped all past and future Justices as "Mr. Justice."²⁷ Twelve, in an excess of counterrevolutionary zeal, broaches the possibility of a "Mme. Justice," only to ruin the gesture with the snide observation that "'Mme.' is properly used whether the Justice is married or unmarried."²⁸

All this is regrettable, but we must not forget that "the right to receive information and ideas, regardless of their social worth, is fundamental to our free society."²⁹ Purchasing Twelve, therefore, subsidizes constitutional values as well as the authors,³⁰ and memorizing it passes the time until the eagerly awaited publication of the Thirteenth Edition of *A Uniform System of Citation* (Thirteen).

27. *Id.*

28. TWELFTH EDITION 27.

29. *Stanley v. Georgia*, 394 U.S. 557, 564 (1969).

30. The matter of subsidy has occasioned spirited interchange among Twelve's creators—the editors of the *Harvard*, *Columbia*, and *Pennsylvania Law Reviews* and the *Yale Law Journal*. The latter three felt that Harvard was illegally keeping all profits from the first eleven editions, estimated to total \$20,000 per year. See Crock, *Blue Book Turns Crimson Green*, Colum. L. Sch. News, Oct. 28, 1974, at 1, col. 1. However, the discontented trio had lost the correspondence indicating an agreement to split the profits. Their threats to sue brought a peaceful settlement, in the form of a contract which provides Harvard with only twice the profits of each of the other schools in return for continued production and distribution services. See *Agreement Between the Columbia, Harvard, and University of Pennsylvania Law Reviews and the Yale Law Journal* (Mar. 24, 1976) (on file (it is to be hoped) with the respective periodicals).