LaRouche: Why We Need Bankruptcy Reorganization

On Oct. 9, 2001, Lyndon LaRouche was interviewed by radio talk show host Jack Stockwell of KTKK radio in Salt Lake City, Utah, in a follow-up of LaRouche's historic Sept. 11 interview on the same show. In the course of the two-hour interview, Stockwell raised the question of the rising number of bankruptcies, and he suggested that perhaps "we need to consider a reorganization on a much higher scale, a much broader spectrum, than just the local business down the end of the street" (EIR, Oct. 26, 2001).

Stockwell said that this idea is catching on around the world, and among certain governments, which are "beginning to recognize that we didn't just hit the iceberg, we hit it some months, some years ago, and that if something isn't done quickly, and move in the sense of nation-building, rather than nation-bombing, we may have the 14th-, 13th-, 12th-Century lifestyle foisted upon us again, whether we like it or not."

LaRouche's response included the following:

"Well, it's true. You know, the fellow today who may be very useful to his or her neighbor, is the businessman who, sometime ago, went through a successful reorganization and bankruptcy, and what he would probably tell that neighbor, if he actually did pull successfully out of a bankruptcy reorganization, he would have said: 'Well, first of all, I didn't want to do it. I didn't want to accept the fact that my business had gone bankrupt. But then I realized I had to bite the bullet, I had to face that reality, and boy, am I glad I did.' Because this was the way in which he saved that business, which may have been significant to that community.

"I think we can apply the lesson which such people can tell us, to the more general situation.

"We have a bankrupt U.S. and world economy. Right now, it's hopelessly bankrupt. There's no way this is going to bounce back. You know, people who went to jail in bankruptcy, did so because they kept issuing, or taking credit, when they were already bankrupt. And the United States government, especially this Federal Reserve chairman, is doing exactly that! We are hocking everything in sight, against assets which really do not exist, promissory notes which will never be paid; they never could be. We should have a reorganization of this economy now, in order to keep the businesses, the banks, and so forth, which are essential, going; to prevent employment from collapsing; to maintain pensions and essential services, and keep the economy going; and keep things growing. The same way that you would take a corporation, a company, that was essentially a sound company, but had gotten into financial bankruptcy—and take that company, put it through reorganization, save it, and bring it back as a viable part of the community. We're going to have to think in those terms."

But more significantly, railroads were seen as imbued with the public interest, and as having a quasi-public character. Indeed, in the 19th Century, their charters generally stated that their corporate status was granted in exchange for providing a public service. As the Supreme Court put it in the Rock Island case: "A railway is a unit; it can not be divided up and disposed of piecemeal like a stock of goods. It must be sold, if sold at all, as a unit and as a going concern. Its activities can not be halted because its continuous, uninterrupted operation is necessary in the public interest."

The old railroad receivership system was, however, riddled with abuses, and it worked to the effect of increasing the concentration of railroad holdings on Wall Street. Nevertheless, this is where the principle of corporate reorganization, rather than liquidation, first came into play. There was an effort to incorporate something like this, as we have noted, in an 1874 amendment to the 1867 Bankruptcy Act, but the law was repealed four years later. Throughout the 19th Century, courts denied to other corporations the right to reorganize their finances in the same manner as railroads, saying that railroads were a special case because of their service to the public.

Hoover Presses for Reform

The crash of 1929-31—with its widespread liquidations and massive resulting unemployment—spurred new efforts to reform the bankruptcy laws. The number of bankruptcies had already been rising throughout the 1920s, reaching a peak in 1932. The disastrous consequences of this, convinced even the conservative Republican President Herbert Hoover to consider a new approach.

On July 29, 1930, Hoover authorized a comprehensive investigation into bankruptcy law and practice, to determine if changes in the laws were needed. The investigation was headed by Solicitor General Thomas Day Thacher, a former Federal judge, who had previously participated in an investigation of bankruptcy in New York City. The Solicitor General's investigation was to be aided by the Department of Commerce, which had just conducted its own study of commercial bankruptcies. New York attorney Lloyd K. Garrison was designated to conduct the investigation under Thacher's supervision.

One of the reasons for Hoover's concern, was obviously that losses in bankruptcy over the previous five years were more than $3 billion, and were averaging $750 million per