

" GOVERNMENT AND THE CORPORATION  
IN A CHANGING WORLD "

Address of  
ROBERT I. MILLONZI, COMMISSIONER  
UNITED STATES SECURITIES & EXCHANGE COMMISSION

To The  
Calvin Bullock Forum  
One Wall Street  
New York, New York

January 24th, 1952.

This forum has a very fine reputation. It is customarily addressed by all of the newly appointed Commissioners of the Securities and Exchange Commission, and I am here today in that capacity. In talking over the prospects of coming here with some of my fellow Commissioners, they all stated to me that they had enjoyed their visit with you and that they had found this experience very rewarding. Since I am new to the Commission, it would be difficult to speak with any degree of authority upon the many subjects we are called upon to deal with every day. However, my business experience as a practicing attorney, corporation and bank director, viewed in the perspective of my short stay at the Commission suggested a subject which interests me and which from time to time must surely intrigue all of us--that subject is the changing role of the corporation in our lifetime.

At law school I was taught that a corporation is a person. This notion struck me as being so utterly absurd that it has stayed with me to this day. The fact is, however, that from an artificial entity granted the power to hold property and to make contracts, which is what it appeared to be a generation ago, the modern corporation has become endowed with traits more nearly personal and human. The large, streamlined American corporation has social responsibilities of the most basic sort; it has community responsibilities; and it even has a heart. The epoch in which corporations have reached this maturity has also been marked by an expansion of Government activity in economic channels.

These developments have taken place, not because of a bright idea in somebody's head in 1933, but because of far-reaching trends arising from public necessities recognized by people of all political preferment and reaching far back into the past. It would appear, therefore, that whatever may happen at the polls in 1952 will not substantially reverse these trends. We shall have to live with them and understand them in order to utilize them for the best advantage of all.

As Justice Douglas remarked while he was a member of the Securities and Exchange Commission, "Today it is generally recognized that all corporations possess an element of public interest. A corporation director must think not only of the stockholder, but also of the laborer, the supplier, the purchaser, and the ultimate consumer." At about the same time, a president of the New York Stock Exchange was saying, "The old maxim 'to govern well, govern little' will not be applied by thinking people today to our problem. We do not regard Government as a necessary evil...There are some who find any supervision of business by government repugnant. We have no patience with that attitude. Such a viewpoint is unreal and is not likely to attract any substantial following among practical men and women."

Similarly, Berle and Means wrote about twenty years ago, "It was apparent to any thoughtful observer that the American corporation had ceased to be a private business device and had become an institution...The translation of perhaps two-thirds of the industrial wealth of the country from individual ownership to ownership by the large, publicly-financed corporations vitally changes the lives of property owners, the lives of workers and the methods of property tenure. The divorce of ownership from control consequent on that process almost necessarily involves a new form of economic organization of society."

The advantages of the corporate form of business organization, that is, the limited liability of stockholders, its extended or even perpetual period of life; its flexibility in financing and management, have attracted to it the greater part of the rapidly growing mass of American capital. Over a half-million corporations contributed 132.2 billions to the national income in 1950 as against 61.8 billions from sole proprietorships and partnerships, and 12.4 billions from all other forms of business. A single corporation like United States Steel, General Motors, or General Electric will have from a quarter to half a million stockholders, and American Telephone and Telegraph about a million. The corporation is the dominant and characteristic form of American business enterprise today;

its productive capacity is the measure of total American capacity; its prosperity determines the prosperity of business as a whole; and its methods and standards tend to become those of American business everywhere.

I should like to retrace some highlights in the evolution of the corporation to its present state.

Although the ancestors of the modern corporation can be traced back to the institutions of Roman law, the ecclesiastical corporations of the Middle Ages and the medieval guilds, the earliest corporations now existing were those formed in the great stock flotation boom of the late seventeenth century in England, so vividly described by Macaulay. With a long interruption due to the explosion of the South Sea Bubble in 1720, the basis of the corporation until about the Civil War was a franchise or privilege or monopoly which was in effect a delegation of sovereign power. Whether it was the Bank of England, a railroad, a land-grant or trading company, the corporation was strongly affected with a public character and carried the attributes of sovereignty so far as in some cases to have its own private army and its own courts. Corporations formed to engage in manufacturing did not appear on the American scene until the 1830's and did not become significant or economically powerful until after the Civil War.

From the beginning corporations were creatures of the state, which was the successor to the British Crown. Each was separately incorporated by an Act of the legislature, often requiring a two-thirds majority vote of each House. The change in the juridical basis of the corporation was a by-product of the Industrial Revolution. The growing industrialism, the great improvements in transportation which provided markets for the products of that industrialism, and the growth of savings both here and abroad---all these factors combined to make the corporate organization of business the most efficient and satisfactory in a society of free enterprise. From an instrument of royal or sovereign monopoly, conceived with due formality and jealously guarded by the power which created it, the corporation became more and more the vehicle by which ordinary business was conducted.

The new corporations were born with the filing of pieces of paper in the State Capitol or County Seat, and the restrictions which had attended the old corporations tended to disappear along with other vestiges of mercantilism. After the Civil War, general incorporation laws, following the pioneer example of Connecticut in 1837, were passed by many states. As corporations grew mightily, many of the States engaged in a popularity contest as to which could sooner and more completely relax its restrictions on the grant of corporate powers so as to attract the greatest number of new corporations. State after State removed limitations on the scope of corporate powers, on the right to hold stock in other corporations, on maximum capital, on pre-emptive rights, on dividend restrictions, on changes in the rights of stockholders. Thus, one by one, the safeguards which had been erected to protect the consumer, creditor, the stockholder, and the business community were gradually eliminated.

In the meantime, the corporations were rapidly increasing in size, a development made possible by the great growth in wealth and savings, and the spread of securities investment among millions of investors whose average individual stake was small in relation to the size of the company. They were neither willing nor able to contribute their personal efforts to supervising the business of which they were the legal owners. In many cases, upon the death of the founders of large enterprises their estates passed on to heirs, who inherited their wealth, but not their managerial capacity, and were glad to sell out their security holdings or turn over the management of the corporate property to full-time professional managers.

Thus a new managerial group arose, comprised of business administrators, investment bankers and corporation lawyers. The control of the corporation by its stockholders was steadily weakened by the wide abuse of proxies, the use of voting trusts, non-voting or multiple stocks, and similar devices. The powers which had been surrendered by the states and the stockholders, tended to become concentrated into the

hands of the professional management, and the ownership of stock became divorced from the control of a corporation.

The new managerial class, often without a substantial stake in the corporation which it controlled, was subject at all times to the dangers of divided allegiance between its interest in making the maximum distributable profit for the stockholders of the corporation, and its personal interest in high salaries, bonuses, fees, stock purchase options, and sometimes trading in the corporation shares on the basis of inside information.

The corporation developed many of the characteristics of an institution, combining the efforts of many people through an organization for a socially desirable end. Its problems, like those of any institution, became those of selection of leadership, a permanent "civil service" or bureaucracy, policy-making and administration, centralization, and public relations with stockholders, dealers, consumers, the community and its working force.

Thus, the problem of democracy in the huge, institutional-type, publicly-owned, modern corporation became all the more urgent as the corporation became increasingly responsible for many other things than its own profits.

As the corporation grew to its present stature and significance, the functions of the State with respect to it have necessarily kept pace.

The truth is that at no time has absolute laissez-faire been insisted upon, or even recommended by any responsible thinker. Even Adam Smith formulated twenty-six exceptions to his rule that the State should intervene as little as possible in the affairs of business.

From the beginning of our Republic, the fundamental doctrine that the State has certain responsibilities for the economic welfare of its citizens was implicit in the

Constitutional provisions for the regulation of foreign and interstate commerce, currency, bankruptcy, taxes, tariffs, money, banking and the like. A study made by the Brookings Institute roundly declares, "The need for a device with which to deal effectively with national economic affairs was the strongest force behind the creation of the Constitution."

However, for the first hundred years of national life there was little change in the relationship of government to business. The first wave of government "intervention" in business and corporation affairs was the Granger movement in the 1870's. This movement originated in the Mid-Western States as an agrarian counter-move to the growing power of the corporations, particularly the railroads, in an effort to reform abuses such as excessive and discriminatory rates. It set the pattern of the movements of the future--- looking toward reform by governmental regulation of corporate abuses. The reformers, caught between the fear of big business on the one hand, and of a powerful centralized Federal Government on the other, looked to the State governments for protection. First to the State legislatures and later to State regulatory commissions. This regulation was attempted first by the States in such fields as railroad and public utility regulation, various types of anti-trust action, pure food controls, labor laws, securities regulation and many others. As State regulatory powers reached the limits of their effectiveness in dealing with corporations of national and international scope, the Federal administrative agency arose. The first of these grew out of the Granger agitation in the form of the Interstate Commerce Commission, created by the Interstate Commerce Act of 1887. This was followed shortly by the Sherman Anti-Trust Act of 1890.

Since then government regulation has advanced apace, not as a result of the ideology of any political group, but as the result of impersonal forces, so that the reforms which were denounced by the "outs", and introduced by the "ins", were never to any great extent repealed when the "outs" in their turn were "in", although it is not difficult to detect differences of

rate and tempo among the major political parties. And from the days of the classic controversies between Hamilton and Jefferson there has been a continuous debate as to where to draw the line between the economic functions of the State and the initiative of private industry; what Jeremy Bentham called the "Agenda" and the "Non-Agenda"; the things that a State should do and those which it should not do. The answer which has been given throughout American history and to which the vast majority of our people adhere, is that the line should encompass at least three types of governmental activity;

1. Governmental promotion of business having certain types of advantage to the public; such as merchant-marine subsidies, public aid to railroads, tariffs, and such promotional aids as are provided by the Department of Commerce.

2. Governmental regulation of business made necessary to act as a counter-weight on behalf of farmers, labor and the community at large, to the increasingly dominant power of the corporation.

3. Governmental initiative in certain limited fields which are considered necessary for the good of the community, but where private industry will not venture because returns are inadequate, uncertain or remote, such as reforestation, the T.V.A. and the R.F.C.

Since the first great rush in 1900-1901 in the formation of modern corporations, when the United States Steel Corporation, American Sugar Refining, American Tobacco, American Can, International Harvester and many others were organized, government participation in business life has advanced uninterruptedly. The legislative program of Theodore Roosevelt in the early 1900's, approved by William Howard Taft, who proposed to add to it the Federal incorporation of business, was followed by basic legislation in the next decade from 1910 to 1920. This was when the Federal income tax, central



banking under the Federal Reserve System, the Clayton Act, the United States Tariff Commission, the Alaska Railroad, the New England Waterways Corporation, and the United States Shipping Board were variously created or enacted. In the Coolidge-Hoover decade, numerous efforts to deal with the farm problem were made by the Federal Farm Loan Board, the Grain Futures Administration, Packers and Stockyards Act, the Agricultural Credit Act, and the Co-operative Marketing Act. The first steps toward Federal regulation of radio and power were taken, and Federal aid to the oil conservation programs of the States became national policy. At the end of this decade, the depression forced the Government to deal with it at first through expenditure of large sums for the support of grain and cotton prices, early forms of unemployment relief, the creation of the Railroad Corporation; and, most significantly, the creation of the R.F.C. for the aid of distressed banks and insurance companies, which has continued to perform needed functions to this very day.

Relative to excess of control by government, Senator Kefauver tells of a very amusing experience he had at the last recess of Congress when he went back to Tennessee to do some "grass roots" fence building. He said he went to a remote part of Tennessee to a place called Madisonville, where he was born. While there he ran into an old friend who complained rather bitterly about government intervention in his business. This man apparently had a small manufacturing operation up in the hills. He complained to Senator Kefauver that he had been going rather nicely with his operation when men came to him from the Department of Interior and told him that they were going to take the land for the purpose of creating a national park. He had to move all of his apparatus and went back further into the hills and got his operation going once more when the Atomic Energy people came to him. They allowed as how he also was making a very powerful product, but indicated that the development of the atom made it necessary for them to take the land on which he had set up his equipment. Whereupon, it became necessary for him to move once more into another county. He bemoaned all this government interference and expressed a great desire to have the good

old days when the only government man he had to worry about was the Revenue Agent. I am quite sure that there are many in America who feel much the same way.

With the New Deal of President Roosevelt and the Fair Deal of President Truman, these trends in the relationship of government to business, were accelerated until the present scope of government activity includes labor and farm legislation; the regulation of transportation and communications; of utilities, securities, and securities exchanges. Also the regulation of soft coal, oil and milk; of banking and currency and insurance; the creation of great lending agencies to deal with real estate, farms, railroads and general business where a public interest is involved; and the creation of great public works of more than local significance.

In the present period of the "cold war", the inescapable needs of mobilization have led to a still greater, but we hope temporary, expansion of government controls.

The distinctive features of the government regulation of business since 1933 grew out of the historic background in which they originated, but they run back long before the New Deal or the Fair Deal. Because the New Deal grew out of the depression and abuses in corporate life laid bare by the depression, its characteristic feature was the search for stability and reform.

The far-reaching needs of the second World War imposed a new direction on the Government program. Because the Fair Deal grew out of problems created by the end of the second World War, its characteristic feature has been the search for stability on the international scale, the support of the United Nations, containment of Russia, Point Four, and foreign aid.

The existing functions of government in business are the product of industrialization just as is the growth of corporations themselves and the concentration of their economic power.

The corporation today as an institution in our community, is stronger than ever before and is performing many more useful functions in our society than ever before. Furthermore, if trends could be discerned, they would indicate that the role of the corporation in our community life is going to be much greater in the future. It is axiomatic in many communities these days that a Community Chest Drive cannot succeed without corporation gifts. It may be that favorable tax laws have accounted for corporation generosity in this direction and others which I shall outline. However, I think it is the growing awareness on the part of corporation officials of their civic responsibility. But, it does not stop with Community Chest Drives. The great educational and scientific foundations that have been created out of corporation assets are proof that corporations are indeed measuring up to their responsibilities.

Opportunities provided by these corporate grants are making possible the education of many of our youngsters, who in turn are doing their part to make the world a better place in which to live. Contributions to scientific research have done much to alleviate the ills of mankind and to prolong life. In addition, there is much that has been done in the field of the humanities and the arts and in the field of social behavior. These charitable endeavors with Rockefeller and Carnegie at the forefront, include as well Eastman, Mellon, Rosenwald, Guggenheim, Ford, The Harkness, and many others. Raymond Fosdick has recently written a book about the Rockefeller Foundation in which he indicates that the purpose of the foundation was "to promote the well-being of mankind throughout the world." Mr. Rockefeller gave to the various foundations 446 million dollars and in the course of fifty years grants of more than 821 million dollars were made. Beardley Ruml has suggested that corporation contributions should be raised so as to give away 5% of their profits. This would mean an annual gift of two billion dollars, and it in turn would be more than five dollars for every one dollar that is being contributed now.

The establishment of pension funds on behalf of employees and their families, which in scope embrace the highest executive to the plant guard, is another interesting development indicating a role the corporation would not have played in the past. The granting of hospitalization and sickness disability benefits, along with life insurance, and other types of insurance, marks another step down the road of greater participation by the corporation in the problems of its employees and consequently the community. Whether these and similar benefits are accorded by legislative action or through unilateral action by the corporation, or through a joint program of corporation and labor unions, the picture that emerges shows the corporation engaged almost in every aspect of community life. In spite of this, and perhaps because of it, the corporations of America today are at the height of their power. Recent statistics issued by our Securities and Exchange Commission indicate that from 1942 to September 30, 1951, the total current assets of all United States corporations, excluding banks and insurance companies, went from 83.6 billion dollars to 162 billion dollars and net working capital went from 36.3 billion to 79.2 billion. It is possibly true that inflationary pressures have caused an increase in these figures, but I think these data do reflect a very healthy and prosperous condition.

In many of our industries, and certainly in our mass production industries, the large corporation is now synonymous with American business. We no longer think so much of doing away with the large corporation as we think of ways to get along with it. Thus, large steel producing companies are the backbone of our industrial strength, and with a modern steel plant costing 100 million dollars or more, there are few who concern themselves any more with the academic problem of bigness in steel.

The role of the Government in attempting to keep down inflation with devices such as price control, keeping production rolling by maintaining the free flow of raw materials, and at the same time stabilizing labor markets, makes the Government by all odds the most important single factor in the economic world today.

It is curious too, that all this has taken place at a time when corporations have been growing in power and in size to the point where some of the larger units have, as in an earlier day, many of the significant attributes of sovereignty, and in this regard approximate the role of Government itself. It was stated to me some time ago that it was General Motors Corp. which taught the Government something about bureaucracy. From the point of view of the resources they control and the number of people whose lives they intimately affect, some of our larger corporations are more significant elements in the body politic than many of our states. As their wealth and power have grown, so too has their susceptibility to pressures of the type that traditionally govern political action. It is also significant that in this posture the large corporations must inevitably have their share of officiousness, of petty corruption, of nepotism and power politics. The fights for control within corporation management are frequent and wasteful. To this extent, the corporation follows a pattern that has existed in governments from time immemorial.

The sophisticated corporate management is concerned not only with the problem of competition in the market place, which is unfortunately non-existent in some cases, but also with the power of labor, the power of agriculture, the power of the consumer, and the power of public opinion generally. Wages, prices and production may be determined by governmental processes, by non-governmental processes, or by a combination of both, but in any event the determining pressures and forces are largely the same.

We are living in an economy new to the Western world--an economy that apparently was not envisaged by any of the brilliant theoreticians who have from time to time made contributions to economic science.

At the Securities and Exchange Commission, it has been my privilege to observe at close range a small yet significant and sensitive area where Government and business interact. From my vantage point, it has become clear to me why there was a need for a certain

type of regulation, and my contacts with persons in the securities industry have convinced me that by and large they have recognized that this regulation has brought great benefits to the persons in the business. I understand that this recognition was not always forthcoming.

If a moral of general application is suggested, I wish to assure you that none is intended. Taken all in all, I do not believe that the degree of government regulation we have today is desirable, but I do believe it is necessary, and that forces over which we have no control will make it necessary for a considerable time to come. If assurance is necessary, I can state, upon the basis of my short experience with the SEC, under circumstances where I cannot as yet claim any personal credit, that regulation can be intelligent, effective and understanding. I have been very impressed with the fair-minded attitude I have found and the high purpose with which the staff goes about its work--and I am encouraged to believe that Americans can solve the newer problems of regulation, and that the flexibility and adaptability of the modern corporation will prove more than a match for the economic organizations of the slave states behind the iron curtain.