Fordham Urban Law Journal

Volume 3 | Number 3 Article 15

1975

The Limits of Corporate Responsibility. By Neil W. Chamberlain. New York: Basic Books, Inc. 1973. Pp. 236. $10.00.

Stephen A. Block

The Limits of Corporate Responsibility. By Neil W. Chamberlain. New York: Basic Books, Inc. 1973. Pp. 236. $10.00.

Cover Page Footnote
B.A., Yale; J.D., Harvard. Member of the New York Bar.

BOOK REVIEWS

THE LIMITS OF CORPORATE RESPONSIBILITY. By Neil W. Chamberlain. New York: Basic Books, Inc. 1973. Pp. 236. $10.00

This is a depressing book. Its essence is summarized in one brief excerpt:

> Our conception of what constitutes a "whole" person has become warped; we demean our productive and integrative capabilities in order to inflate our accumulative capacities. The consequence is discernible, in varying degree, from top to bottom of the corporation's hierarchical structure, from the assembler to the production manager. The production of "whole" people is not the function of the corporation. Its specialized task, as we have been so often told, is efficient production of goods and services. Schools, churches, and homes are the "people producing" institutions. But this formulation ignores the inescapable impact that people's working lives have on their identities, and in our unconcern for that effect we have sold ourselves for steak and plumbing.[1]

In short, this volume is a chronicle of past and a prediction of future corporate survival through the furtherance of the consumerist philosophy. Professor Chamberlain discusses (although all too briefly) how corporations have inculcated in American society the materialism that is its principal motivating force and how that value, feeding on itself and thereby forging an alliance of mutual need between the corporate structure and the American people, has created the situation described in the above quotation. He also analyzes the impact of this philosophy on various aspects of corporate and noncorporate life, from the corporation's relationship with its employees to that with its shareholders, from the physical environment to education, from community decisions to national policy and international relations.

Throughout the discussion, Professor Chamberlain continually points to the problems and conflicts that the corporate impact has created and to the ways in which corporations have been able to survive and prosper. His stated theses, which are repeatedly examined in his discussion of the relationship between corporations and

1. N. CHAMBERLAIN, THE LIMITS OF CORPORATE RESPONSIBILITY 91-92 (1973) [hereinafter cited as CHAMBERLAIN].

various segments of society, are:

(1) Although corporations, both individually and collectively, are at least partially responsible for the myriad problems society faces, because of the strictures of the marketplace and the traditional corporate obligation to maximize its profits, the individual corporation can do very little to help solve what it has caused; and

(2) While corporate power in the aggregate is vast and has the resources to act beneficially, corporations by their very nature as competitive entities with separate identities do not form a unified structure which would enable them to work together.

What permeates this book, however, sometimes impliedly, other times as explicitly as in the opening quote, is the conclusion that even if corporations were capable of solving the environmental, social, and political problems that their existence and their competitive aggressiveness have helped to create, their constituency, the American people [the monolith whom the corporate structure has helped to create and who sustains its continued growth and prosperity] would not let them. Professor Chamberlain insists that the marginal cost of such solutions exceeds what the American people are willing to pay, because such increased costs would adversely affect their life styles and hinder their continuing quest for more possessions. Through their economic and political power the American people would place a limit on any ameliorative action corporations would be disposed to take. Through all of these machinations, however, indeed because of the values it has ingrained and the importance it has assumed in the economic life of America, the corporate system will survive and even prosper. According to Professor Chamberlain, it will simply react and accommodate, confident that society will protect it.

Even a cursory analysis bears out Professor Chamberlain's conclusion about the individual corporation. By law, corporate management—the board of directors and the executives who are the real governors of the corporate state—is considered a fiduciary for its shareholders.[2] While management has great discretion and flexibility in its style of performance, fulfillment of its fiduciary responsibilities requires maximization of profits for the benefit of investors.[3]

2. *See, e.g.*, United States v. Byrum, 408 U.S. 125, 138 (1972); Pepper v. Litton, 308 U.S. 295, 306 (1939).

3. CHAMBERLAIN 11.

The board of directors of any corporation which fails to maintain this "corporate trust" risks accountability to its owners, either through court action which can be lengthy, expensive, and can even impose severe penalties for breach of this fiduciary responsibility,[4] or through the electoral process. Management which does not produce can be replaced.[5]

Social involvement raises the spectre of removal. Management is sometimes able to justify undertaking socially oriented programs on the ground "that it is in the long-run interests of stockholders to be socially responsible."[6] If, however, a corporation's competitors are not investing equivalent or proportional capital and other resources in the same kinds of programs, but are pouring assets into product development, advertising or plant expansion, the socially responsible corporation is likely to find itself at a competitive disadvantage, which can lead to lower profit and consequently lower investment return or even losses for shareholders. Unhappy shareholders may seek to remove management, or sue for breach of fiduciary responsibility. Even the most socially conscious people look askance at economic loss.

Most importantly, even if no actual competitive disadvantage, management removal, or legal exposure would result from social involvement, management would be concerned about such conseences. These concerns, real or imagined, lead to the same result. The corporation does not vigorously pursue social programs. Instead, it does no more than is absolutely necessary to attempt to

4. *See, e.g.*, Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949); Koster v. Lumbermens Mut. Cas. Co., 330 U.S. 518, 522-23 (1947); Miller v. American Tel. & Tel. Co., 507 F.2d 759 (3d Cir. 1974); Milstein v. Werner, 57 F.R.D. 515 (S.D.N.Y. 1972).

5. Generally, external pressures leading to attempted removal of management occurs either through a proxy contest, *see, e.g.*, Committee for New Mgt. of Butler Aviation v. Widmark, 335 F. Supp. 146 (E.D.N.Y. 1971); Twentieth Century Fox Film Corp. v. Lewis, 334 F. Supp. 1398 (S.D.N.Y. 1971); Milstein v. Werner, 1970-71 CCH FED. SEC. L. REP. ¶ 92,986 (S.D.N.Y. 1971), or by tender offer, *see, e.g.*, Susquehanna Corp. v. Pan American Sulphur Co., 423 F.2d 1075 (5th Cir. 1970); Electronic Specialty Co. v. International Controls Corp., 409 F.2d 937 (2d Cir. 1969); Texasgulf, Inc. v. Canada Dev. Corp., 366 F. Supp. 374 (S.D. Tex. 1973).

6. CHAMBERLAIN 186.

appease the most militant of its constituents who seek to impose on it at least some sort of social involvement.[7]

Management is supported in its view by the overwhelming majority of shareholders. Their goal as shareholders is to maximize the return on their investment,[8] and they too perceive the same dangers in social pioneering as management does. Shareholders are also consumers and, whether through their own perceptions or through inundation from outside, particularly from corporate sources, they are concerned about the higher cost of the "good life," the threat to their standard of living that massive corporate concern with social problems may create. Finally, to a great extent, these shareholders and consumers are also the employees of corporations. In that capacity their interests are incompatible with corporate activities which threaten corporations' competitive position, which could mean loss of security, benefits, or their jobs. As long as their mate-

7. This pressure is accomplished either through consumer agitation, CHAMBERLAIN 12-13, or by shareholders through attempted use of management's own proxy materials. Rule 14a-8, 17 C.F.R. § 240.14a-8 (1974), promulgated under § 14(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78n(a) (1970), provides a mechanism pursuant to which shareholders may submit proposals to management for inclusion in the management proxy statement. Under Rule 14a-8(b), 17 C.F.R. § 240.14a-8(b) (1974), management must include a 200-word statement setting forth the shareholder proposal unless the proposal falls within certain excepted areas. These exceptions include shareholder resolutions whose substance is (1) to promote general economic, political, racial, religious or social causes and (2) to require management to take action on a matter relating to the conduct of the corporation's ordinary business operations. While these exceptions serve to thwart many attempts at shareholder democracy, in Medical Comm. for Human Rights v. SEC, 432 F.2d 659, 676-82 (D.C. Cir. 1970), *vacated on other grounds*, 404 U.S. 403 (1972), the court punched a potential hole in those exceptions, a hole whose scope is yet to be determined but which may provide a vehicle whereby shareholders will be able to put the question of greater corporate responsibility to a vote. *See* 17 C.F.R. § 240.14a-8(c)(1)(ii), (c)(5) (1974).

8. As Professor Chamberlain points out, this is particularly true of institutional investors—investment trusts, pension funds, and mutual funds—who often control large blocs of stock and whose managers themselves are fiduciaries. These fund managers thus are even more amenable to management goals than ordinary shareholders. CHAMBERLAIN 183-84.

rial needs are satisfied, these employees have no real interest in social problems.

Thus, as Professor Chamberlain hypothesizes, there is no successful way in which the individual corporation can satisfy the needs and desires of its constituents—shareholders, employees, consumers—and at the same time make a significant contribution to social problems. This inability to reconcile competing interests and legal responsibilities compels the corporation to choose goals other than social responsibility and eliminates any real incentive for the individual corporation to make a social input.

In the aggregate, corporate power is immense; indeed, as Professor Chamberlain rightly concludes, corporations are the dominant economic and social forces in American life. Yet, he says the corporate system cannot be relied upon any more than the individual corporation to make social changes. I believe that Professor Chamberlain is correct, but I do not share the basis for his conclusion. As previously noted, he contends that this helplessness is due principally to the fact that the corporate system "is not a hierarchically structured and unified whole that can collectively transform itself into a different kind of efficient, productive network capable of reengineering society to more utopian specifications."[9] I would disagree. Indeed, I think Professor Chamberlain contradicts himself in his discussion of institutionalized reaction—for example, lobbying efforts, media and economic pressure, activities of trade associations—to attempted regulation.[10] That analysis demonstrates that corporations can and do undertake joint action, if only by proxy, when their interests or power is threatened or under pressure.

In my view, the corporate system will not perform the social miracle that it might accomplish principally for some of the same reasons that the individual corporation will not undertake the task. The employees, shareholders, and consumers upon whom corporate existence depends and who, in turn, depend upon corporations for their economic and social sustenance, will balk. These constituencies will not accept the trade-offs—the sacrifices, the impairment of life-styles, and the increased costs—that such action would bring. It is social choice, not the limitations of corporate organization,

9. *Id.* at 4.
10. *Id.* at 16-17.

which inhibits the corporate system, as it inhibits the individual corporation.

However, as the problems discussed by Professor Chamberlain mount and become more acute, in my view, the corporate system itself, always keen to what is most advantageous (or at least necessary) to its prosperity, will recognize that collective action is necessary. With its sophisticated planning and evaluative techniques, the corporate system will recognize this necessity long before its constituencies and this recognition will collide with the social choice made by those constituencies. The system will want to act and those whom the corporations serve will resist that action. Considering the vast economic power of the corporate system, the corporations, acting collectively, might simply ignore the social choice made by their constituencies and impose on society the changes that they deem necessary. This course of action would be more attractive to corporations acting in the aggregate since one of the most inhibiting factors to individual corporate social responsibility—the fear of losing competitive position—would no longer be an economic consideration.

But the social choice voiced by corporate constituencies has another element, which I believe raises a potentially insurmountable obstacle to collective corporate action and is the principal reason, rather than those advanced by Professor Chamberlain, why the corporate system cannot respond to social needs. That element is the antitrust laws. The social policy evidenced by these statutes demands competition. It does not condone collective economic activity, particularly decisions which would involve allocation of economic priorities and consequent agreements upon costs and prices (as decisions relating to environment, education, and the like obviously would), no matter how beneficial the result of such action might be.[12] Unless the antitrust laws are changed, these statutes,

11. The principal federal statutes are the Sherman Anti-Trust Act, 15 U.S.C. § § 1-7 (1970), and the Clayton Act, 15 U.S.C. § § 12-27 (1970). Of course, states have their own statutes. *See, e.g.*, CAL. BUS. & PROF. CODE § § 16700-16758 (West 1974); N.Y. GEN. BUS. LAW § 340 (McKinney 1968).

12. *E.g.*, Northern Pac. Ry. v. United States, 356 U.S. 1 (1958), where the Court stated that the Sherman Act "rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the

designed to protect American society against corporate economic dictatorship, will act as the ultimate deterrent to collective corporate responsibility. There is little reason to expect modification since Congress and state legislatures have the same constituencies as the corporate system; these representative bodies are even more dependent on those constituencies than corporations are in the aggregate. Indeed, the conflict between the policy of the antitrust laws and social change has been recognized.[13]

I stated at the outset that Professor Chamberlain's is a depressing book. The reason, now obvious, is because his insights and conclusions are so valid. Indeed, if this volume has any weakness, it is that Professor Chamberlain is so detached and objective in his analysis. Only rarely does he show the indignation and frustration evidenced in the quote opening this discussion. This book makes clear that truly creative and complete solutions to the social issues facing American society will require a substantial reorientation of American values. Perhaps Professor Chamberlain's detachment derives, at least in part, from recognition, indeed resignation, that such a change is unlikely to occur.

Stephen A. Block

---

greatest material progress . . . ." *Id.* at 4. *See also* Timken Roller Bearing Co. v. United States, 341 U.S. 593, 599 (1950); Standard Oil Co. v. United States, 221 U.S. 1, 65 (1911). *Cf. In re* Multidistrict Vehicle Air Pollution, 367 F. Supp. 1298 (C.D. Cal.), *modified*, 481 F.2d 122 (9th Cir. 1973); United States v. Automobile Mfrs. Ass'n, 1969 CCH Trade Cas. ¶ 72,907 (C.D. Cal. 1969), *approved*, 307 F. Supp. 617 (C.D. Cal.), *appeal dismissed sub nom.* Grossman v. Automobile Mfrs. Ass'n, 397 U.S. 248 (1970).

13. F. Rowe, Address on Antitrust Policies and Environmental Controls, *Twelfth Annual Corporate Counsel Institute*, Northwestern University, Oct. 3, 1973, in 633 BNA ANTITRUST & TRADE REG. REP. at F-1 (Oct. 9, 1973).

* B.A., Yale; J.D., Harvard; Members of the New York Bar.