

REVIEWS

THE AMERICAN STOCKHOLDER. By J. A. Livingston. Philadelphia and New York: J. B. Lippincott Company, 1958. Pp. 290. \$4.95.

As many readers will know, Joseph Livingston is the fluent and sharp-penned financial editor of the *Philadelphia Bulletin*. His familiarity with the world of finance and his ability to write lucid English are marks of his skill at his trade; his penchant for asking the embarrassing question and his willingness to turn an irreverent wit upon the totems of society are marks of his personality. In *The American Stockholder*, Livingston has taken as his topic the role of the stockholder in the modern publicly-held corporation. His thesis is that this role is insignificant. He has given the general reader a useful book, an entertaining book, but a book which stops short of its own implications.¹

Some background facts are needed to put Livingston's book in context. Since the end of World War II, the brokerage profession and particularly the New York Stock Exchange have become persuaded that it is at least good public relations and, hopefully, even good business to broadcast the gospel of "People's Capitalism." The theme is that American enterprise—especially big business—is really "owned" and, by implication, controlled by legions of small stockholders.

The Stock Exchange is in part a business organization and stockbrokers are businessmen. As such, they can be no more criticized than other businessmen for doing their best to puff their product. But securities are not commodities like safety pins, and the Exchange is not just another business corporation. Data on the number of safety pins sold and who buys them disclose relatively little about the American economy or its power structure; data on who owns securities and who controls corporations, however, disclose a great deal about our economic system as a whole. When the investment industry purports to have discovered a People's Capitalism in America, it invites a rather more critical analysis of its claim and supporting evidence than is usually accorded advertising copy.

At the request of the New York Stock Exchange, the Brookings Institution prepared and published in 1952 its well-known report—often called the Kimmel Report—entitled *Share Ownership in the United States*. This study found that, as of March 1, 1952, 6,490,000 individuals owned shares in publicly-held corporations.² The results were disappointing, for it had been hoped that share

1. In all matters of shareholder relations these days, the watchword is "disclosure"—usually in small print. Let me therefore quickly disclose in this first footnote that Joe Livingston is a personal friend.

2. These shareholders represented 4.2% of the then total population of 155,520,000. They were members of 4,750,000 family spending units, or 9.5% of an estimated national total

ownership was more widespread. In 1956, the Exchange's own Department of Public Relations and Market Development, collaborating with Alfred Politz Research, Inc., did a bring-down study. This time, the Exchange was able to announce that, "based on new sampling techniques" of the "vast economic changes that have altered America," none is "more significant than the emergence of a democratic 'People's Capitalism.'"³ The most pointed statistical conclusions of the 1956 Exchange report were that the number of individuals owning shares in publicly-held corporations had increased to 8,630,000 since the 1952 study and that two thirds of all shareholders earn under \$7,500 per year.⁴ Since the publication of this report, the Exchange has done its best to disseminate these statistics and dramatize their implications.

Concurrently, brokerage firms have developed and been pushing the new Monthly Installment Plan, calculated to extend still further the base of stockholdership among the people by making it possible to buy stocks on time for as little as \$40 a month. It was perhaps inevitable that the image of People's Capitalism should be incarnated in a selected representative stockholder. He was Mr. D. M. Kuehl—age forty-eight, married, two children, salaried employee earning \$7,500 per year, residing near South Bend, Indiana, the geographic metacenter of individual shareowners—a walking statistic represent-

of 50,000,000. The estimated 4,350,000 adult owners constituted about 6.4% of the adult population. See KIMMEL, SHARE OWNERSHIP IN THE UNITED STATES 89 (Brookings Inst. 1952) (hereinafter cited as KIMMEL REPORT).

The Report also found 91.4% of the record shareholdings of the reporting corporations, constituting 57% of the outstanding shares of such corporations, to be held by individuals or in joint accounts. *Id.* at 18. But on the basis of adjustments to take account of holdings in the name of nominees, brokers and dealers, and estimates for publicly-held corporations which did not report, the Kimmel Report concluded that 85.8% of shareholdings in publicly-held corporations are held by individuals or in joint account and that these holdings constitute 70.7% of the shares of all publicly-owned issues. *Id.* at 62-69, 79, 124.

3. NEW YORK STOCK EXCHANGE, WHO OWNS AMERICAN BUSINESS—1956 CENSUS OF SHAREHOLDERS 3 (hereinafter cited as 1956 CENSUS).

The thirty-two page, slick-paper, chocolate and persimmon, cartoon illustrated Exchange Report offers an interesting contrast to the 140-page, dull buff Kimmel Report.

4. *Id.* at 6, 8, 14-15. The 1956 Report shows a population increase from 155,520,000 to 170,268,000 during the four-year lapse. *Id.* at 17. The percentage of total shareowners of publicly-held issues to total population had therefore increased from 4.2% to a little over 5%. Though the terminology of the 1956 Report varies a bit from the Kimmel Report on the breakdown between adults and minors, the 1956 figures point to an increase of shareownership among adults from 6.4% in 1952 to 8.3% in 1956. *Ibid.*

The 1956 Report found almost no change in the percentages of total record shareholdings of individuals, concluding that in 1956, 91.3% of all record holders were individuals, either singly or in joint account, and that these holdings constituted 56.9% of all shares. *Id.* at 25, 26. No adjusted figures on the point comparable to those in the Kimmel Report are given. See note 2 *supra*.

Exploring a new vein not mined by the Kimmel Report, the Exchange study also concluded that in 1956 there were 1,400,000 individuals who owned shares only in privately-held corporations, defined as corporations with less than 300 stockholders or with shares restricted in ownership. 1956 CENSUS 9, 32.

ing the findings of the Exchange's 1956 study. In the summer of 1956, Mr. Kuehl was the well-publicized guest of the Exchange, invited to spend a couple of days in the canyons of Wall Street to survey the world which he and his fellow shareholders "own."⁵

Somehow, certainly through no fault of his own, the visiting shareholder was not convincing in his role as owner of America's business. (Some with an associative turn of mind thought of another little fellow who, in 1933, had been set briefly in the lap of Wall Street.) And somehow, certainly through no fault of the Exchange, energetic repetition of the "two thirds earn less than \$7,500" slogan and wide distribution of advertisements depicting all America at a stockholders' meeting⁶ have not persuaded many to accept the glowing image of People's Capitalism.

Livingston is among the unpersuaded. Tackling the latter-day dialectic of People's Capitalism head on, he suggests that one reason converts are few is that the gospel just isn't so.⁷

He points out that the "two thirds earn less than \$7,500" statistic itself is less startling on reflection than it may first appear. In 1952:

"More than 65 per cent of all shareowning family units had incomes of \$5,000 or more.

"The New York Stock Exchange, in its later surveys, found pretty much the same. However, the Exchange is so intent on publicizing the widespread ownership of stocks, or propagandizing the phrase, 'people's capitalism,' that it headlines: 'Two-thirds of Shareowners Earn Under \$7,500.' The inference to be drawn is that only one third of America's shareholders are in the upper brackets. But you have to decide where the upper bracket begins—at \$5,000 or \$7,500. Further, it would be strange, indeed, if a majority of shareholders did not have incomes under \$7,500. After all, nearly 90 per cent of the adult population is in the below-\$7,500 income group. Only 10.4 per cent is in the above-\$7,500 group. Yet, this 10.4 per cent accounts for 36 per cent of the shareholders by the Stock Exchange's own count."⁸

The Exchange's interpretation of its own statistics also seems questionable to Livingston.

"On a significant point, Kimmel and Stock Exchange data come close together: For shareholders in the \$5,000-and-below income group, Kimmel shows 31.6 per cent, the Stock Exchange 37.7 per cent. The discrepancy—the higher percentage of the Stock Exchange—could well be due to the rise in incomes, the inflation between 1952 and 1956, rather than any important increase in the proportion of shareowners among the lower-income group.

"
"Families with leftover income—unspent income—are the purchasers of common stocks. These are the better-heeled families. A sample survey

5. N.Y. Times, July 31, 1956, p. 28, col. 3.

6. See, e.g., Time, May 5, 1947, p. 93.

7. P. 18.

8. P. 27.

by the Ford Motor Company of its shareholders supports this. Only 11 per cent of the Ford holders reported incomes of less than \$5,000; only 31 per cent reported incomes of less than \$7,500. In other words, 69 per cent had incomes of \$7,500 or more. Four out of five purchasers of Ford stock (82 per cent) were already stockowners. Yet here was a security originally tabbed for the man in the denim cap, not the homburg hat.

"The conclusion to be drawn is not that, increasingly, farmers and laborers own shares, but rather that as people ascend the income ladder, their savings spill over into the stock market."⁹

And he finds other figures in the 1952 and 1956 studies which accord far more readily with one's *a priori* hunches on who are the country's shareholders. These figures concern the percentages of shareholders in different occupational groups. Though the classifications in the two studies differ somewhat, both show what one would have guessed—that a shareowning laborer is a rare fellow, a shareowning farmer only slightly less so, and a shareowning corporate executive commonplace.¹⁰

Strangely, Livingston forbears from hammering squarely on the weakest link in the statistical case for People's Capitalism. The 1952 and 1956 reports reveal almost nothing about the concentration of stock ownership. Inescapably, they do show that only a small minority of the population holds any stock at all.¹¹ But, in studying the 1952 and 1956 reports, one first dimly senses, then sharply awakens to, the fact that the multiplicity of statistics cannot be arranged to reveal anything about share ownership concentration among those who do own shares.¹² The reports deal in terms of "shareholdings," "share-

9. Pp. 27-28.

10. Livingston sets forth in abbreviated form the statistics on shareholders classified by occupation drawn from the 1952 and 1956 studies. Pp. 32-33. The original figures appear in KIMMEL REPORT 98; 1956 CENSUS 20.

11. The Exchange report stresses its findings that in 1956 shareownership had increased 33% in the years since 1952 and that one adult in every twelve was a shareowner in a publicly-held corporation. Read the other way, the same data show that in 1956, 95% of Americans owned no stock in a publicly-held corporation and over 91% of American adults were not stockowners. Even when the 1,400,000 shareholders in private corporations found by the 1956 Report are added to the 8,630,000 owners of public issues, over 94% of the population remain nonstockholders. See note 4 *supra*.

12. The accompanying texts of the studies make it clear that collection of information on the point was affirmatively avoided.

"Our inquiry with respect to publicly owned stocks was concerned only with the fact of ownership. No questions were asked concerning the amount of money invested, the number of shares owned, or the names of the companies in which share owners are investors. It was felt that any attempt to question people about the amounts or value of their holdings would be an invasion of their personal affairs." KIMMEL REPORT 87.

"Because of the highly confidential nature of the information and because of the difficulty of sampling and projecting accurately dollars assets of broad segments of the population, no attempt was made in the 1956 Census to measure the dollar value of stock holdings by various shareowner groups." 1956 CENSUS 14.

owners" and "issues," not "shares." An owner of one share is a "shareowner" just like an owner of one million shares; a shareowner holding one share of each of five "issues" has five "shareholdings," while an owner of one million shares of a single issue has only one "shareholding."¹³ Two thirds of all shareholders earn under \$7,500. Probably, too, ninety-nine per cent of all landholders in the Soviet Union are peasants—each with his acre of personal beets—but this statistic doesn't throw much light on the Soviet agricultural system.

In view of the importance of the subject, it may seem surprising that so little information on shareholder concentration is available from any source. Efforts to obtain this data, however, run into serious statistical hurdles—complex problems of properly allocating the holdings of trusts, corporations, and of investment, insurance and retirement funds—and an understandable resistance to disclosure of financial matters felt to be private. A 1949 estimate, which Livingston mentions in passing, was that about 0.5 per cent of the nation's population held slightly over 50 per cent of all marketable securities

13. Descriptions of the methodology of the 1952 and 1956 studies appear, respectively, in KIMMEL REPORT 4-8, 85-89, 132-36; NEW YORK STOCK EXCHANGE & ALFRED POLITZ RESEARCH, INC., SAMPLE DESIGN AND OPERATIONAL PROCEDURES FOR 1956 CENSUS OF SHARE OWNERS (technical supplement to the 1956 Census). The research methods differed in significant respects but both involved a combination of analysis of corporate stock lists and a field survey of selected population samples. The 1956 study introduced a new and interesting technique for eliminating duplication in "shareholdings" to derive the number of "shareowners." See *id.* at 5-33.

The closest either of the studies came to the subject of stock concentration is an analysis in the Kimmel Report of the size of "shareholdings" and the number of "issues" held by shareowners. The data on the number of shares per "shareholding" for common stocks of the reporting corporations show that 67% of shareholdings were between 1 and 99 shares, 31% were between 100 and 999 shares, and only 2.1% were over 1000 shares; however, shareholdings of less than 100 shares accounted for less than 10% of total shares, while shareholdings from 100 to 999 shares accounted for 32% and shareholdings of over 1,000 shares accounted for 58% of total shares. KIMMEL REPORT 41-43. The pattern for preferred stock was slightly different, with shareholdings between 1 and 99 shares being 82% of shareholdings and having 20% of the shares, those between 100 and 999 shares being 16.5% of shareholdings and having 33.5% of the shares, and those over 1,000 shares being 1.1% of the shareholdings and having 46% of the shares. *Id.* at 45-47. On the matter of the number of issues owned by shareowners, Kimmel's data showed that 46% of shareowners owned only one issue, 62% two issues or less. At the same time, 20% had five or more issues and 8% had ten or more. *Id.* at 110.

These figures, taken together, tempt one to infer patterns of ownership concentration, but they will not, on analysis, support more than a general impression or, perhaps, some tenuous maximum and minimum limits. The missing link is always the same—lack of information about the size of any shareowner's portfolio. The shareowner holding many "issues" may always be a small shareholder while a controlling shareholder may show up as owning but one "shareholding." These figures also, of course, show nothing about value.

One interesting side statistic in the Kimmel Report which has been given little attention is that the number of shares per shareholding is generally greater for relatively small corporations than for the large corporations. The report conjectures that this is the result of large holdings by principal officers and shareowners who are members of the same family. *Id.* at 76, 134-35.

owned by private investors.¹⁴ Other and later sources report different estimates but imply a similar magnitude of concentration.¹⁵ What indications we have on the subject are unlikely to inspire many to thoughts of "People's Capitalism."

What the available data do show, however, is that there are a large number of shareholders in publicly-held corporations in the United States, perhaps 9,000,000, that the total number is growing, and that the vast majority of these own very few shares. Livingston devotes the major part of his book to an inquiry into the part that this mass of small shareholders plays in the conduct of the modern corporation. He does not attempt to bring down to date the economics of the disparity between "ownership" and "control" documented by Berle and Means;¹⁶ nor does he primarily undertake a showing that management groups do control corporate conduct. Rather, he chooses the other fork of demonstrating that shareholders do not.

As Livingston sees it, an important cause of shareowner impotency is that,

14. BUTTERS, THOMPSON & BOLLINGER, *EFFECTS OF TAXATION: INVESTMENTS BY INDIVIDUALS* 25, 434, 438 (1953). The Livingston reference is to "families." P. 34.

15. Some light on the distribution of stockholdings and their dollar value is found in Federal Reserve Board, *1957 Survey of Consumer Finances*, 43 FED. RESERVE BULL. 878 (1957). According to this survey, there were in the United States in 1957, 56,100,000 spending units (defined roughly as all family households which pool their money, plus single spending units). 11% of these spending units held publicly-owned stocks. (The figure checks well with the Kimmel Report after allowing for the five intervening years. See note 2 *supra*). Of this 11%, 7% held an investment averaging \$5,000 or less; only 3% had an investment of over \$10,000; 1% was unascertained. *Id.* at 894. It would be expected that the 3% holding the heaviest stock investment would be principally in the highest income brackets. Other statistics in the same study tend to confirm this. Comparison of Supplementary Table 1, *id.* at 892, with Supplementary Table 6, *id.* at 894, produces the following. The top income bracket for spending units, those with incomes of over \$10,000, constituted 8% of all spending units. They received 27% of the total money income of all spending units. Of this 8% group, 57% had no stock holdings, 19% had less than \$10,000 invested in stocks, 19% had over \$10,000 and 5% were unascertained. The next income bracket, spending units in the \$7,500-\$9,999 income category, constituted 9% of all spending units. They received 15% of the total money income of all spending units. For this second income bracket, almost exactly matching the first in size, the number of spending units holding no common stock rises to 80%, 16% show less than \$10,000 in stocks and the number holding over \$10,000 in stocks drops to 2%, the remaining 2% being unascertained.

The concentration pattern of share ownership is undoubtedly complicated by the fact that substantial portfolios are often held by middle-income persons who have retired and whose main source of income is from their invested life's savings. See Pp. 35-36; KIMMEL REPORT 98.

An article by an economist appearing after the writing of this Review argues in greater statistical detail that shareownership in the United States remains concentrated. Perlo, "People's Capitalism" and Stock-Ownership, 48 AM. ECON. REV. 333 (1958).

I am indebted to my colleague, Professor Leon Lipson, for calling to my attention another recent critical commentary on People's Capitalism from a quarter from which the Exchange doubtless finds criticism more welcome than praise. Blyumin, *The Crisis of Contemporary Bourgeois Political Economy*, Problems of Economics (English Translation of *Voprosy Ekonomiki*, Journal of the U.S.S.R. Academy of Sciences, Institute of Economics), June 1958, p. 29, at 33.

16. BERLE AND MEANS, *THE MODERN CORPORATION AND PRIVATE PROPERTY* (1932).

despite their numbers, stockholders are a negligible political force. The usual shareholder is an amateur for whom stock investment is a relative sideline. Despite the efforts of Lewis Gilbert and Wilma Soss to create shareholders' organizations, the individual seldom identifies himself with others to form a self-conscious group.¹⁷ Thus, shareholders, however numerous, do not constitute a cohesive, politico-economic bloc.

Ineffective in the halls of the legislature, what can the small shareholder do for his own protection? Livingston sees three choices: the stockholder can sue the corporate management; he can attempt to throw out the management; or he can throw himself out by selling his shares. It is not difficult to show that he usually does the last of these—or nothing.

The law suit against management is an uncertain road, open only in relatively extreme cases of perfidy and subject to heavy toll charges in the form of lawyers' fees. The small, nonprofessional shareholder seldom has a sufficient stake to justify entering upon it. It is hard to disagree with Livingston here. The law today probably protects the shareholder reasonably well against thievery; and the threat of the striker's suit has some salutary consequences. But recourse to the courts hardly offers the shareholder a significant method for overseeing his investment or controlling the corporate enterprise he is said to "own."

What of the shareholders' right to vote and to throw out an offending management? Livingston draws a generally sympathetic profile of intrepid corporate democrat Lewis Gilbert,¹⁸ and retells the saga of Young versus the New York Central.¹⁹ But he sadly concludes that control of management through shareholder election is largely illusory. Managements are virtually never displaced at the polls by their alleged constituency. On the rare occasions when a management is deposed, the insurgents are far more apt to be invaders than rebels—invaders who draw their main strength not from the force of their arguments but from the outright purchase of voting shares for the purpose. The modern proxy fight is usually a battle between heavyweights—in this ring *Wolfson v. Avery*, in that *Young v. White*, in the other *Silberstein v. Morse*. It is no game for the flyweight shareholder. He knows it—or if he should happen not to, his lawyer will tell him. So when he is disgruntled, he either goes along with management anyway, or sells out to another investor who will.

17. "When doctor-stockholders get together, they are far more apt to talk about operations, or the incidence of cancer due to cigarette smoking, than about the stock market or corporate policy. Housewife-shareholders will be more interested in soufflés and garbage disposals than in the movement toward corporate democracy. Few shareholders, regardless of the hats they wear, have sufficient at stake financially to devote much time to the companies in which their money is invested." Pp. 33-34.

". . . [S]tockholders, for the most part, are doctors, lawyers, executives, school teachers first, and stockholders second. They are investors, who for the most part, do not wish to be bothered—except by dividends." P. 38.

18. C. 8.

19. C. 11.

Shareholder impotence would not be much of a problem if one had no reservations about concentrating uninhibited power in the hands of corporate executives. Certainly Livingston has such reservations. He concedes that standards of managerial corporate morality have improved in the last generation with the development of the SEC, the growth of "enlightened" management, and the spread of the concept of the corporation as a Good Citizen. But he is far from convinced that the good citizenship approach provides a sufficient answer for society as a whole and investors in particular.

"The shareholder is the residuary beneficiary of Good Citizen, Inc., and this gives rise to two-toned morality—one set of morals with which executives, corporations, greet the outside world, and another set of morals with which they treat shareholders.²⁰

"Although corporation executives are often criticized—muckraked by union officials and left-wingers—they also have the power of benevolence to dispel said criticism, to symbolize themselves as paragons of thoughtfulness and Good Citizenship. This is the power of the corporate purse. When United States Steel Corporation, General Motors, Procter & Gamble, or Ford dispense scholarships, fellowships and wads of cash to universities, the presidents and professors at those universities are likely to be well disposed toward corporation policies, especially since the fount of largesse is continuous. When corporation executives take to fundraising for the Red Cross, Cancer, Community Chest and Boy Scout drives, and disburse corporate as well as personal funds in these national and community endeavors, an awareness of the social conscience of the corporation is readily engendered. Benevolence is disarming and self-serving. Criticism is dulled and gratitude whetted by the lively expectation of further favors to come.

"And this, the concluding section of *The American Stockholder*, tries to look behind this facade of Good Citizenship and examine the social consequences of the erosion of shareholder power—how the incapacity to correct and restrain corporation executives has become a grant of excess freedom. Executives have become an overprivileged class in a democratic society. Their power to overpay themselves, with legal sanction, could, if unchecked, erode the very structure on which they and their corporations depend for survival. The Good Citizen whom so many young men and women want to emulate, could become the Bad Example."²¹

With the restraining hand of the shareholders atrophied, Livingston sees a tax-sheltered managerial elite inexcusably setting its own extravagant compensation. The most serious consequence is not the diversion of corporate funds to personal use, but the impact which unduly high executive reward has upon the rest of society. This misallocation gives the business corporation an overpowering bargaining advantage in the national competition for talented manpower—an advantage which government, schools, the military and other essential social service institutions cannot hope to match.

20. P. 220.

21. Pp. 221-22.

Seeing little promise for the toothless shareholder in the world of things as they are, Livingston casts about to find a champion for the shareholders' cause. On the horizon he glimpses a possibility—the mutual investment funds. Manned by professionals, permanently in the market on the equity side, economically powerful, the investment funds may, and in Livingston's view should, develop into a countervailing power to help police management's stewardship of corporate control. The author quickly adds, however, that so far the mutual funds have shown no disposition to assume this role. Indeed, they have adopted the motto, "In Management We Trust." The book concludes with a call to the investment funds and to the tame, uncritical financial press to awaken to their unique responsibility and potentiality as defenders of the helpless small shareholder and of the public.

I have described Livingston's book as useful and entertaining. It is entertaining because it is deftly, professionally and often amusingly written. It is useful because it offers, in a style readily understandable to all, a realistic assessment of the shareholder's position, stripped of slogans and focused on the control of events rather than the symbols of ownership. The book makes its point, and with punch. It deserves wide readership.

But "useful" is a word of measured praise, chosen because the book seems to falter at its most crucial point—the conclusion. The author is a firm and discerning reporter in his description of the shareholder's world as it is. The implications of his findings, however, appear to reach well beyond his stated conclusions.

In 1932, Berle and Means vivisected the modern corporation. They found a virtually omnipotent management and an impotent shareholdership. A quarter century of unparalleled corporate law reform intervenes. In 1958, Livingston surveys the lot of the shareholder in a reformed world—a world of SEC regulation, extensive disclosure requirements, elaborate proxy machinery, Stock Exchange self-discipline, corporate Good Citizenship, People's Capitalism and Corporate Democracy. His finding? A virtually omnipotent management and an impotent shareholdership. The finding itself will not surprise many readers. But a book demonstrating that twenty-five years of reform have not appreciably changed the situation inescapably raises the question whether we have been on the right track for the last two and a half decades. Although Livingston is worried by what he sees, it seems fair to say that he responds primarily with a yearning for re-enfranchisement of the shareholder, with an encouraging though not very optimistic smile for the churnings of Lewis Gilbert, and with a wistful hope that the investment funds will rise to save the day.

Even while suggesting the investment funds for the role of shareholder champion, Livingston spends more time explaining why they have not applied for the part. The case against such a development is probably even stronger than Livingston makes it out. As with other shareholders, the primary interest of the investment fund must be income and profit-taking—not the abstraction of good business management. For the investment fund, too—with

only a small part of its fortunes riding on any one company—it is far easier to sell out than to try to reform management policy. In some ways, the funds may find it even harder than small shareholders to assume the policeman's role, since the men who manage investment funds are subject to special social pressures arising from their position as members of the very management class that Livingston expects them to discipline. It is doubtful that the managers of any investment fund would find attractive the expensive and nonconforming posture of Sir Galahad. It is still more unlikely that investors would flock to entrust their savings to a fund which so conceived its function. And at the end of the line is always the question—*quis custodiet?*—for a controlling investment fund is just another holding company. In some circumstances, the funds have the power to make their voices felt; in fewer circumstances will they do so. The far greater probability is that, like other shareholders, they will sell their shares and move on when they dislike the way the wind is blowing. And the problem of managerial responsibility will remain just about where it was before the growth of the mutual funds.

What, then, of improving the situation by redoubling present efforts to re-enfranchise the shareholder?

For the last generation, the prevailing school of thought among corporate reformers, writers and legislators has been that the key to ensuring managerial responsibility lies in the shareholder's power to vote. The common shareholder elects the directors; all he needs is information adequate to form an intelligent judgment and he may be relied upon to vote as his personal estimate of his economic interests indicates. His interests will thus be protected and management will be checked. Out of the elements of this conception, together with the total failure of the states to include adequate reporting requirements in their corporation statutes, arose the proxy regulation requirements of the Securities Exchange Act of 1934.

Whatever agitation continues today for corporate reform is in this same tradition—pressing for more of the same statutory approach. Extreme partisans of this viewpoint have appropriated for themselves a fine, associative symbol, in character not unlike the Stock Exchange's "People's Capitalism." They put their faith in what they call Corporate Democracy—a shimmering conception fusing good old American free enterprise with good old American Jacksonianism. Apostles of this ideology offer a fully developed program to cure our corporate ills.²² The nostrums of Corporate Democracy have a vaguely familiar quality, for the prescription is largely taken from the municipal reformers of the turn of the century: more disclosure; greater mass attendance at shareholders' meetings; more policy issues on the ballot for shareholder vote; cumulative voting; more pre-, during, and post-meeting reports, preferably in color; machinery for submitting shareholder proposals to vote; and more representation for women. Nearly all of the planks in

22. GILBERT, *DIVIDENDS AND DEMOCRACY* (1956). See also EMERSON & LATCHAM, *SHAREHOLDER DEMOCRACY* (1954).

the platform of Corporate Democracy find their analogues in the reform agitations of 1900 for the long ballot, initiative and referendum, the direct primary, proportionate representation and women's suffrage.

One would be brave indeed at this date to raise any question about the nineteenth amendment. But with this exception, the success of these political reforms over the past fifty years has been at best debatable—and in the case of the long ballot and proportionate representation, decidedly unfortunate. More to the point, whatever their desirability in the political life of 1900, the wholesale importation of these reforms into the area of mid-twentieth-century business organizations should be preceded by some analysis of their appropriateness to the context. Advocates of Corporate Democracy have been more ready to invoke the symbols of our political tradition than to undertake such an analysis, more eager to press for further reforms along the party line than to assess how well shareholder democracy has worked so far. Every page of Livingston's book supports the conclusion that Corporate Democracy in its present form has not accomplished, is not accomplishing and will not accomplish the visitatorial job set for it.

Without doubt, the growth of more rigid disclosure requirements, particularly through the SEC, has had a powerful and healthy effect upon managerial conduct. No prophylaxis is so effective as sunlight, and to the extent that Corporate Democracy implies disclosure, it deserves applause. Fact disclosure by management, however, is not the same as corporate decision-making by a shareholder "democracy." Once stock is issued, disclosures to shareholders are made under present rules mainly in conjunction with an election or other shareholder vote. But tying disclosure to voting is no more than a convenience and is even incidental. The same or more stringent disclosure requirements could be set up without being hung on the event of voting. Disclosure is essential; how significant in the publicly-held corporation is the shareholder vote to which it is appended?

Managements are almost never reprimanded or displaced by the shareholder electorate; shareholders remain stubbornly uninterested in exerting control. Management recommendations on mergers, option plans or other corporate matters are virtually never rejected by the shareholders. The SEC machinery for putting shareholder proposals on the ballot is almost never used.²³ When directors and officers deal personally with their corporation, as in compensation arrangements, shareholders are either not asked for their views or else give rubber stamp approval. The once-in-a-lifetime opportunity given the small shareholder to choose sides in a street brawl proxy contest between giants is hardly the democratic process. Livingston is clearly right in his conclusion

23. Figures offered by Mr. Livingston show that out of 2,000 proxy statements filed with the SEC in 1956, only 66 (about 3%) contained shareholder proposals. Some proxy statements contained more than one proposal, the total number of proposals being 102. Seventy-eight of these 102 proposals were the product of the "professional shareholders," the two Gilbert brothers and John Campbell Heinz. The same general picture emerges from the 1955 figures. Pp. 262-65.

that, in practice, the mass shareholders' voice is but faintly heard through the creaking of the proxy machinery.

What other dividends has Corporate Democracy paid?

The cost of hiring professional shareholder bloodhounds at meeting time to flush a quorum, and the expense and time required to comply with the legal formalities of a foreordained election, are a nuisance. But they can be borne. Bearable, too, is the increasingly familiar sight of large-company shareholder meetings with a revival-meeting atmosphere—box lunches, flowers for the ladies, wailing infant shareholders, publicity-seekers demanding the floor and—a new benefaction of modern technology—the portable, battery-operated megaphone.²⁴ Shareholder interjection into the flexible day-to-day operation of the corporation could become a more serious problem, but fortunately shareholder apathy has effectively contained this risk. Experience with cumulative voting in the large corporation has been found to have little practical effect upon corporate conduct, has often introduced an undesirable divisive element into the operation of centralized corporate management, and affords a potential nuisance weapon to the minority shareholder motivated to wield it. Again, however, these are results which can be lived with, especially since, as in the case of municipal proportionate representation, the spread of the use of cumulative voting in large corporations seems today to have largely been stemmed.

But in the fever of the "democratic" proxy contest, the corporate patient is approaching the period of crisis. The modern proxy contest has become a grotesque travesty of an orderly machinery for corporate decision-making. Largely irrelevant to issues of management policy, fought out between rival cliques competing for personal control of the corporate treasury and the elixir of corporate office, an instrument for attack by wolves from without rather than for surveillance by watchdogs within, increasingly a sideshow performance of hired public relations men, its effectiveness haphazardly dependent on the accidents of stock distribution, available only to those who command the enormous ante the game requires—the modern proxy contest does not significantly touch the mass of small shareholders until the victor, or both victor and vanquished, present their handsome expense accounts to the corporation for reimbursement of costs incurred for the "benefit of the corporation."²⁵ The modern proxy contest is at best a device for tempering autocracy by invasion. Too infrequent and misdirected to perform the function of policing management responsibility, it is often too frequent for the resources of a corporate treasury when it occurs once.

From the standpoint of the national economy, powerful arguments can be advanced to justify the corporate "raid" as a mechanism for reallocating frozen

24. *Wilma Soss Challenges Big Steel With Her Own Portable Thunder*, N.Y. Times, May 6, 1958, p. 51, col. 3, reports the tumult at this year's United States Steel annual meeting.

25. For a case in which both victor and vanquished were reimbursed, see *Rosenfeld v. Fairchild Engine & Airplane Corp.*, 284 App. Div. 201, 132 N.Y.S.2d 273 (1954), *aff'd*, 309 N.Y. 168, 128 N.E.2d 291 (1955) (total about \$250,000).

capital investment. Probably, too, the possibility of a proxy fight in which management will have to look to the good will of its shareholders to retain office has some collateral effect in inducing executives to toe the mark—though the practices adopted by a well-advised management to head off proxy attack will often have little relation to sound management policy from the standpoint of the corporate enterprise. The central point here, however, is that whatever collateral advantages the shareholder proxy fight may have, it cannot be relied upon as an effective device for regularized supervision of management's stewardship.

Perhaps the most serious charge against the myth of shareholder democracy is that its slogans do much to create an impression in the public mind, and in the minds of the potential investors in a People's Capitalism, that a degree of shareholder supervision exists which in fact does not. It is quite arguable that the net effect of the corporate Jacksonians has been to impede their ultimate objective of responsible corporate management. The forms and mechanisms of shareholder democracy divert attention from the real problems of holding business managements to a desirable standard of responsibility. Modern international politics demonstrates that a centralized control group can do much behind a democratic panoply that could not otherwise be done. In actual effect, the paraphernalia of corporate democracy may operate as a first line of defense around management's high ground of control.

Altogether, the tenets of Corporate Democracy have served us little; and it is predictable that they will serve us less and less as public stockownership grows. The reason is not hard to find. In looking to the shareholder franchise for management supervision, we have been trying to design remedies for a make-believe world rather than a real one. We have done this, even though in another compartment of our minds, we have known better.

Thanks to the pioneering work of Berle, Drucker and a few others, we have long known that in our modern industrial system, it is the corporation as an institution which is permanent and the shareholders who are transitory.²⁶ We have known since 1932 that widespread public holding of shares erodes a chasm between "ownership" and "control" and, particularly since the 1952 and 1956 reports on shareholdings, that the faceless mass of small stockholders is increasing by millions. We have known, too, that today's large corporation may for many purposes be best viewed as an intricate, centralized, economic-administrative structure run by professional managers who hire capital from the investor. In competition with other managements seeking capital, they sell, for what the market will bear, the opportunity to share in the economic results of their managerial efforts. Dramatic illustrations are afforded by the sprawling, all purpose, multidivisional diversified corporate enterprises which have become commonplace since World War II. The purpose clause in the charters of these companies reads simply "to make money." In an interesting

26. See, e.g., DRUCKER, *CONCEPT OF THE CORPORATION* (1946); Kaysen, *The Social Significance of the Modern Corporation*, 47 AM. ECON. REV. 311 (Supp. 1957).

and new way these companies offer an opportunity to diversify a portfolio with one purchase—to buy into an operating mutual fund rather than an investing one. Here, the buyer of stock does not know even what business the company may be in tomorrow. He is betting on a management, banking on its expert judgment to steer his small investment through the swift currents of today's commercial stream.

But for a generation, the law's response to these facts has been partially to ignore them, partially to try to exorcise them by mislabeling and partially to decree that the clock of history shall run backwards. Finding the shareholder a passing investor, we have insisted that he is an owner and a member of an electorate. Finding managements to be hirers of capital, we have tried to bury this disquieting fact by calling them hired hands of the shareholder-owners. Finding "control" to have slid away from "ownership," we have sought to put the control back with the ownership where it "belongs." Pressed by the evident economic need for flexible centralized management, we have sought to decentralize decision-making and offer it to the multitude.

The reform efforts of the Corporate Democrats, seen in this light, appear fundamentally misplaced, misdirected and romantic. Their prescriptions have not been effective to date. There is even less to recommend them for tomorrow as the corporate form matures and the number of small shareholders increase.

If our present course of reform toward more Corporate Democracy is misguided, is it possible at this time to project a more satisfactory approach? Probably so. But such an approach would have to proceed from the facts of the modern corporate institution and be accommodated to them, rather than to a bucolic and obsolete image.

An arbitrary model of a corporate structure may prove helpful in attacking the problem. Assume a large modern corporation similar to its typical commercial counterpart in all respects but two. First, the model abandons the *a priori* legal conclusion that the shareholders "own the corporation" and substitutes the more restricted conception that the only thing they "own" is their shares of stock. Second, the shareholder in this model corporation has no voting rights. His position would be quite similar to that of a voting trust certificate-holder with all economic rights in the deposited stock but no power to elect or replace the trustees by vote. Given this corporate model, there can be no talk of "corporate democracy" or rejoining "control" and "ownership." In such a corporate world, how would one go about ensuring the desired degree of management responsibility while permitting corporate officers the necessary discretion to run the business? The problem is difficult but not impossible. Its solution has already been approximated in trust law.

Reflection on the legal implications of this model would doubtless isolate other areas where accommodation in the present law would be called for, but four come readily to mind. First, of course, full and periodic disclosure of the managers' business conduct to the security holders would be necessary; perhaps a responsible judicial or other public agency should be similarly informed.

By hypothesis, this information could not help the voteless stock holder to throw the management out by election. But it would offer him data on the basis of which he could decide whether to retain or sell the shares he "owns" and, perhaps, whether to sue for fiduciary breach. An individual investor might not read much of this disclosure material, but the professional investors and the investment funds would; and the market is largely made by them.

Second, in a shareholder world without voting rights it would be necessary to provide—judicially, legislatively, administratively or by new nongovernmental machinery—some supervision of management's behavior in corporate matters affecting their personal interests, such as personal compensation.

Third, since the certificate-holder could not influence the course of the enterprise, he would badly need available avenues for rapidly and inexpensively disposing of his investment interest, and for pulling out, when he objects to the course set by management.

Finally, the entrepreneurial function of this model corporation would demand that management have the broadest latitude for discretion in business matters and that the present business-judgment rule be continued or even extended. In this respect, the law for the model corporation would depart radically from the restrictive operational rules which govern ordinary trusts designed for other economic objectives. A different result would probably follow in nonbusiness matters. The peculiar aspects of this model would invite critical attention to some practices of corporate good citizenship—particularly charitable contributions unrelated to company business. With the elements of stockholder "ownership" and voting control removed by hypothesis, such contributions could no longer be easily described as private donations from shareholders channeled through the corporation. A power of appointment is a special form of compensation. Charitable contributions would be overtly seen in the model as a matter of management's sole discretion and would probably attract some form of external restriction.

This nonowning, nonvoting shareholder corporate model is useful. In the first place, it helps skirt a dangerous semantic pothole. The usual articulation that "the shareholder owns the corporation" is only one step removed from "therefore he should run it." From a premise of shareholder "ownership," one almost inevitably becomes involved in concepts of "shareholder approval," "shareholder contract" and "shareholder estoppel." In large measure, the superstructure of the ideology of Corporate Democracy proceeds from deep emotional associations deriving from the concept that the shareholder "owns" the corporation.²⁷ It is not at all necessary to say anything about who "owns"

27. At p. 172, Livingston cites for a different purpose a line from RIPLEY, MAIN STREET AND WALL STREET (1929), the flavor of which well illustrates the psychological impact of dealing with the control problem in terms of "ownership." To the 1925 sale of Dodge non-voting common, Ripley objected that the plan "bears every appearance of a bald and outrageous theft of the last tittle of responsibility for management of the actual owners . . ." *Id.* at 87.

the corporation when discussing the problem of the proper distribution of corporate power. The term is best abandoned for this purpose.²⁸

More importantly, the model is useful because, in the case of the large, publicly-held modern corporation, it approximates reality. Except in the context of the closely-held corporation, the limited notion of the shareholder as owner of a "share"—a reified legal and economic bundle—is surely more valid than our historical image of the shareholder as "owner of the corporation." To view the shareholder as the owner only of a share of stock—as a bondholder is said to own "the bond"—conforms far more closely to the shareholder's own expectations and describes far more accurately what he in fact handles as his own—buying, selling and giving away. And the model's assumption that the shareholder has no vote is much closer to fact than the Jacksonian metaphor of the voting, independent freeholder.

Our historical absorption with the democratic process, as a process, tempts us always to describe our environment in the verbal categories of democracy. It is not only in Cleveland that any three people at a bus-stop are soon a bus-waiting committee, with three elected officers. It comes hard for us to accept the possibility that any institution not democratically operated can be operated morally. We are not apt at discriminating between organs of the state—which get out of hand if not subjected to internal democratic voting check—and organs of institutions within the state—which, if not democratically controlled internally, may yet be effectively controlled from without. It thus comes easily to us to conceive and treat shareholders as an electorate—though a rather odd electorate which buys and sells its franchise daily on an exchange.

But though the political figure is tempting, it just will not do. As Livingston well documents, the average stockholder does not behave like an active member of an electorate, born into a corporate political environment as a citizen. He is an economic investor. He may choose to put his money in a sock or in peppercorns for safety. Or, if he is a bit more sophisticated and income conscious, he invests in government bonds, or a bank, or a post office savings account, or an investment trust, or in bonds, or debentures, or preferred stocks or common stocks. In none of these but the last does he buy—or is he forced to buy, willy-nilly—any semblance of a "control" over the enterprise in which he invests. The appeal of common stock to the average investor lies in its peculiar economic features—greater return, speculative potential and inflationary hedge. He discriminates among his possible choices of investment largely on economic grounds—or what he conceives to be economic grounds. And as stock ownership becomes more widespread, this disinterest in voting rights may be expected to intensify.

28. In a similar way, classical Socialist theory seems today quaintly naive and word-bound in its emphasis on who "owns" the means of production—who has the "title"—and in its attendant insensitivity to the supereminent realities of power and control. The error has come to be recognized even by some of Communist persuasion. See DJILAS, *THE NEW CLASS* (1957).

Characterizing the mass of shareholders as an electorate carries the implication that their franchise may be relied upon to police the conduct of the corporation. For the few professionals who buy and sell corporations like used cars, control is of paramount importance. But the usual shareholder's interest in the control factor is reflected in his unlimited boredom with the devices of corporate democracy, in his simple decision to depart when he objects to the way things are going, and in his eagerness to snap up Dodge stock in 1925 and Ford stock in 1956, ignoring the absence of voting control.²⁹ It may be legitimately speculated that, but for the listing rules of the New York Stock Exchange,³⁰ enormous blocks of pure nonvoting stock of major corporations would probably be outstanding in the hands of the public. In most situations, the control differences among publicly-held corporations with fully nonvoting stock, the Ford pattern in which the common held by the public is substantially noncontrolling, and the General Motors pattern in which the publicly-held common legally carries voting control, are primarily differences in words.

The model is not to be taken literally of course. Legally votable stock is in fact votable, and the vote can, in some circumstances, make a difference; for some purposes, such as the determination of creditors' rights, shareholders may be conveniently viewed as proprietors; and for the closely-held corporation, the model's assumptions are obviously invalid. But, as a broad generalization for use in thinking about problems of power distribution within the publicly-held corporation, the suggested model offers a much better guide than the unarticulated model we have been following—the homespun Jeffersonian image of the small business owned and operated by sturdy freeholders.

Accepted as a valid working tool, the model points to the likely course of tomorrow's law governing control of the big corporation. The four areas of legal change suggested by it and outlined earlier combine to form a unified general pattern: franker acceptance that centralized managerial control is necessary, a fact and here to stay; less wishful pretense that the shareholders' vote is or can be an effective restraint; emphasis upon disclosure, free exit and transfer as the shareholder's principal protections;³¹ and development of new and extrinsic mechanics to supervise management dealings in corporate funds for non-business purposes and for itself.

We are dealing here with trends. De-emphasis of the role of shareholder voting does not imply the scrapping of existing shareholder voting machinery.

29. Mr. Livingston gives an account of these two financings, the Ford transaction in detail. Pp. 186-87; c. 13.

30. "Since 1926, the Exchange has refused to authorize listing of non-voting common stock, or of any non-voting stock, however designated, which by its terms is in effect a common stock." *NEW YORK STOCK EXCHANGE, COMPANY MANUAL* § A15, at 280.

31. Development here may be anticipated along three lines: extension and variation of existing appraisal remedies for dissenters and radical streamlining of present clumsy procedures for appraisal; maintenance of a free and unmanipulated stock market; revision of the tax laws to permit limited shifts of investment from one stock to another without incurring tax liability.

Although the proxy system of electing directors is largely an engine of, rather than for, management control, someone has to select directors, and there would be no advantage in permitting them overtly to choose their own successors. Further, as already mentioned, improvement of disclosure requirements has been largely linked to shareholder voting. Institutionally, this is the way the law has grown and experience has been amassed; nothing is to be gained by discarding what we have. The need is, rather, to recognize that the important thing is the disclosure, not the electoral process to which it is attached. Similarly, at least until a better solution can be found, the proxy fight will be difficult to dispense with, however much it may have gotten out of focus. We may expect some adjustments in present proxy fight procedures designed approximately to realign them with their asserted purpose, but evolution is to be anticipated, not revolution.³²

The projection offered here is a broad outline. It is tempting to try to project in more detail. But the essential need is for a major revision in our thinking about the problem. When we shall have made this turn, the concrete forms of change will come with time and trial. One general observation on this process should be made, however. We are not locked into our present corporate control system by our ideological preference for a pluralistic, privately-run society and a less rather than a more regulated economy. The contrary is true. It is this very preference which may be expected to bring about change—in the same way that pluralistic preference has inspired our antitrust laws.

Livingston is vehement on what he considers the undue power position of corporate managers in American society. Without necessarily echoing the same vehemence, one is forced to recognize that the control of corporate managers over employment, over disposition of business property and over their own compensation confers vast community power upon them. The new enthusiasm for the concept of corporate good citizenship is likely to increase this power further. The driving need for funds on the part of educational and charitable institutions and our reluctance to turn to government sources incline us to welcome the prospect of access to the only large accumulations of donatable funds remaining outside of government—the corporate treasuries. Current judicial opinion³³ and tax patterns encourage such contributions, for they are today considered “private” and a healthy example of American capitalist adaptability. In time, however, we may be driven to conclude that though corporate good citizenship is preferable to corporate bad citizenship, unfettered donative power in the board of the large good-citizen corporation may more

32. For example, we may come to a system under which only those shareholders will be allowed to vote who have been shareholders for a substantial period of time. Expansion may perhaps be expected in the doctrine that shares improperly acquired for fighting purposes only may not be voted. Something must be done about the matter of expense, with corporate reimbursement to incumbent and challenger perhaps restricted to limited circulations of their respective sides of the case.

33. See, *e.g.*, *A. P. Smith Mfg. Co. v. Barlow*, 13 N.J. 145, 97 A.2d 186 (1953).

conflict with than conform to our pluralistic preference. Relatively small, diverse private donations by countless individuals and small businesses are one thing. Quite another is the prospect of vast donations of investors' funds by the directors of publicly-owned corporations. For these must inevitably favor institutions conforming to management's predispositions and add to management's existing community influence the profound power attending the role of a Medici. Past hesitation to permit corporate donations at board discretion arose from concern at giving away shareholders' money. To this will be added tomorrow a broader social concern at the increased community power of management and at the life and death implications of more centralized donative power upon the charitable and educational institutions themselves. Avoidance of undue concentration of economic power and supervision of a trustee's personal dealings with the subject of his trust are in the mainstream of conservative legal tradition in America. Corporate management cannot expect indefinitely to remain outside this current.³⁴

It will not be easy to find new ways to police transactions in which management sits on one side of the table and the managers sit on the other, or to deal with management's newly won power to disburse corporate assets to charities of its choice. No responsible source is calling for direct government controls to keep management in line. Neither are we forced to stand still. The genius of the American people has been its history of working out pragmatic solutions to new problems without running to Draco. But this process cannot be brought to bear until the problem is faced—until we stop thinking about the large corporation as though it were a family partnership.

There is one way to head off the legal development projected here—curtail the increase in amateur small stockholders. Something of a case could be made

34. It may be hazarded that a surprising number of the corporate management group would silently welcome some measure of relief from the constant weight of justifying to themselves and others the legitimacy of their present overfavored position. Today's Veblenesque competition for new executive compensation devices does not sit well in the minds of many responsible members of management. They are powerless to break the competitive cycle alone—but there are probably many executives who would be happy to see it brought under some moderating control.

In the matter of corporate nonbusiness donations, it might be feasible to work out a procedure under which the management sets the amount and the shareholders designate their choice of charity by categories. It might, on the other hand, be desirable to hold a corporation to an announced donation policy so investors could at least take this factor into account in deciding whether to buy or sell the stock.

In a way, this problem was foreshadowed by the famous Berle-Dodd debate of the early 1930's on the trustee position of management. Dodd, *For Whom Are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145 (1932); Berle, *For Whom Corporate Managers Are Trustees: A Note*, 45 HARV. L. REV. 1365 (1932). Mr. Berle of the 1950's seems to have conceded that he has lost the debate. BERLE, *THE 20TH CENTURY CAPITALIST REVOLUTION* 169 (1954). It may be fortunate, however, that he left himself an out by adding to his concession "at least for the time being," for it may have been the early Berle who caught the worm.

for this course of action. The history over the centuries of stock investment by the unsophisticated has not been particularly happy. If it could be assumed that only pros played the stock market, the necessity for expensive and time-consuming regulatory machinery would disappear. Professionals in smaller numbers could be expected to look after their own interests; if they did not, the social loss would not be great.

Obviously, this theoretical alternative is out of the question. Rising incomes increase the pressure of investable funds. The pull of common stocks as an inflationary hedge and higher income source is powerful, particularly for retirement investment. To exclude the common man from these advantages would be totally repugnant to the American dream. And it is generally agreed that the nation must tap every available source of equity investment if it is to maintain or arrive at an adequate rate of economic growth.³⁵ Finally, the normal incentives of commercial expansion may be expected to spur the stock exchanges and the brokers to sell their wares where they can. Barring serious depression, public stock ownership will continue to grow.

"People's Capitalism" and "Corporate Democracy" are slogans with an inverse relationship. Each expansion of the first undermines the second. Every sale of common stock to a new small investor adds to the fractionation of share ownership which lies at the root of the impotence of shareholder voting as a check on management. Every extension of common stock ownership to an inexperienced small investor adds to the ranks of those who may be expected to lay claim, both politically and morally, to new legal protection of their interests. Every victory for the cause of the Exchange's People's Capitalism accelerates the development of new legal techniques designed to temper the power of corporate management.

Joseph Livingston's book, though it does not say so, documents the end of one era of corporate reform and foreshadows the beginning of the next.

BAYLESS MANNING†

THE FEDERAL LOYALTY-SECURITY PROGRAM. Report of the Special Committee of the Association of the Bar of the City of New York. New York: Dodd, Mead & Co., 1956. Pp. xxvi, 301. \$5.00.

REPORT OF THE COMMISSION ON GOVERNMENT SECURITY. Washington: G.P.O., 1957. Pp. xxxiii, 807. \$2.50.

WHILE many useful studies of loyalty-security programs have appeared in the past decade, it involves no slight to their intrinsic merit to say that a special importance attaches to the reports of the New York City Bar and the Commis-

35. See, *e.g.*, THE CHALLENGE TO AMERICA: ITS ECONOMIC AND SOCIAL ASPECTS 22 (Rockefeller Bros. Fund Special Studies Project Report IV, 1958).

†Associate Professor, Yale Law School.