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The 20th Century Capitalist Revolution (Book Review)

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The article on "Interstate Publication" commences with the electrifying observation: "It is an amazing and sobering thought that, by the utterance of a single ill-considered word, a man may today commit forty-nine separate torts, for each of which he may be severally liable in as many jurisdictions within the continental limits of the United States alone, and without regard to any additional liability he may incur in the possessions and territories, and in foreign countries."⁷ The reference is, of course, to a word transmitted over radio or television or written in a nationally circulated publication. The possible ramifications of this country-wide defamation are indeed tremendous, and Prosser has done an important service by bringing together the many aspects of this too seldom considered problem and putting forth some tentative suggestions for alleviating it. He finds that the only possible remedy is legislation providing for only one action by the defamed person, such as a Uniform Law⁸ or an Act of Congress.

What I have here commented upon are those portions of a uniformly excellent book which struck me personally as truly novel and highly significant contributions. Others may disagree, and cast their vote for "The Borderland of Tort and Contract" or "Comparative Negligence," both of which are top-grade. And the old standbys, "Business Visitors and Invitees" and "Res Ipsa Loquitur in California"—articles by Prosser published elsewhere ten and five years ago respectively—still make fine reading.

JOHN V. THORNTON.*



THE 20TH CENTURY CAPITALIST REVOLUTION. By Adolf A. Berle, Jr. New York: Harcourt, Brace and Company, 1954. Pp. 192. \$3.00.

Since 1927, the author of this book has been Professor of Corporation Law at Columbia University Law School. He has long been a noted lawyer specializing in corporation law. For many years, he has rendered distinguished public service. He filled honorably the posts of Assistant Secretary of State from 1938 to 1944, and of Ambassador to Brazil from 1945 to 1946.

In 1933, the author (in collaboration with Dr. G. C. Means) wrote "The Modern Corporation and Private Property." In 1954, on invitation of the Faculty of the Northwestern University School of Law, the author delivered

⁷ P. 70.

⁸ The National Conference of Commissioners on Uniform Laws proposed and approved in September, 1952, a statute now known as the Uniform Single Publication Act, providing in substance that a person shall have only one cause of action founded on any single publication and that a judgment in one jurisdiction shall bar any action elsewhere.

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a series of lectures under the auspices of the Julius Rosenthal Foundation. The present book is an expansion of the lectures. "The Modern Corporation and Private Property" dealt with the corporation as an economic institution. The present book is a preliminary study of the corporation as a quasi-political institution.

The book contains five chapters:

- I. The Modern Corporation and the Capitalist Revolution
- II. Corporate Power and Modern Capitalism
- III. The Conscience of the King and of the Corporation
- IV. The Modern Corporation in International Affairs
- V. Corporate Capitalism and "The City of God"

The book is beautifully written and is packed full of philosophical thinking in the fields of economics, political science and law. Students of these respective fields will recognize upon a reading of the book the close existing integration of these fields of knowledge. The impact of the large size modern corporation on society and the state, and the correlative impact of the state on the corporation, are delineated.

The principal thesis of the book is developed in Chapter I.

The Twentieth Century has been a century of revolution in many areas of human activity, particularly in the area of economics, and the large size corporation has been a, if not the, major medium for its operation. Political revolution in this century began near the close of World War I and was precipitated by the Russian Revolution in 1917. "The Russian revolution was nominally based on Communist dogma; but its significant struggle was to find some instrument by which a vast backward country could be mauled into industrialization. The capitalist revolution in which the United States was the leader found apter, more efficient and more flexible means through collectivizing capital in corporations."¹ The communist state has thus far proved itself a "brutal, blunt, and fumbling instrument," while elsewhere capitalism has been evolving its own instruments for more effective industrialization, and ". . . accomplishing the twentieth-century revolution with infinitely more humanity and efficiency. The fundamental change was technical: the application to the everyday life of hundreds of millions of people of newly developed methods of production."² In the process of industrialization in a revolutionary century, the American corporation has been not just a useful business device but a social institution of large import.

Chapter II deals with Corporate Power and Modern Capitalism.

Two principal phases are discussed therein: (1) the extent of concentration in the corporation and the resultant power exercised by it; and (2) the sources and extent of capital used for further corporate expansion.

Professor Berle refers to the estimate made by Professor M. A. Adelman of The Massachusetts Institute of Technology that 135 corporations own forty-five

¹ P. 23.

² P. 24.

per cent of the industrial assets of the United States, or nearly one-fourth of the manufacturing volume of the entire world. Roughly seventy per cent of American industry operates under "concentrates," *i.e.*, a system whereby a few large corporations dominate an industry, and are known in a particular industry as the "Big Two," or "Big Three," or "Big Five," as the case may be.³ Thus, General Electric Company and Westinghouse Corporation are the "Big Two" in the electrical industry. General Motors Corporation, Ford Motor Corporation and the Chrysler Corporation are the "Big Three" in the automobile industry. The economic power of these corporations is determined not simply by the size of the industrial assets owned by them; they exert tremendous economic power upon their supply houses, carriers and dealer-distributors.

The separation of ownership from control, implicit in the large sized corporation, vests tremendous power in management. Management has power to determine whether and how it will operate; what it will produce and sell; whether it will expand and the extent of capital expansion.

The extent of management's dependency upon public-invested capital is now surprisingly small. Such capital comes in a large measure from the corporation's accumulated earnings or reserves.⁴ "Major corporations in most instances do not seek capital. They form it themselves."⁵ This tends to increase the power of management.

The one final check on the power exercised by management is the satisfaction or dissatisfaction manifested by consumers in the purchase or non-purchase of the corporation's products.

Chapter III, *The Conscience of the King and of the Corporation*, briefly alludes to the origins of equity jurisprudence and of the British Chancellor as the keeper of the King's conscience. Equity and the Chancellor assuaged the rigorous consequences of some of the existing rules of the common law, and acted as a counterpoise to the power of common law courts. Professor Berle here suggests that in the corporate field there is slowly emerging an analogous counterpoise (still indefinite and inchoate) to the power of corporate management. He offers as an example the recent insistence of the Superintendent of Insurance of New York upon retirement of the president of a large life insurance corporation because the president had given to a young and comparatively inexperienced member of his family a large contract in behalf of the corporation for advertising and publicity. The contract was not unfair and unreasonable but the Superintendent asserted that the contract was preferentially given. The directors of the corporation acquiesced in the demand of the Superintendent for retirement of its president. They did this in order to forego a fight on the question of the Superintendent's authority in the matter, and the correctness of the conduct of the president. They preferred compulsory retirement of the president and chose not to hazard unfavorable public reaction to the conduct of their business by the president.

³ P. 26.

⁴ P. 38.

⁵ P. 40.

Professor Berle considers the present day problem regarding the power of corporations to sever employment relations where employees are suspected of subversive activities or associations or where derogatory matter has been filed with the employer. Severance effected on the basis of unchecked raw derogatory matter is an exercise of corporate power but at the same time is a sign of corporate weakness. Security of the nation is a matter of paramount importance but equity and good conscience (if not due process) require that provision be made for hearings and review incident to severance.⁶

Achievement of national security should be coupled with implementation of safeguards for personal living. Corporations must manifest in this area a conscience, or be required to ". . . accept direction from the conscience of the government. This conscience must be built into institutions so that it can be invoked as a right by the individuals and interests subject to the corporate power For twentieth-century capitalism will justify itself not only by its out-turn product, but by its content of life values."⁷

Chapter IV, *The Modern Corporation in International Affairs*, reviews the progress and status of the corporation as it operates on an international scale and as a vehicle for foreign trade. The corporation is an invaluable auxiliary to the conduct of foreign affairs by the Government, and ". . . has become an international as well as a national instrument. It is a mighty institution which thus far has not become, and has manifested no great desire to become, an independent political force. In international life it is an experiment in non-national organization, pledged only to discharge certain economic functions."⁸

Chapter V, *Corporate Capitalism and "The City of God,"* is the concluding chapter of the book.

In this chapter, Professor Berle envisions corporate management coping with problems of industrial planning coupled with community amelioration. All that requires not simply the businessman's know-how, but the approach of the philosopher and political scientist. In this connection, Professor Berle refers to St. Augustine's "City of God," written in the fifth century. St. Augustine had surveyed the wreck of the Roman Empire, and envisioned (for the future) a city-state wherein a moral and philosophical organization complemented and ultimately controlled institutional organizations. Only the future will tell whether corporate management is prepared or willing to play the role of industrialist-statesman-philosopher.

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⁶ P. 85.

⁷ Pp. 113-114.

⁸ P. 163.

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