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THE NONINVESTMENT VALUE OF CONTROL STOCK

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In the 1968 federal case of *Christophides v. Porco*[1] Charles Bluhdorn and his expansionist Gulf and Western were accused of passing a premium to Fasco, the incumbent contrôleur, for the control of the Brown Company, a diversified paper manufacturer. The court dismissed this accusation summarily: "[A] purchaser is free to offer a premium for a block of control stock. This is so, even though control stock is purchased pursuant to a plan to acquire the remainder of the shares at a lower price. . . ."[2] As for Fasco the recipient, such a sale-of-control premium was equally blameless. "Even assuming that Fasco realized a premium for its controlling stock, that alone would not entitle plaintiffs to relief."[3] Judge Pollack saw no reason for looking deeper into the matter, since a "controlling stockholder is under no duty to other stockholders to refrain from receiving a premium upon the sale of his stock which reflects merely the control potential of that stock. There is no obligation under such circumstances to 'share and share alike.' "[4]

What legitimate values did the New York Federal District Court—and arguably Charles Bluhdorn and Gulf and Western—envisage in "merely the control potential" of the 23 per cent block of Brown stock? Is it possible to break down this "control potential" into its constitutent—and salable—elements? Once broken down, moreover, why do these control elements belong exclusively to the "controlling stockholder?" Why is there "no obligation under such circumstances to 'share and share alike' " with the 77 per cent public shareholders?

These questions surrounding the various values of control stock have haunted both courts and commentators for decades. The answers will be attempted in a *Prelude,* four parts: (I) *Total Contrôleur Contribution,*

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1. 289 F. Supp. 403 (S.D.N.Y. 1968).

2. *Id.* at 405. Porco received unqualified support, but without elaboration, from the Tenth Circuit in McDaniel v. Painter, 418 F.2d 545 (1969).

3. *Id.*

4. *Id.*

(II) *Total Corporate Compensation,* (III) *The Ownership of the Control Assets,* (IV) *The Sale-of-Control Premium-Bribe,* and a *Conclusion.*

THE PRELUDE

Over the decades of this confusion court and commentator have been mizzled by a plethora of 'control values'—some attached to the control itself, some integral to the concomitant stock, some legitimate, some illegitimate. This variegated mix of underlying control advantages has been difficult to sort out, as if one had three or four jigsaw puzzles in a single box, and did not know it. The first chore, therefore: To separate the puzzles, and work on them one at a time.

Illegitimate Desires

The readiest exclusion from discussion is outright marauding. In the long-famous looting cases of the early forties,[5] the prize of control was the liquid portfolio. In *Caplan v. Lionel Corp.*[6] the prospect of unloading several corporate 'white elephants'—held by his Premier corporation, but destined for Lionel motivated Sonnabend to buy control from Muscat. In *Perlman v. Feldmann*[7] the Wilport Syndicate sought a captive steel supply at favoring rates. Understandably Charles Bluhdorn and his GW—and certainly Judge Pollack in *Porco*—had none of these values in mind in seeking "the control potential" of the Brown Company. Nor should such illicit aspects of corporate control be relevant to the noninvestment value of control—stock. Infinite are the varieties of larceny —from the bald to the subtle—and none are peculiar to corporate control. Such a study would be barren. Recall throughout, therefore, that the present concern must only be the benefits legally following from control. Any illicit returns not only break the rules of the corporate game but render futile any reasoned dissection of the noninvestment value of control stock.

Investment Value

The sorting out of the second alien puzzle in the jigsaw box is far more difficult. Unwittingly the *investment* value of the *stock* itself has been indiscriminately grouped—and with baneful results—with the con-

5. Insuranshares Corp. v. Northern Fiscal Corp., 35 F. Supp. 22, 24 (E.D. Pa. 1940); Gerdes v. Reynolds, 28 N.Y.S.2d 622, 652 (1941).

6. Matter of Caplan, 151 N.Y.L.J. at 14, col. 3 (1964).

7. 219 F.2d 173 (2d Cir. 1955), *rev'g* 129 F. Supp. 162 (D. Conn. 1952), *cert. denied,* 349 U.S. 952 (1955). For an analysis of this famous case, *see* Bayne, *The Sale-of-Control Premium: The Disposition,* 57 CALIF. L. REV. 615 (1969).

geries of *noninvestment* values inhering in the *control* alone. Yet the one puzzle has absolutely nothing to do with the other, except for the happenstance of being in the same 'control stock' box. The investment value of 'control' stock has essentially nothing to do with the control, and everything to do with the stock. The noninvestment value of control 'stock' has nothing to do with the stock, and everything to do with the control.

At this point a technically exact definition will facilitate the segregation:

> *The Investment Value of 'Control Stock'* is the total worth of a given block of stock, composed of two elements: (1) The base value of the block antedating the advent to the corporation of a new contrôleur and (2) The increment to the block attributable to the superadded talents of the new contrôleur.

One does not find difficulty with the generic concept of 'investment value'—the worth inherent in the stock itself, dependent on the dollars-and-cents return in dividends and capital gain—but the specific limitation to 'control stock' mystifies, and rightly so, because it is a misnomer. The accession of a new contrôleur with his estimable contribution to the firm enhances the value of *all* stock equally, whether 'control' or otherwise, whoever the owner, however held. True, a 'control block' may happen to be the accidental concomitant of a transfer of control, may pass at the time of the appointment of a new contrôleur to head the firm. Yet the sale of such stock is *intrinsically* unconnected with the change of control. A new contrôleur at AT&T would hardly refer his tenure to stock holdings, but rather to the domination of the proxy and the share dispersal.

The crux of the concept of the *investment* value of 'control stock' lies in the personal qualifications of the successor contrôleur, the difference between the corporation before and after. Technically, the totality of these new-contrôleur talents is the contrôleur increment:

> The increase in value to all stock of a corporation referable exclusively to the proven abilities of a new contrôleur—the differential between the contributions to corporate value of the outgoing and incoming contrôleur.

This understood, the investment value, enhanced by the advent of a new contrôleur, is scarcely limited to any particular block of stock. The efforts—and predictable successes—of the new contrôleur are directed to

the entire corporate entity and correspondingly increase the value of every single share, willy-nilly. Yet in the past this value has been erroneously attributed to the 'control stock' exclusively.

Further, it cannot be the present purpose to decide who may realize the dollar value of this contrôleur increment, or under what conditions, by a direct sale of stock from incumbent to incoming contrôleur, by purchase or sale on the general market, by a *pro rata* tender offer to all corporate shareholders, or in whatever other way. In fact, the conclusion has been reached elsewhere that any realization of 'investment value' must be effected only on terms set by an impartial market—the minority public, for example, or the Big Board—informed fully of all elements of the new-contrôleur increment, or decrement.[8]

But the court in *Porco*—and correspondingly Bluhdorn and his GW—made no mention of the *investment* value of 'control stock.' 'Contrôleur increment' was not advanced as their rationale for the "premium for a block of control stock."

Noninvestment Value

Arguably the subject of Judge Pollack's discussion, and of this study, is rather a set of control advantages "which reflects *merely the control potential* of that stock," those values which would flow from the later exercise of control, completely irrespective of any stock.

If one were to assume, arguendo but justifiably, a complete separation of control from stock (hence the impossibility of *investment,* and the necessity of *noninvestment,* value), what advantages attach to control? Begin with a tentative, even loose, working definition, with the objective of continual technical refinement over succeeding pages:

> *The 'Noninvestment' Value of Control 'Stock'* is the totality of those legitimate values which inhere in the power of control, "merely the control potential," (irrespective of, and in contradistinction to, the investment value, including particularly the contrôleur increment, of the concomitant stock) and flow from the right and duty to direct the corporation through the domination of the board of directors.

With the noninvestment-value puzzle alone left in the box, how put the pieces together in an intelligible pattern?

Judge Hincks on the trial level in *Feldmann*[9] was deeply confused

8. For a fuller treatment of this collateral and highly complicated question, *see* Bayne, *The Investment Value of Control Stock,* 22 STAN. L. REV. — (1970).

9. *Id.* at 184.

in his overall philosophy of corporate control—he was reversed by the Second Circuit—but he nonetheless correctly knew that "the control potential" was in itself a value much to be desired. He sets the general scene, moreover, toward an item-for-item enumeration of the many species and subspecies of the genus "control potential."

> When the distribution of a corporate stock is such that as a practical matter under the corporate charter and by-laws a given block—whether a majority block or one somewhat less—can control the election of the directors, the power is one that may be utilized to control the corporate management. . . . It is obvious, I think, that some at least of the specific applications of the power have inherent value. . . .[10]

At another point Hincks expresses the same idea when he refers to "the incidents of the electoral power . . . which contributes value to the entire bundle of rights and powers. . . ."[11]

In the famous federal case in 1962, *Honigman v. Green Giant Co.*,[12] Judge Nordbye showed himself much of a mind with Hincks in his control philosophy. But he also fully appreciated—perhaps more realistically than Judge Hincks—the very real cash-money value of corporate control.

> No . . . shareholder could be expected to forego the power of control of a company of this size without receiving in return a consideration commensurate with the value of the control which he foregoes.[13]

Underlying this sweeping reference to "the power of control" Judge Nordbye had before his mind's eye, and in the *Green Giant* brief, a methodical—some might even call it a Machiavellian—itemization of those "specific applications of the power" to which Hincks referred.

The Glore, Forgan Report

When the Cosgrove family finally realized that their Green Giant could grow no taller without a healthy infusion of the green of public dollars, they consulted Glore, Forgan & Co., the Chicago brokerage house, (impellingly redolent of Koko's consultation with Pooh Bah, as private secretary, or perhaps more apropos, as his solicitor, anent his nuptials)

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10. *Id.*
11. *Id.*
12. 208 F. Supp. 754 (D. Minn. 1961), *aff'd*, 309 F.2d 667 (8th Cir. 1962), *cert. denied*, 372 U.S. 941 (1963).
13. *Id.* at 758.

toward an estimate of the dollar value of their control over Green Giant. In the event, Glore, Forgan and Judge Nordbye both concluded to a premium of roughly 2 million dollars[14] ("Although there are broad limits to the control power . . . , and hence to its value, there is no question that this value is real and substantial"[15]) even though the Cosgroves never actually parted with control, merely relinquished absolute-majority for equally effective mere-incumbency control. Some nine years later they remained very much the contrôleur of Green Giant.

But incredibly pertinent to the present purposes, the result of the Glore, Forgan counsel was a detailed 27 page report to the Green Giant board, that is, the Cosgrove family, detailing a "Plan of Recapitalization for the Green Giant Company," with unblushing emphasis on the *"Advantages . . . of Control."*[16] These several pages were aimed at, and arguably were successful in, establishing for Judge Nordbye the "consideration commensurate with the value of the control" of Green Giant. Reducibly, therefore, the question was simple: What control advantages were worth 2.1 million dollars to the Cosgroves? Even though they never handed them over.

It was as if the Glore, Forgan Report had set itself especially to search out and analyze Hincks' "specific applications of the power"[17] of control. The opening paragraph, even its subheading, is certainly apposite to introduce a systematic breakdown of those "advantages of control" which constitute "merely the control potential," to wit, the noninvestment value of control.

> *Specific Areas of Advantage*
>
> In considering the advantages of control . . . we are not primarily concerned with advantages from the possible illegal actions [sic]. However, there are many possible actions which . . . are either legal or on the borderline. Specific areas of such action are as follows.[18]

The Control Advantages Specified

The Glore, Forgan Report will serve as a matrix, but no more, for the development of a comprehensive pattern of those values flowing from "merely the control potential." Remember, especially when the Report

14. *Id.* at 760.
15. Defendants' Exhibit K, Plan of Recapitalization for the Green Giant Co., Glore, Forgan & Co., Record at 324-350, Honigman v. Green Giant Co., 309 F.2d 667 (8th Cir. 1962) [hereinafter cited as *Report*].
16. *Id.* at 338.
17. Perlman v. Feldmann, 129 F. Supp. 162, 184 (D. Conn. 1952).
18. *Report* at 338.

strays too near "the borderline," that all illegitimate objectives have by postulate been excluded from consideration. Moreover, this capitulation is neither all-inclusive nor hierarchical as to importance.

"Adverse Contracts"[19]: Glore, Forgan was "not *primarily* concerned with advantages from the possible illegal actions."[20] But if such contracts are truly "adverse," the Report has already stepped well over "the borderline." In fact, the border line becomes more like a tightrope as the Report describes these contracts.

> Entering into contracts with suppliers or agents owned by the [controlling] stockholders could be advantageous. However, opportunities to do this are probably limited and the advantages small. Contracts not made on an arms-length bargaining basis would certainly be open to attack.[21]

Assuredly the law would attack any contract that did not insist on a legitimate quid for the corporate quo. The power, however, to allocate many kinds of corporate contracts, even on stringently legitimate terms, can be highly beneficial to an incumbent contrôleur.

As with suppliers so too with consumers. Judge Hincks ranked such contract allocation high on his list of desiderata.

> Turning to another specific application of the power of corporate control . . . it is obvious, I think, that the power to control the selection of the customers is a factor adding materially to the value of the block of stock to which the power is appurtenant. It is another one of the incidents of the electoral power of stock which contributes value to the entire bundle of rights and powers which is wrapped in a control block of stock.[22]

If one were to concede—probably unjustifiably—the legitimacy of the Feldmann plan of interest-free prepayments by end-users of Newport's steel during the Korean gray market, these "corporate opportunities"[23] might be classed as a licit control advantage.

"Liquidation: The not unusual practice of obtaining control in order to secure a capital gain by liquidating the company"[24] *could be* a perfectly legal maneuver if two prerequisites were satisfied: (1) Statutory

19. *Id.* at 339.
20. *Id.* at 338.
21. *Id.* at 339.
22. Perlman v. Feldmann, 129 F. Supp. 162, 184 (D. Conn. 1952).
23. Perlman v. Feldmann, 219 F.2d 173, 176 (2d Cir. 1955).
24. *Report* at 339.

compliance with liquidation provisions, and (2) the fairness of any plan. Liquidation was the objective in *Commonwealth Title Ins. & Trust Co. v. Seltzer,*[25] in which the Continental Hotel Company possessed as its sole asset a valuable piece of real estate. (The sale of control in *Seltzer* was struck down for reasons other than the projected liquidation itself.)

"Elimination of Dividends: The cutting or elimination of dividends to avoid personal income taxes . . ."[26] would seem to be clearly over the border line. As Glore, Forgan admits: "Furthermore, if the case were extreme the Company might well develop problems with the Department of Internal Revenue."[27]

Perquisites: The use of the company jet, executive limousine or yacht, membership in city, country and boat clubs, "plus other perquisites of the office including such things as stock options, pensions, insurance coverage, *et cetera,*"[28] all are legitimate and highly desirable habiliments of the office of control. This is true even though the Report felt that: "The areas in which control stock can exercise discretion in the matter of granting of stock options are not regarded as very important in view of existing law and generally accepted corporate practice."[29]

"Mergers and Consolidations: The practice of arranging mergers and consolidations advantageous to the controlling persons' outside interests might prove difficult to carry out. Minnesota law requires that all shareholders be notified of such proposed action."[30] Here again the Report seems properly skittish about its footwork. "Although a certain amount of alertness would be needed, the [public] stockholders undoubtedly could block such actions by dissenting and demanding the fair cash value for their shares."[31]

A merger was the very legitimate objective in *Manacher v. Reynolds.*[32] In *Lionel,*[33] to the contrary, Sonnabend had several illegitimate mergers in mind. In *Porter v. Healy*[34] the American Gas Company sought control of the Pottstown Light, Heat & Power Company toward its eventual absorption.

The Intangibles: At a certain point, purely financial considerations

25. 227 Pa. 410, 76 A. 77 (1910).
26. *Report* at 339.
27. *Id.*
28. *Id.* at 340.
29. *Id.* at 339.
30. *Id.*
31. *Id.*
32. 39 Del. Ch. 401, 165 A.2d 741 (1960).
33. Matter of Caplan, 151 N.Y.L.J. at 14, col. 3 (1964).
34. 244 Pa. 427, 91 A. 428 (1914).

invariably give way to more subtle human urgings. Such natural drives are difficult of monetary evaluation, but nonetheless are powerful propellants toward corporate control. The triple incalculables of Prestige, Power, the Inner Satisfaction of Accomplishment are foremost among control values. A dollar sign can be set opposite them only during *ad hoc* negotiations between corporation and incipient contrôleur.

"Management and Salaries":[35] Glore, Forgan's earthy treatment of this most palpable of all legitimate control advantages has a certain collateral fascination that would seem to warrant full presentation:

> The major advantages to the [controlling] stockholders which might be adverse to the interests of the [public] stockholders is the right to select the management and to establish salary levels. Even here there are certain practical limits to the extent of this advantage.
>
> 1. Obviously there are outside limits to the salaries which might be paid without becoming subject to court attack on the basis of violation of fiduciary responsibilities.
>
> 2. The action of replacing a large proportion of the officers of the Company with incompetent friends or relatives in the long run would be acting against the controlling party's own interest.
>
> 3. If such employees were capable, the action might not be adverse to the [public] stock unless the salaries were exhorbitant [sic]; that might be attacked in the courts.
>
> From a practical standpoint, it would seem that the chief advantage of control is the right to elect the principal officer of the corporation and thereby to obtain the largest salary that could not be attacked in the courts plus other perquisites of the office including such things as stock options, pensions, insurance coverage, et cetera.[36]

As with supplier and consumer contracts, salary awards both to self and friends or relatives can carry distinct and calculable benefits even though the corporation's right to a generous *quid pro quo* is scrupulously observed.

Corporate Improvement: One of the most subtle—and hence worthy of some later discussion—of all the values attaching to corporate control

35. *Report* at 340.
36. *Id.*

was mentioned early by Judge Hincks in his attempt to present some "specific applications of the power."

> For instance, to the usual minority stockholder in a corporation the value of his stock necessarily depends on earnings which in turn depend on the ability of its management. But one considering the purchase of a control block in a corporation may give less weight to past earnings since, if a change in management might be beneficial, the power to make such a change is in his hands. . . . Surely this power through stock control *to improve the corporate performance* may be a factor of value attaching to a control block of stock.[37]

This opportunity "to improve the corporate performance" can be viewed from many aspects, and so it will betimes. For the present, classify it as one more legitimate reward of corporate control.

This conspectus of the legitimate—and one must be vigilant to keep them so—advantages of control will constitute the wherewithal in facing the question posed by Pollack in *Porco* and allegedly by Bluhdorn, GW and Fasco. These various specifications of "merely the control potential" of the block of Brown stock can serve for ready reference throughout. The first question, therefore, was indeed answerable. It is "possible to break down this 'control potential' into its constituent —and salable—elements."[38] But what of the other questions: "Once broken down, moreover, why do these control elements belong exclusively to the 'controlling stockholder'? Why is there 'no obligation under such circumstances to 'share and share alike" with the 77 per cent public shareholders?"[39]

Total Contrôleur Contribution

Mythical Rikling Nut and Rivet, Inc. had been the only child of the three Rikling brothers. Based in Syracuse, Mythical Rikling has a net worth of 150 million dollars, ranked 482 in *Fortune's* select 500 industrials, and generally enjoyed the highest respect in the community. But, retired and now in their midseventies, the three brothers faced a delicate control problem with their firm.

Some ten years earlier the three had decided, after some 40 years at the grindstone, that their startling successes with Mythical Rikling warranted the sun and leisure of Lauderdale. Their solution—and also to

37. Perlman v. Feldmann, 129 F. Supp. 162, 184 (D. Conn. 1952) (Emphasis added).
38. See text accompanying note 1 *supra.*
39. *Id.*

preserve and increase MR's assets for the benefit of their joint charity —had been a voting trust holding the third interests of each. The voting trustee had been a hard-charger, much in the Rikling mold, who had prosecuted the corporate *bonum commune* with the same successes of the halcyon days. But the idyll was now threatened with the reluctant resignation—the ten-year term of the trust was expiring—of their hard-charger contrôleur. Who to succeed to the office?

The marriage brokers were put on the spoor and the field for a successor contrôleur was narrowed to two, a Rikling relative and a brash interloper by the name of Richard B. Jarneen. The Riklings had determined to reinstate the voting trust, with the added provision in a point will that the new contrôleur would carry on after the brothers' death under a strict trust and appoint his successor ad infinitum.

Successor Suitability

The years of experience had given the Riklings a very crystallized concept of the manifold qualifications required of a competent contrôleur of Mythical Rikling, or for that matter of any corporation. As sole owners they were not bedeviled by any moral or legal fiduciary duty to select the most competent personnel, especially the successor contrôleur—not that they were blind to the interests of their charity—but the brothers were nevertheless determined that their appointee meet the elemental, fivefold norm of successor suitability: (1) Moral integrity; (2) Intellectual competence; (3) Managerial and organizational proficiency; (4) Social suitability; and (5) Satisfactory age and health.

The Riklings were astute observers of human nature. In both young Jarneen and the aspirant Rikling, the brothers saw highly capable competitors. Both were honest to a fault. There would be no walking "the borderline," let alone any concern, even secondarily, "with advantages from the possible illegal actions." As to talents it was a toss-up. Both moreover could be expected to work long devoted hours. Finally, since neither would-be contrôleur owned any stock, neither would be tempted to minority-shareholder-serving maneuvers.

In a word, each would bring to the corporate bargaining table substantial assets in the form of contrôleur talents. Although each had different personal qualifications, the total contrôleur contribution of each would indeed constitute valuable consideration in the negotiation of the employment contract.

A resolution of the dilemma of equal suitability was found in interviews and negotiations with the prospective contrôleurs.

TOTAL CORPORATE COMPENSATION

Over against the respective offers of the candidates the Riklings decided to lay out the corresponding corporate consideration, the "specific areas of advantage" surrounding the office of control of Mythical Rikling Nut and Rivet, Inc. Since each prospect presented comparable credentials and since the demands of the office were both stable and estimable, the Riklings offered an identical package of *tangible* inducements to both. The predecessor's salary of 100,000 dollars was to be augmented by a sliding scale of profit-based bonuses. Since MR's 100 million dollars in annual sales would predictably increase at the recent ten per cent rate, this could net at least 10,000 dollars in the early years. Beyond the usual perquisities—the firm's boat, the company Cadillac, an executive assistant—MR had usually underwritten the initiation fee and 75 per cent of the annual dues at both the Century Club and the Onondaga Country Club. The outgoing contrôleur had rated these collateral benefits at 3,000 dollars a year. Group health and life policies, the pension plan and stock options exercisable for the life of the trust totaled another 7,000 dollars. As the Rikling brothers saw it, in tangibles alone the corporation's offer would total roughly 120,000 dollars per year.

Negotiations

In a highly communicative meeting with the Rikling scion, the three old brothers realized that their cousin, even without a single share of Mythical Rikling, was driven by a deeply sincere—and to the brothers a highly creditable—desire to build the firm that bore his name to a position of preeminence in the nut-and-rivet world. ("At least, it is worth 5,000 dollars a year if they let me see that outfit succeed.") With thoughts of Armour and William Wood Prince the three old Riklings were not unhappy. To them this was the pure altruist with only one thought, to build for the benefit of others.

Apart from this Robin Hood, man-on-the-white-horse approach young Rikling anticipated a certain personal, almost Germanic, satisfaction in the hard work, the palpable progress, the orderly organization of his very own creature. "Their offer goes up another 5,000 dollars just for the privilege of doing things in my own precise way." Young Rikling agreed with Judge Hincks: "Surely this power through . . . control to improve the corporate performance may be a factor of value attaching to . . . control."

The upshot of the interview: All four Riklings agreed that the total—tangible and intangible—corporate remuneration of 130,000 dollars should adequately compensate young Rikling for his total con-

trôleur contribution to the future of Mythical Rikling Nut and Rivet, Inc.

As a study in human energy and ambition, Jarneen was even more interesting. He had had no connection whatsoever with Mythical Rikling. Not only was he shareless, but he would come from an archcompetitor, and had been acquainted with the company only on a business basis. Further, apart from equal qualifications, Jarneen was the antipolar extreme to Rikling. While Rikling could put a 5,000 dollar price tag on the opportunity to enhance the family name, Jarneen saw the same value in the chance to build a personal empire. Jarneen was a lineal descendant of Samuel Insull, the Van Sweringens, and the Rockefellers. His modern counterparts head up Genesco, IT&T, City Investing, Textron. Mythical Rikling Nut and Rivet, Inc. would soon become MRNR Industries, Inc. and each new acquisition would be one more diadem for the Jarneen royal head.

Beyond this sense of power, this absolute authority, Jarneen was ready to admit that the prestige of the position—contrôleur, chairman of the board, chief executive officer of 'MRNR Industries, Inc.' —was as good as another 5,000 dollars in the bank. Mythical Rikling was a prestigious name in Syracuse. Its top executives had long been civil notables. All this added dollars to the corporate offer.

But Jarneen parted company with young Rikling on another important item of control value. Jarneen saw a very attractive program of self-advancement and self-benefit in the day-in-and-day-out allocation of the many corporate contracts with suppliers, consumers, top-level executives. Not that Jarneen was dishonest. To the contrary. He had no thought of even approaching the Glore, Forgan border line. He reasoned this way: It would be worth 10,000 dollars a year personally to appoint a hitherto unknown, albeit impressively competent, 'comer' to the presidency of the firm; to help out a struggling but honest die manufacturer; to assure a certain construction company of a fair deal and a steady source of rivets. In every instance the deal would be a rigid *quid pro quo* with absolutely no conflict of interest, but the legitimate advantage would be nonetheless appreciable, even if unconscionably long-range.

The Premium for Control

With the cards thus on the table, the three Riklings, and young Jarneen, sensed that the intangibles in the corporate offer were far more valuable—$10,000 exactly—to Jarneen than to young Rikling. Taking stock within himself, Richard B. Jarneen compared in dollars and cents the emolument he would personally receive from MR—a total figure of

140,000 dollars per annum in corporate compensation, tangible and intangible—with MR's comparable offer to Rikling, which totaled only 130,000 dollars. The 10,000 dollar annual differential in the corporation's offer impressed Jarneen with his superior bargaining position. After much calculation he concluded that 50,000 dollars—the difference accumulated over a five-year period—would be a sensible investment toward "the control potential" that would predictably extend well beyond such a short tenure.

Armed with this conviction, and an almost oppressive desire to control 'MRNR Industries, Inc.,' Jarneen approached the three Riklings with a proposition: He would accept the contrôleurship of Mythical Rikling on the terms discussed *and,* to cinch the deal, therewith offer to pay the three brothers a 50,000 dollar premium for the control of the company. Jarneen was almost childlike in his forthright enumeration of the many control values he sought. Knowing that MR regarded its offers to each as identical Jarneen was convinced that the premium would win the day. The three brothers were not unimpressed.

Confident of young Jarneen's honesty, ability and above all his driving ambition for the firm, the founders and owners of Mythical Rikling Nut and Rivert, Inc. had already determined that young Jarneen embodied all five requisites of contrôleur suitability, and was definitely the man for the job.

They could not, however, restrain a wry smile at the proffer of the premium for control. Jarneen was almost callow in his inability to correlate the proffered premium with the collateral contract of contrôleur employment. As they pointed out to Jarneen, after all, they were the sole owners of MR, and all the corporate assets were effectively theirs. Moreover, MR had just formulated a deal whereby the corporation would pay him some 140,000 dollars consideration in exchange for his labor and industry. Every item of this consideration—whether salary, perquisites, options or pensions, whether the intangibles of power, prestige or contract allocation—was a corporate asset flowing under the contract from MR to Jarneen. How fatuous, therefore, for the three brothers to receive 50,000 dollars from Jarneen with one hand while paying him twice that amount in salary with the other. The simple solution: Offset the 'permium' against the salary, and thereby maintain the original stipulation of 130,000 dollars in corporate remuneration. Thus reduced, the total corporate compensation would equal Jarneen's total contrôleur contribution to the company. Merely pro rate the 50,000 dollar 'premium' over the five-year period, and cut the salary accordingly to 90,000 dollars per annum.

True, salary, perquisites, prestige, power, are all estimable and legitimate control values. As valuable, they are salable. As salable, Jarneen could do well to 'buy' every one of them by 'paying' a substantial 'price' for their 'purchase.' But since the corporation is the owner of each, since only the owner sells, and since the corporation disburses these very assets to Jarneen for his work for the firm—they form the congeries of emolument at the disposal of the corporation for the remuneration of the incumbent contrôleur—Jarneen should 'pay' the 'premium for control' to the owner, by lowering his salary in the agreed amount. Any 'premium' should be recognized as simply such a deduction, an acknowledgment that the corporate remuneration had been too great.

After this circuitous return to reality, the Riklings and young Jarneen closed the deal at 90,000 dollars in salary, plus 40,000 dollars per annum in fringe benefits, tangible and intangible. Which was the same amount MR would have paid young Rikling, had he won the day.

The Stock-Enhancement Factor

Vary the suppositions of the mythical Mythical Rikling in one important particular, but otherwise leave all the facts intact. Presume, in the fairy-book Prince-Armour formula, that the brothers Rikling, dreaming of the day now arrived, had each bestowed a third of a share of MRNR on the newborn cousin and heir apparent. Thus, some three decades later, the Rikling scion approaches the same bargaining table armed with his same high ideals, family aspirations, overall contrôleur suitability, but holding in his hand a further factor of moving importance, his one share —one per cent, 1.5 million dollars worth—of Mythical Rikling Nut and Rivet, Inc.

Granted, the total ownership of MR had scarce been altered. Each brother still owned a third, and the one per cent against the 99 would change the bargaining impact not a whit. But to young Rikling—apart from any clout at the table—that one share gave rise to an appreciable dollar-and-cents consideration as he totted up the several "advantages of control" and estimated his total corporate compensation from MRNR.

In early 1964 old man Weyenberg, founder and longtime contrôleur of the highly successful Weyenberg Shoe Manufacturing Company (again the parallel is pat with both Armour and MRNR) found himself in his early eighties bereft of a successor and long ready to resign.[41] His choice was Thomas W. Florsheim of the Florsheim name

40. Perlman v. Feldmann, 129 F. Supp. 162, 184 (D. Conn. 1952).

41. Bayne, *A Legitimate Transfer of Control: The Weyenberg Shoe—Florsheim Case Study*, 18 STAN. L. REV. 438 (1966).

who readily assumed control and embarked the firm on a vigorous promotional program (striking ads in *Time,* the *Wall Street Journal,* and the *New York Times*) and an aggressive acquisition approach (the prestigious Nunn-Bush). The result: Florsheim's three per cent 600,000 dollar interest in Weyenberg Shoe increased in value by a satisfying 100 per cent within the five-year period ending in 1969.[42] Apart completely from all the other legitimate rewards of control, old man Weyenberg had given Florsheim the opportunity "to improve the corporate performance" and thereby enhance the value of his own stock by an estimable 600,000 dollars.

This Florsheim lesson was not lost on Rikling. Quick arithmetic showed him a similar situation. If his own considerable contrôleur talents could up MRNR's annual five per cent after-tax return to seven, his personal increment would be some 30,000 dollars on his 1.5 million dollar holding. Were he to invest an annual 10,000 dollars to guarantee his increment, the net would be a yearly 20,000 dollars beyond his return at the firm's present pace. Moving further in his calculations, Rikling decided on a five-year gamble of an accumulated 50,000 dollars for the projected 150,000 dollars, especially since his youth gave every prospect of many years longer than five.

From this point forward the drama took on all the aspects of a replay of the Jarneen negotiations. With the extra 10,000 dollars in stock-enchancement compensation, Rikling, as had Jarneen, proffered a 50,000 dollar premium for the control of MRNR.

Once again came the same wry smile, the same restrained wonder at the callowness of youth, the same patient explanation of the realities of the relation between Rikling's contrôleur contribution, labor, industry, honesty, and MRNR's corporate compensation, salary, perquisites, power, prestige—and now the opportunity to enhance the value of his one per cent 'block.' The upshot was the same. Young Rikling realized that this extra control advantage should be 'paid for' not with a 50,000 dollar premium, but rather by a simple reduction of the stipulated 100,000 dollars in salary. With that deal sealed, family considerations prevailed and Rikling became contrôleur with compensation at 130,000 dollars, tangible and intangible, which was the same amount MR would have paid Jarneen, had he won the day. The further absurdity occurred to them all. To the extent of his ownership of MRNR, Rikling would in effect be paying a premium to himself.

Thus this 'opportunity' "to improve the corporate performance" is

42. The Wall Street Journal, April 29, 1969, at 31, col. 5.

merely another asset in the corporate treasury, available on proper occasion for contrôleur compensation. Note, however, that this particular 'opportunity to improve the firm'—the stock-enhancement factor—is not the same 'control value' as either the Robin Hood's pleasure in helping the firm or the Germanic satisfaction in building both of which are 'control values' and could be called the 'opportunity' "to improve the corporate performance."

This addition of the stock-enhancement factor should complete the list of those "advantages" flowing from "merely the control potential" of the office.

The Ownership of the Control Assets

Implicit in these MRNR fantasies has been a realization—too elusive for the past—that could well dispel much of the confusion clouding the concept of control value. Both parties to the Mythical Rikling contract fully sensed—albeit subliminally—the governing truth that all these control advantages belonged without exception to the corporation, that the contrôleur personally did not produce any of these assets for himself, that all were for the firm. But this is only half the matter. The other half of the Rikling perception was a series of subtle distinctions far at the base of the various corporate control values. An exact analysis of these distinctions should give deeper understanding to the Rikling negotiations, and the noninvestment value of control stock.

Corporate Administration

In the theoretical—but very real—beginning of every corporation the shareholder owners in a deliberate appropriation entrust the corporate assets to the untrammeled dominion of that necessary top-level authority, the contrôleur. In acquiescing to this appropration the contrôleur thereby assumes custody of the entity, with all its duties and rights. Technically, therefore, corporate control is a relation of total custody subsisting between the subjective term, the office of control, and the objective term, the corporate entity itself. In this relation inhere all the corporate rights and duties. In accepting this stewardship the contrôleur dedicates himself unremittingly to the overall corporate welfare. He acknowledges himself a strict trustee and accepts the stringencies of the benefit-to-beneficiary and no-inquiry rule. His sole undertaking: To administer the corporation and utilize its assets to the exclusive advantage of the shareholder owners.

In this administration of the corporation *ad bonum commune* the contrôleur, as the chief corporate agent, has been burdened with that complexus of corporate duties originally imposed by the state, at the

instance of the incorporators, and enumerated in the corporate purposes of the charter. These corporate duties have become necessarily the contrôleur's duties. Thus, for example, AT&T has formally undertaken a vast public service. The duties incurred by this undertaking are legion, from the construction of a computerized switchboard in New York to the selection of the appropriate Princess for a lady in Duluth. Set off against these manifold duties is a perfectly correlative set of corporate rights, ranging from the appointment of top executives—including incidentally, if need be, a successor contrôleur—to the allocation of major contracts with suppliers and consumers, on down to the employment of linemen, switchboard operators and ditch-diggers. All these rights and duties inhere essentially in the corporate entity. Incumbent on the entity is the performance, through its agents, of this broad corporate obligation of public service, and all the subobligations implict in it. Correspondingly, to the corporate entity attach all the rights necessary for the performance, through its agents, of all the correlative duties. Sitting as he is at the top of the corporate hierarchy, the contrôleur, therefore, must see to the performance of these duties, the exercise of these rights, all the entity's benefit.

The office of control—in the person of the contrôleur—possesses the totality of these corporate rights and duties. In fact the ambit of the contrôleur's official authority and responsibility—the limits of his job—is coterminous with the rights and duties of the corporation as spelled out, or implicit, in its charter. The contrôleur is hired to prosecute the corporate goals by performing the corporate rights and duties. Thus all the rights of the contrôleur qua contrôleur are control rights. And all the duties, control duties. Because of the virtual identification of the contrôleur with his office, and the corresponding relation of the office to the entity, this is a justifiable viewpoint for the study of the non-investment control values.

The Direct Returns of Corporate Control

In going about his day-to-day duties the contrôleur is presumably visited with some success. The enlightened managerial policy of AT&T's contrôleur produces an upswing in the earnings record, and healthy profits for dividends or expansion. A sound corporate structure encourages investment and hence capital increment. The selection of aggressive personnel increases further the profit potential and ultimately augments the assets. All these advantages flowing from the contrôleur endeavors in the corporate behalf are by no means limited to high-level administration but include the most menial, from the productivity of the computeriz-

ed board in New York to the tender care of the Duluth office. But all these returns from the energy of the contrôleur are very real control values and are directly and primarily referable to the performance of the corporation's duties and the exercise of its rights under the contrôleur's general guidance.

The Indirect Advantages

But the corporate rewards of the contrôleur's industry are not all primary and direct. The competent contrôleur creates a corporate climate that encompasses a broad list of assets of extreme value to the company. Thanks to the same enlightened managerial policy, all the employees—from ditchdigger on up even to the contrôleur himself—enjoy their work, feel the exhilaration of accomplishment, the satisfaction of good working conditions, the prestige of their positions with Bell— or possibly reap the legitimate byproducts of contract allocation, managerial appointments, customer selection, or even the enhancement of their AT&T stock. A solid corporate structure plus superb personnel gradually effect a substantial going-concern value and notable corporate goodwill. All these collateral benefits are corporate assets adding to the overall worth of the firm.

The utilization by the contrôleur of the control rights and the performance of the control duties, therefore, result in a broad spectrum of benefits, products, profits— the sum of corporate assets produced through the corporate administration entrusted to the office of control. The totality of these benefits, *direct and indirect,* represents the totality of control advantages, the collective fruit of the custodial administration of the corporation, the exercise of control. Quite clearly this totality is by no means limited to those "control advantages" laid out in the Rikling—or Glore, Forgan—list. Some of these values flow from the labor expended toward the direct and primary objectives of the corporate business, some are secondary and collateral gains. But *all* are the result of official corporate effort. All are produced by corporate agents on corporate time toward the corporate well-being pursuant to the charter purposes, and ultimately under the direction of the corporate contrôleur. All consequently are corporate assets. Here, then, is the totality of control values.

The Rights of the Human Person

But how dovetail these corporate duties and rights into the personal rights and duties of the humans—especially the human contrôleur—who man the entity? Generally speaking, all the employees, from ditchdigger, operator, lineman on up to the chief executive officer and finally

the contrôleur, come to their jobs at AT&T with the same class of personal duties and rights. Their duty is fivefold: To be honest, adequately intelligent, industrious and proficient, socially adaptable, physically fit. In a word, to do their best for the firm. Their rights are corresponding: to receive sufficient salary, health and retirement benefits, the respect and dignity of the position, the satisfaction and exhilaration of the job, the opportunity to improve the firm.

Thus the duty and right to dig the ditch and erect the computer belong to AT&T. The duty and right to represent AT&T in the performance of its duty and right belong to the employee. For the performance of his personal duty—labor, honesty, industry—AT&T recognizes the employee's personal right to salary, perquisites, prestige and power. In fulfilling, as agent, the corporate duties and exercising the corporate rights, the employee—including the contrôleur—earns his appropriate compensation disbursed from the corporate assets, whether from the store of direct control assets, e.g., salary, options, perquisites, or the indirect, e.g., presitge, power, satisfaction.

The Corporate vis-a-vis the Personal

At this point the sharp control-value dichotomy, the direct and the indirect, plus the set-off of personal from corporate rights and duties, prompt the introduction into the control lexicon of two new technical terms embodying these various distinctions.

> *Personal Control Advantages* are corporate control values flowing either primarily and directly or secondarily and collaterally from the performance of official corporate duties and rights, and *passed on by the corporation to the human occupant of the office of control* as his total corporate compensation for the performance of his personal duties and rights.

Over against these strictly personal rewards of control are other concomitant corporate benefits:

> *Corporate Control Returns* are corporate control values flowing either primarily and directly or secondarily and collaterally from the performance of official corporate duties and rights, and *necessarily retained in the corporate net worth.*

In both cases—*Personal Control Advantages* and *Corporate Control Returns*—these control values are corporate assets accuring to the corporation as a result of corporate effort expended toward the corporate welfare. In the former, the corporation simply sees fit to disburse the

emolument, direct or indirect, to the person holding the position of control, as recompense for a job well done. In the latter, the corporation retains necessarily the benefits, direct or indirect, as the sought-for fruits of the corporate program toward profit-making. The key concepts are *disbursal* and *retention.* Nothing else distinguishes them. Both are species of the genus *Corporate Control Values,* corporate assets broadly referable to the overall corporate administration of the contrôleur. Ultimately, of course, and here is the catch in the whole piece, all these 'control values' are simply subproducts of the total corporate product viewed, by force of the multiform problems raised by the sale of control, from the slightly forced aspect of the person who happens to hold the office of control, or the one who wants to 'buy' it.

But in the view of any other observer, these values are no more 'control values' than they are directorial values or chief-executive-officer values or presidential values. They are simply corporate assets. Nothing more. But over the decades contrôleurs have tried to sell them off as if they were really their own personal possessions, as if 'control value' meant an asset belonging to the human in control rather than as asset produced under the corporate administration of the office of control. Hence a spate of misnomers and a botch of fallacies. Which leads to the last major point.

The Sale-of-Control Premium-Bribe

For the last time, recur to Mythical Rikling Nut and Rivet, Inc. and make two last—but major—alterations in that hardy hypothetical. As before, the brothers Rikling—founders of the firm, joint holders of every voting-trust certificate, long ready to retire—face the imminent expiration of the voting trust and the vexing necessity of selecting a successor contrôleur to guide the firm's future. Both the Rikling scion and the aggressive young Jarneen are again in the wings, ready to serve.

But beyond all this, everything is not the same. The ten years of the trust had not been kind to the three Riklings. Pressed by parlous times, each succeeding year had seen their personal finances fail. The regretful solution: A sizable stocksplit, 10,000 for one, and a successful secondary offering of their entire 99 per cent. Since each sale was extremely small and, more to the point, the purchasers were widely scattered, none of the new owners held more than two per cent of the company. Thus the three brothers, although completely shareless, nonetheless held unassailable mere-incumbency control through the proxy mechanism and the wide dispersal. But to their dismay they also held the awesome and onerous obligation of entrusting 150 million dollars in other people's money into

the unfettered hands of a new contrôleur.

Onto this deeply altered scene walked Victor Birwolf, entrepreneur extraordinaire, who knew a good thing when he saw one. Fully apprised of the many control values in MR's offer to Rikling and Jarneen—and of possibilities that never occurred to these conscientious young men—Birwolf joined his name to the list of prospective contrôleurs, but with a difference. Whereas Rikling and Jarneen had both seen the fatuity of their 50,000 dollar premiums for control, Birwolf was not so perspicacious, or perhaps more so. Birwolf not only saw the 'control advantages' in the tangibles—salary, options, perquisites—and the intangibles—power, prestige, the opportunity to improve the firm—but he looked even beyond this 140,000 dollars. After all, the Rikling brothers would be gone on the morrow, and his mere incumbency control would be absolute. He further knew as no one else the true worth of his talents, and saw no reason against a substantial salary increase at an early date. Glore, Forgan's words kept running through his mind: "From a practical standpoint . . . the chief advantage of control is . . . to obtain the largest salary that could not be attacked in the courts plus other perquisites of the office." Birwolf tolled off a long litany of control values, especially contract allocations to cronies, large salaries for "incompetent friends or relatives," maybe even eventual liquidation, that were foreign to the thoughts of Rikling and Jarneen. In a word, perhaps Birwolf was "not *primarily* concerned with advantages from the possbile illegal actions," but his secondary concern was compelling.

To give proper expression to these sentiments Victor Birwolf concluded to an offer of a 100,000 dollar sale-of-control premium, which he promptly presented to the brothers Rikling.

The Premium-Bribe

For the three Riklings no astute argumentation was necessary to penetrate to the heart of Birwolf's deal. No longer was it a case of three owners receiving 100,000 dollars with one hand while paying out the same amount in salary with the other. True, the owners would still be paying the salary—and the perquisites, power, prestige, whatever—but the owners would not be receiving the 100,000 dollar premium. As with Rikling and Jarneen, how fatuous not to offset the premium directly against the salary. But more pertinently, how dishonest to pay the premium to the nonowners Rikling when it belonged to the owner shareholders scattered across the country.

Here was nothing other than the bald primitive sale-of-control premium-bribe:

> (1) some form of consideration, monetary or otherwise, (2) flowing to the incumbent contrôleur, (3) from or on behalf of the prospective contrôleur, (4) to induce the appointment to the office of control, (5) paid knowingly, *scienter*.[43]

Armed with this realization, and all the implications of the unsuitability of a premium-briber—particularly his predictable propensity to recoup his premium-bribe at the expense of a hapless ownership—the three Riklings threw the charlatan out and betook themselves to their old problem of choosing between their cousin and his competitor.

Fatuity Becomes Fraud

From the strictly factual standpoint—in contradistinction to any intrinsic illegitimacy—the sale-of-control 'premium' ceases to be merely fatuous and becomes downright dishonest when the payment goes not to the owner but to a noncorporate third party. It becomes singularly schocking when that third party is a trusted agent who has dedicated himself to the very owners he is cheating. The *factual* nub of the premium-bribe, therefore, is the payment of a 'rebate'—otherwise merely foolishly circuitous—to the wrong person.

One may admit to certain personal advantages flowing from the office of control. As valuable, they may be 'sold.' But if 'sold,' the 'sellers' must invariably be the owners. When they in truth were the owners, the Riklings could have entered into the ridiculous circuity of a sale of control. No matter. If the new public owners of Mythical Rikling want to indulge in a similar absurdity, also no matter. But if the nonowners Rikling attempt to 'sell' the control they no longer 'own'—or Birwolf attempts to 'buy' it—the result is aggravated larceny in the subtle and oft-undetected guise of premium-bribery.[44] Imbedded in this larceny is a triple turpitude, the intrinsic illegitimacy of the premium-bribe:

> (1) the perversion of the judgment of the incumbent contrôleur, engendered by an appointment of a successor induced by a cause other than suitability, (2) that is, for consideration illicit in itself, (3) resulting in the appointment of a candidate unsuitable by reason of his own active role in the inducement.[45]

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43. Bayne, *The Sale-of-Control Premium: The Definition,* 53 MINN. L. REV. 485, 597 (1969).

44. N.Y. CONSOL. LAWS § 180.00 [McKinney 1967].

45. Bayne, *The Sale-of-Control Premium: The Instrinsic Illegitimacy,* 47 TEXAS L. REV. 215, 222 (1969).

CONCLUSION

With all the distinctions and subdistinctions, the correlatives and the antitheticals in the background, what can be said in technical summary of *'The Noninvestment Value of Control Stock,'* and the many concepts and subconcepts surrounding it? Concisely, what is the exact import of the subject? The answer lies in an orderly process of exclusion and refinement, a step-by-step narrowing from general to specific, down to the point of an intelligible, and practical, delineation of the major burden of this study.

Control Value. Here probably is the chief devil in the piece. 'Control value' is so hopelessly generic a term as to be practically useless. It includes everything, legitimate/illegitimate, stock/nonstock, investment/noninvestment, direct/indirect, anything in any way pertaining to any benefits, advantages, values, inuring to corporation or contrôleur or anyone, through the impact of corporate control. Further, it is indeterminate about the ownership of these values. Are they 'owned'? And if owned, may they be sold? And if salable, who may sell them? Or buy them? The use, or misuse, of the term has left court and commentator in an ill-defined state of chaos. Witness *Feldmann* and *Porco*. In short, 'control value' should be condemned to oblivion, except as an introductory phrase demanding immediate technical qualification.

Illegitimate Control Values. The first such technical qualification must be the elimination from consideration of all illegitimate returns milked from and through the office. Strictly, such returns are not properly referable to control at all, but are simple larceny effected in a control context. Any gain even secondary from "the possible illegal actions" or activity along "the borderline" should be outside the definition of 'control value.'

The Investment Value of Control Stock. The next narrowing saw the exclusion from the concept of 'control value' of that possible increment to the stock itself—*stock about to be purchased*—attributable to the advent of a talented new contrôleur. Here, the adjective 'Control' is a transposed epithet which properly modifies neither 'stock' nor 'value' but applies exclusively to the changed quality of the corporate administration. The '*control change*' heightens the investment value of all stock. Control administration benefits the entire entity. Since the entity is merely the conduit for every shareholder interest, any such gains flow perforce to all equally. This 'investment value' applies to every share, not just those about to be sold, whether 'control' or no, by whomever. As only remotely related to 'control,' 'investment value' is scarcely a 'control value,' or at

best only in some metonymic sense.[46] Such use without immediate qualification, therefore, is also anathema.

The Noninvestment Value of Control Stock. Whereas 'investment value' referred solely to the purchased stock and not at all to the distant 'control,' the 'noninvestment value of control stock' refers only to control and not a bit to the 'stock.' To a great extent their connection is an historical anachronism. In earlier days a controlling block generally accompanied a control transfer. Even today control is often passed by a 50-plus per cent stock block. Strictly, however, control itself is not connected necessarily with the stock. 'Control' is exercisable without relation to the base on which its tenure is founded, whether voting trust, proxy, mere-incumbency, however.

With the 'stock' thus removed, the subject now becomes "The Noninvestment Value of Control." But is not 'noninvestment' also superfluous? After all, it was used only to negate the concept of 'investment' and eliminate any connection with the stock. With 'stock' gone, why talk of 'noninvestment' at all? Investment is only in stock, perforce. Absent the need to eradicate the historical anachronism, both words are unnecessary. To use the prefix 'non' before 'investment' in the same phrase with 'stock' in redundant. The elimination of both 'noninvestment' and 'stock' leaves a better title: The Value of Control.

Corporate Control Assets. This circumscribed, the proper perspective begins to appear. The only 'values' correctly denominated 'control' are those corporate benefits, products, profits, produced through the control administration. As such, every last one of them is a corporate asset. But when the average layman—if ever he were to blunder onto the term—refers to 'the noninvestment value of control stock'—or better, 'the value of control'—he would never mean *all* the Corporate Control Assets. The concept is still too inclusive.

Corporate Control Returns. Even though they are in every sense 'control assets,' those corporate returns from the contrôleur's administration retained in the corporate net worth—annual profits, capital increment, going-concern value—are never referred to as 'control values.' Why? Although ultimately *produced* by the work of the contrôleur—and to this extent 'control values'—they are not *paid out* to him personally, thus never become doubly the contrôleur's own. The discussion of Corporate Control Returns was necessary only to distinguish them from the last remaining class of 'control values.'

Personal Control Advantages. Here then is the end of the line. Some

46. *See* Bayne, *The Investment Value of Control Stock*, 22 STAN. L. REV. — (1970).

corporate assets, once in the corporate treasury through the contrôleur's efforts, hence 'control values,' are then *disbursed* to the contrôleur himself in payment for his work for the firm. These are the 'control values,' doubly so in a sense, of which the layman—and the lawyer, judge, writer—should speak. The technically correct title should read:
The Personal Control Advantages Accorded the Contrôleur as Corporate Compensation.

Two Parting Adversions

With the title thus changed and the concepts clarified, no further questions should arise about the ownership of these corporate assets, or their salability, or their purchase for a premium. As corporate assets originally and as contrôleur remuneration eventually, the thought of 'selling' or 'buying' them is fully as callow as the Rikling-Jarneen 50,000 dollar 'premium' for the 'sale of control'.

Finally, equally otiose should be any discusson of the intrinsically illegitimate Birwolf premium-bribe. Granted the fatuity of the Rikling-Jarneen 'premium,' at least the 50,000 dollars was destined for the true 'owners.' Birwolf on the contrary was prepared to pay an illicit 100,000 dollars to nonowners Rikling, an act of premium-bribery.

All the misnomers strewn through these pages—notably the title itself—and the fallacies behind them had their genesis, as with Hincks in *Feldmann,* Pollack in *Porco,* in one pervasive misconception: That *somewhere* amid all those control values—salary, perquisites, prestige, power, particularly the opportunity to improve the corporate performance —*something* must be the personal possession of the contrôleur himself. That somehow corporate control could legitimately be sold.

Which, of course, set the purpose of this study: To lay these misnomers and fallacies to rest once and for all. To show simply that the values resultant on control can never be sold, except by the owners. To establish above all that the contrôleur is not an owner, merely an employee. To prove that the contrôleur, as an employee, produced these assets for the corporation, not for himself personally.