BOOK REVIEWS

Bureaucracy and Trusteeship in Large Corporations. Temporary National Economic Committee, Monograph No. 11. By Marshall E. Dimock* and Harold K. Hyde.† Washington: Government Printing Office, 1940. Pp. ix, 144. $0.30.

What is bureaucracy? Is it an evil to fulminate against and, if possible, to eradicate, or is it merely a phrase descriptive of certain characteristics which are necessarily assumed by any large organization, governmental or private, which is seeking to accomplish certain purposes through the united efforts of its component individuals? Is there good bureaucracy as well as bad bureaucracy, and is much of its alleged badness merely the reflection of its qualities—the necessary consequence of the fact that the orderly pursuit of a common objective, whether by a football team, an army, a government bureau, or a large business corporation, must place certain limitations upon unbridled individual initiative?

In Monograph No. 11 of the Temporary National Economic Committee, the authors, Messrs. Dimock and Hyde, define bureaucracy as something without good-bad connotations. "Bureaucracy," they tell us, is merely a descriptive term—a shorthand form of referring to an organization which is "characterized by successive departments, bureaus, and other subdivisions arranged in a hierarchy, each with its own particular sphere of activity and interest, and under the control of a chief," and which has a tendency toward professionalization of its personnel. But they bracket this neutral definition with a recognition of the difficulty of writing about bureaucracy without falling into the popular habit of treating it as a term of opprobrium, and their subsequent discussion does not wholly succeed in accomplishing their announced "attempt to differentiate the two uses as occasion requires."

This vacillation in the use of the term need not trouble us greatly. What the reader hopes to find in a study of this kind is that the organization and the internal functioning of big business will be clearly and accurately described, that the weaknesses which tend to appear in its organization will be diagnosed, and that—unless the authors' conclusion be that bigness and efficiency are incurably incompatible—some promising methods by which those weaknesses may be minimized will be suggested.

Monograph No. 11 does not purport to be more than a preliminary exploration of the subject. As the authors inform us in their preface, they are engaged in a much larger research project in the same general field, which is still incomplete. The subject is one which cannot be fully explored without much greater elaboration of detail than can be given in a study of no more than 135 pages. Not all large corporations are alike, and the differences between the organizational problems of a billion-dollar utility which has dealings with millions of consumers and those of a hundred-million-dollar locomotive works whose customers are no more numerous than those of a village store are,

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for some purposes, as significant as their similarities. An undifferentiated study of business bureaucracy which lumps the American Telephone and Telegraph Company with the American Locomotive Company is much like a study of governmental bureaucracy in which the Securities and Exchange Commission, the Post Office Department, and the Sanitary District of Chicago are treated as birds of a feather.

But the kind of detailed study in which the trees begin to emerge from the woods is not to be expected, perhaps not even to be desired, in a pioneer work of exploration. And Monograph No. 11 is, in many respects, a pioneer work. Studies of business organization are not new, but Messrs. Dimock and Hyde's method of dealing with the problem is new and highly illuminating. For they have brought to the study of big business a wide acquaintance with and thorough understanding of the problems of big government; Mr. Dimock, in particular, has had experience both as a government administrator and as a scholar whose field is public administration. Others may, to be sure, have hinted at the existence of some family resemblance between the organizational problems of large-scale business and those of large-scale government; but there is a world of difference between the first man who observed with surprise that the whale nourishes its young after the manner of the cow and the zoologist who has prepared himself for a scientific study of the whale's anatomy by a thorough knowledge of the structure and habits of terrestrial mammals.

What are the organizational problems and personnel problems of big business? To what extent are its organizational problems due merely to its size and hence identical with those confronting other large organizations, such as governmental departments and bureaus? To what extent are they differentiated from those of government by the fact that the objective of business is profit rather than public service, like that of the Post Office, or regulation, like that of the Interstate Commerce Commission? To what extent, if any, do certain modern trends which are observable in big business, such as the trends toward monopoly, toward diffusion of ownership, and toward separation between ownership and control, tend to accentuate bureaucratic evils in its internal functioning? It is questions of this kind that Messrs. Dimock and Hyde ask and seek to answer, and it is primarily the insight which they have derived from this mode of approach which distinguishes their work from that of other writers on business organization and makes Monograph No. 11 an important contribution to our knowledge of the internal functioning of big business.

The monograph begins with three chapters which are designed to lay the groundwork for the later parts by summarizing the outstanding characteristics of modern corporate enterprise. The trend toward the giant corporation in the railroad and utility fields, in certain types of manufacturing, in finance, and, to a more limited extent, in retail selling, is described, largely on the basis of materials derived from the studies of the National Resources Committee. The relevance of this matter of bigness to bureaucracy is obvious enough, but the extent, if any, to which other matters dealt with in the first chapter, such as the interrelations between corporations and their relations with investment bankers and financial institutions, may tend to accentuate undesirable characteristics of bureaucracy is nowhere explored.

Chapters II and III are concerned with diffusion of ownership and with separation of ownership and control. It is unfortunate that the authors did not, in this connection, have available for their use the TNEC Monograph No. 29. That monograph, a study made under the auspices of the SEC, demonstrates that the separation of the ownership and the control of our two hundred largest non-financial corporations is somewhat less complete than had been indicated in certain earlier studies on which Messrs. Dimock and Hyde rely. Monograph No. 29 supports the findings of other investigators that the managers of our largest corporations rarely hold any substantial percentage of their shares, but it also demonstrates that, in a large percentage of these corporations, a majority share interest or a sufficient minority share interest to constitute effective control is held, directly or through a holding company, by the members of a single family or by some closely associated group. Even in these corporations, the separation between ownership and control may be substantial, as, for example, where a family holding company which controls a group of industrial enterprises is itself controlled by a member of the family who has a relatively small minority interest in the holding company.[1] Moreover, as Messrs. Dimock and Hyde point out, control by a compact minority sometimes proves to be ineffective if the managers assert their independence of the minority. Nevertheless, Monograph No. 29 does indicate that the picture which is often presented to us as an accurate likeness of most of our giant corporations—a picture of a non-shareholding management which is subject to no substantial control by any group of shareholders—however true to life it may be for such enterprises as the American Telephone and Telegraph Company, is far from being a perfect image of all, or nearly all, giant corporations. This necessary modification of the control picture is of considerable importance with respect to problems of trusteeship and with respect to problems of bureaucracy as well, if we accept the authors' view that the inability of those who have substantial ownership interests to exert pressure on management tends to make the management indifferent to the existence of bureaucratic wastes.

In the middle of Chapter II, the authors shift the scene suddenly from diffusion of ownership to the theory of monopolistic or imperfect competition as expounded by recent economic writers. Although the exposition of that theory is assumed to be relevant to the subject of the monograph, we are not enlightened as to the manner in which monopolistic competition, as distinct from monopoly, tends to increase the evils associated with bureaucracy. Monopolistic competition—competition between a small number of large enterprises—largely eliminates price cutting, but has much less effect on other forms of competition. The managers of a wholly monopolistic enterprise may have relatively little incentive to attempt to eliminate bureaucratic wastes, but the competitive spur to efficiency would not seem to be removed by the fact that large competitors tend to compete in quality of product and in advertising technique rather than by means of price wars.

With Chapter IV we pass from a general description of the nature and external behavior of the modern giant corporation to a study of its administrative mechanisms. The study seeks to determine how far these mechanisms are bureaucratic in the non-derogatory sense and to what extent they tend to display those imperfections of which we are thinking when we use the term bureaucracy, as we commonly do, as a term of reproach.

That large corporations are and must be bureaucracies in the first sense is indubitable. Subdivision of function and gradations of authority are necessary for the successful carrying on of large-scale operations of a complicated character. Power to control

[1] TNEC, Monograph No. 29, The Distribution of Ownership in the 200 Largest Nonfinancial Corporations 103 et seq. (1940).

subordinates is essential, and power to fire them at will generally exists and is widely regarded as promotive of efficiency. Professionalization of executive personnel is less universal, but it tends to increase as ownership and management become more widely separated so that the higher executives are themselves professional administrators rather than "political" appointees of dominant shareholders. Furthermore, a complicated organization requires rules, since the attempt to operate without rules will lead to one of two evils. Either subordinates will be vested with uncontrolled discretion and will frequently exercise that discretion in ways which are inconsistent with the purposes of the enterprise as a whole, or, if subordinates are neither given rules for their guidance nor permission to exercise their own judgment, the chief executive will be subjected to the intolerable burden of making a multitude of decisions about matters of detail. Moreover, rules may often be necessary in order to give assurance that the activities of the business will conform to some externally imposed standard, such as the obligation of equality in the treatment of consumers which the law imposes on public utilities.

It is unfortunately true that, in business as in government, a system of rules tends to become unwieldy and to be followed blindly without reference to its real purpose. On the other hand, despite the existence of rules, departmentalization of a business tends to produce malcoordination between the various parts of an enterprise, with the head of each department seeking to make an individual showing with little regard to the long-range advantage to the concern as a whole. Thus corporate bureaucracy, no less than governmental bureaucracy, develops evils which the authors examine in more detail under the separate heads of structural and personnel causes of bureaucracy (here used by the authors as a term of reproach).

"The causes of bureaucracy," they tell us, "may be roughly classified as structural and personnel, though it must be recognized that the division is chiefly one of convenience." Generally speaking, size leads to structural complexity, and structural complexity involves the danger of bureaucratic inflexibility. Furthermore, the tendency towards bureaucratic inefficiency is said to be increased by separation between ownership and control which lessens the pressure on management to reduce costs and by the diffusion of authority which may exist between management and an outside body, such as a utility commission or a labor union.

There are also more specific structural problems. If all action has to clear through hierarchical channels, the result is red tape and delay, as well as the risk that proposals which must pass through many minds before they can be adopted may be incompletely understood and wrongly interpreted by those who have the final power of adopting them. On the other hand, confusion and conflict are likely to result if too many short cuts are allowed. Furthermore, in any large-scale enterprise, personal relationships become formalized, and administration by rules must be substituted for management by direct contact with subordinates. Large corporations must have rules, but the systematization which rules bring about has serious disadvantages. Contrariwise, inadequate definition of the scope of the authority of a particular executive—what in government would be called inadequately formulated jurisdictional rules—tends to confusion, although some executives insist that relations between men at or near the top should be informal.

Bureaucracy may also be inefficient, not because of structural difficulties, but because of inadequate personnel. So, though the authors fail to note the fact, may any enterprise, including that in which a single individual is capital, labor, and management rolled into one. But a hierarchy creates special personnel problems. It necessitates a system for recruiting the higher executives, and the system should be such as to produce the best possible results. In this connection, Messrs. Dimock and Hyde furnish us with data to the effect that the chief executives of thirty-five supposedly typical giant corporations were appointed at an average age of fifty years, which is about the same age as that at which federal cabinet officers are appointed and somewhat above that of bureau chiefs. The corporate executives usually stay in office longer than the cabinet officers and apparently longer than the bureau chiefs, and it is suggested that corporate chief executives, particularly railroad presidents, tend to be somewhat older than is desirable. Moreover, the common practice of recruiting such executives from within the corporation often brings to the top specialists who lack breadth of outlook. In this respect, corporations resemble government bureaus rather than government departments, since the heads of the latter are political appointees who do not come up through the ranks and often more than compensate for their lack of technical knowledge by their broader experience.

Another fault in personnel policy which is characteristic of large corporations as well as governments is an undue tendency towards promotion by seniority, which means that promotion is slow as well as, in many cases, undeserved. In this connection the data presented appear to support the authors' rather surprising statement that seniority is as large a factor in the promotion of corporate executives as it is in promotion to the headship of non-political government bureaus. Although the authors are of the opinion that corporate executives reach the top of the ladder at too advanced an age, they believe that the length of time for which most of them retain their positions—which is somewhat longer than that of non-political government officials of more or less comparable rank—is in general a favorable factor in the situation.

Another important question is whether the rewards of the corporate executive are sufficient to attract men of high-grade executive talent. Monetary compensation is, in general, high, but varies widely as between corporations. The result of such variation, in combination with the tendency towards inbreeding, is that high monetary rewards given to the men at or near the top of one giant corporation do not serve as incentives for junior executives in others. Security of tenure, at least in the higher ranks, is such as should be highly satisfactory from the standpoint of the officials concerned and the prestige which attaches to major corporate positions is sufficient to make such positions inviting goals.

The chief weaknesses in corporate personnel policy with respect to the selection of the higher executives that stand out from this survey are the attempt to make broad-gauge executives out of specialists and too much reliance on seniority as a method of promotion. Moreover, leaders cannot lead unless the rank and file will follow, a reflection which causes the authors to consider the morale of the employees of large corporations. This subject, which involves the whole problem of labor relations, is obviously too large to be dealt with adequately in a few pages. The authors do, however, present data with regard to turnover which tend to prove that the morale of the employees of large corporations is no worse than that of the employees of small ones, so that size in this connection does not appear to be a factor in causing inefficiency as a result of low morale. Rigidity of human habits is cited as an additional personnel cause of bureaucratic deficiencies—thereby ignoring the fact that the small shopkeeper may be as hidebound in his business habits as the managers of a corporate leviathan. Absence of competitive pressure is also referred to, but the extent to which big business is non-competitive in other matters than price policies is not explored.

At this point the authors turn their attention to managerial correctives of bureaucracy, which are again divided into structural and personnel factors. On the structural side, it is suggested that greater definition of the exact scope of authority, even of the higher executives, is desirable; that every large corporation should establish procedures for periodic reexamination of corporate policies and practices; that initiative should be encouraged even to the extent of permitting a certain amount of disobedience to rules, provided the disobedience is justified by results; that improved methods for measuring results be instituted; that informal contacts between departments be encouraged; that authority be decentralized as much as possible; and that more emphasis be placed on adapting rules to customer desires—a suggestion which indicates that the authors are inclined to think of the giant corporation in terms of the American Telephone and Telegraph Company rather than in terms of a producer of ten-thousand-ton freighters.

On the personnel side, the authors deplore the fact that labor unions generally insist on seniority as the chief criterion for promotion. They make no attempt, however, to show the extent to which the group from whom the higher executives are recruited at present is subject to labor union rules. Insofar as management is unfettered by such union restrictions, it is exhorted to follow the practice of those concerns which have devised systematic rating tests as a substitute for promotion by seniority. Recruiting of many executives from smaller concerns is advocated, and the successful results of the growing trend toward recruiting college graduates are adverted to. Whether the method has been successful because most able young men go to college or because college training develops managerial ability is not explored. Perhaps the question is, from the point of view of corporate personnel policy, an irrelevant one.

A number of suggestions are made about labor policies which may be adopted with a view to improving labor morale. Most of these are sound enough, but many of them seem little related to the problem of bureaucracy. Unintelligent treatment of labor is not peculiar to big business. No doubt the tendency towards dehumanized relations increases with size, but the more direct and personal relationship between the small entrepreneur and his employees does not necessarily lead to the sort of sympathetic understanding of the employees' point of view which the authors have in mind.

Such—apart from the rather inadequate final chapters which deal with trusteeship—is the scope of the monograph. In what respects does it increase our understanding of the subject? Part I, "The Nature and Scope of Big Business," does not purport to be anything but a summary of the researches and conclusions of earlier writers, such as Berle and Means. On the other hand, Parts II and III, which relate to causes and correctives of bureaucracy, are, in the main, the products of the authors' own research and of their own thinking. As has been stated earlier, the novelty of their approach is found primarily in their making use of their knowledge of big government to illuminate their study of big business and secondarily in their attempt to correlate the materials in Part I, which deal with such matters as monopoly and separation of ownership and control, with problems of bureaucracy. The latter effort has not been highly successful, partly because they have been content to assert rather than to demonstrate that both monopoly and freedom of managers from shareholder control seriously accentuate bureaucratic evils, partly because they have leaped too hastily to the conclusion that monopolistic competition resembles monopoly in tending to induce bureaucratic sloth —a proposition which does not necessarily follow from economists' demonstrations that monopolistic competition closely resembles monopoly in substituting administered prices for market prices. Their attempt to correlate the conclusions of writers like Berle and Means about ownership and control and those of writers like Edward Chamberlain about competition with problems of bureaucracy is worth while; but it is useful for its suggestion of problems for further study, rather than because the authors' own explorations in that particular direction have led to any important discoveries.

The authors stand on much firmer ground in comparing business with government, for, in using materials about governmental organization to illuminate problems of business organization, they are drawing on their own knowledge as experts. Their study makes it clear that most of the problems of business administration, like most of the problems of public administration, result from the difficulties which confront the administrator by reason of the size and complexity of the organization which he is attempting to manage. The need for maintaining a nice balance between the chaos of unlimited discretion and the red tape and rigidity which result from blind adherence to an elaborate code of rules and the difficulty of maintaining such balance are as characteristic of big business as of big government. The techniques which are available to the administrator for minimizing these difficulties—techniques which will enable him to delegate discretion and to devise effective methods of checking up on the manner in which it is being used and enable him, in addition, to formulate rules which will sufficiently systematize operations without at the same time forcing superficially similar but fundamentally unlike cases into the same Procrustean bed—are substantially identical for government and for business. The personnel problems which confront the corporation and the government bureau are fundamentally alike, even though the external pressures which compel the public administrator to adopt certain personnel policies are somewhat different from those to which the corporate executive is subjected. All this Messrs. Dimock and Hyde have convincingly demonstrated.

But there is another aspect of governmental administration which needs to be considered before any comparison between public and private administration can be regarded as complete. The public administrator, particularly the administrator who presides over a regulatory body, such as the ICC or the SEC, is subject to a special type of pressure to administer by rule rather than by permitting himself or his subordinates to exercise broad discretionary powers. An administrative agency whose function is to carry out a legislatively declared policy of interfering with the desire of the citizen to do as he pleases is subject not only to statutory restrictions on the procedures which it may adopt but to more generalized limitations arising out of the conceptions of justice which are implicit in such phrases as due process and equal protection of the laws. On the other hand, dealings between business enterprises and their customers are conducted, in the main, on a basis of bargain, with no legal compulsion to establish rules or standards that are designed to assure that all comers will be treated alike under similar circumstances.

A public administrator who exercised his licensing power over laundries in the discriminatory manner of the Board of Supervisors of San Francisco of a half-century ago would meet with stern judicial reproof based on the high principle that what is sauce for John Doe must be sauce for Yick Wo as well.[2] The managers of a washing machine company are under no similar legal duty to justify any unequal treatment of laundries in which they may choose to indulge.[3] "A government of laws and not of men" is not an ideal with which corporate business need concern itself in its dealings with its customers. Governments make and enforce laws; business makes bargains. The distinction may seem unreal to one who is blacklisted by a business enterprise which is his only available source of supply, but for the most part the law declines to view his protests as legally well-grounded.

No doubt there are many reasons which make it impracticable for a large business organization, particularly one which deals in consumers' goods, to adopt sales policies which closely resemble the haggling of a merchant in an Oriental bazaar. It is nevertheless true that one has not fully explored the extent to which the business and the government administrator are under similar pressures to establish a system of rules until he has considered how far governmental agencies are subject in their dealings with the public to obligations from which business enterprises are, for the most part, immune.

What has just been said is not intended as a criticism of Monograph No. 11. Its subject is business, not business and government. Governmental analogies are employed merely for the light which they shed on problems of business management, and an inquiry into the extent to which the public administrator is subject to certain legal restrictions from which the business administrator is free would have had little value in illuminating our understanding of the problems of business administration. It is intended rather as a suggestion that the question is appropriate for consideration in some future comparative study of public and private administration than as an intimation that Messrs. Dimock and Hyde's analysis of corporate bureaucracy is injuriously affected by their failure to examine matters which they could reasonably regard as having but little relation to their objective.

As I have indicated above, the authors' diagnosis of the nature and defects of corporate bureaucracy is followed by a consideration of methods by which those defects could be remedied or ameliorated. The proposals which they make are of a hortatory rather than of a regulatory nature. No legislation or governmental action is advocated apart from the suggestion that the Department of Commerce might "establish a unit to study problems of administration and to give expert advice and aid to executives who ask for it." The tacit assumption is that the controlling forces in giant corporations—whether they be dominant shareholders or chief executives—have an interest in eliminating the bureaucratic evils described and need only to be properly advised as to what reform measures to adopt. With respect to the problems of bureaucracy, as distinct from those of trusteeship, the assumption seems, for the most part, a justifiable one. Where executive management is subject to effective shareholder control, it is under pressure to reduce inefficiencies which have the effect of diminishing profits. Where, as is frequently the case, it is largely independent of

[2] Yick Wo v. Hopkins, 118 U.S. 356 (1886).

[3] The Robinson-Patman Act, 49 Stat. 1526 (1936), 15 U.S.C.A. §§ 13, 13a, 13b, 21a (1941), does, of course, restrict the legal right of sellers who are engaged in interstate commerce to indulge in price discrimination. That act is not, however, based on any theory that customers are entitled to equality of treatment, but on the theory that price discriminations are objectionable because they tend to encourage monopoly. Public utility rate regulations and wartime price control are in a different category.

shareholder control and its own security holdings are negligible in amount, it can, if it chooses, afford to be indifferent to bureaucratic wastes so long as the effect on earnings is not so serious as to threaten the enterprise with disaster. But even managers who are so situated are likely to be men who desire power, glory, and the satisfaction which is derived from achievement. And whether the achievement which they most desire be maximum output, superiority of product, or maximum profits—whether, for example, they conceive "the world's greatest newspaper" in terms of circulation, qualitative preeminence, or net income—bureaucratic inefficiency in the hierarchy of which they are the directing heads will tend to frustrate the attainment of their objectives.

It is quite otherwise with respect to trusteeship, which is the subject of the last part of the monograph. Tell a corporate manager that, owing to faulty administrative methods, his subordinates are not carrying out his policies effectively, and he will be impressed and interested—if you can prove your case. But tell him that he is not himself living up to his obligations of trusteeship and that he ought to do better even though no adequate machinery may exist for compelling him to do so, and his answer —if his conscience is an elastic one—may quite reasonably be, "Why should I?"

Moreover, for whom are corporate managers trustees? The authors, without much discussion, assume the validity of the statement that the managers are trustees not only for the shareholders, but also for labor and for the public, particularly the public in its capacity as consumer. This conception of the managers' position should appeal strongly to those who both recognize and approve of the fact that, at least until 1933, the managers of big business were the dominant group in our modern American society. In any society which deserves to be called a civilization, power implies responsibility. One who accepts as right and proper a state of affairs in which corporate executives are vested with enormous power to affect the lives of laborers and consumers is thus morally bound to insist that the managers have responsibilities toward the members of these groups.

In the spring of 1932, at a time when the Government of the United States seemed practically to have abdicated when face to face with an economic crisis of devastating character and to have left the task of bringing about recovery to our business leaders, I was rash enough to suggest that our law of business corporations, although traditionally based on the theory that the function of business managers is to maximize profits for the benefit of shareholders, might develop a broader view which would make the proposition that corporate managers are, to some extent, trustees for labor and for the consumer more than meaningless rhetoric.[4] The legal difficulties which were involved were clear enough, as Mr. A. A. Berle was quick to point out.[5]

The events of the last ten years have weakened the argument that large corporations represent what Mr. Berle has called "industrial government" and that we should accept that situation and seek to find methods for making the governors accept responsibility with respect to the governed. It was not to industrial government, as represented by corporate managers, but to political government that the nation looked for leadership when the acute depression of 1932 became the crisis of March, 1933. Since that time, the implementing of the obligations of business toward labor has

[4] Dodd, For Whom Are Corporate Managers Trustees?, 45 Harv. L. Rev. 1145 (1932).

[5] Berle, For Whom Corporate Managers Are Trustees: A Note, 45 Harv. L. Rev. 1365 (1932); cf. Berle and Means, The Modern Corporation and Private Property bk. 4 (1932).

been accomplished by means other than treating business managers as in some measure fiduciaries for their employees. It has been accomplished in part by granting labor certain specific statutory rights which business corporations and their managers are bound to respect, and in part by encouraging labor to organize so that it may bargain with management on something like equal terms.

The social philosophy which is inherent in such legislation as minimum wage laws may, indeed, be broadly described as a philosophy of trusteeship in that such legislation treats the laborer as one who is equitably entitled to at least a certain minimum share in the receipts of business enterprise. But, legally and practically, there is a wide difference between the fiduciary obligation which a trustee owes to a beneficiary—the obligation to administer the trust fund so as to secure to the latter the largest possible return which is consistent with safety—and the obligation which the modern corporation and its managers owe to labor—the obligation to give recognition to certain specific claims which are accorded to labor by modern legislation. If corporate managers should concede that a certain suggested course of action would increase both short-term and long-term earnings available to shareholders, that it would have no tendency to produce the sort of unfavorable public reaction which might injure the corporation as a money-making enterprise, and that it would neither violate any rule of law nor the contract rights of any person, including those of the managers themselves, the managers ought, according to orthodox trusteeship principles, to pursue that course of action in the interest of the shareholders. But there is no similar legal duty to pursue a course of action which would enable the corporation to benefit its employees by raising wages.

Trusteeship for consumers is no less a misnomer than trusteeship for employees. Consumers have, to be sure, in the last decade acquired a number of new legal rights, which now, in this time of war-induced scarcity, include, in the case of certain commodities, the right not to be charged more than a governmentally fixed price by any seller, large or small, corporate or individual. Labor and the consuming public have thus strengthened their legal position as against business enterprises, but to call the relationship thus created a trust is, to lawyers, to indulge in as misleading a metaphor as the now discredited thesis that corporate capital is a trust fund for creditors.

But Monograph No. 11 is not a legal treatise, and its authors are justified, for their purposes, in referring to the obligations which managers or the enterprises which they direct owe to labor and to the public as coming within the scope of what may be loosely called trusteeship. From their standpoint, the question is not one of terminology but of the obligations which are or should be imposed on management to give heed to the interests of shareholders, of laborers, and of consumers, and of the extent to which the authors' administrative proposals for implementing those obligations are desirable and practicable.

Messrs. Dimock and Hyde, like many other critics of our current directorial mores, are convinced that the trusteeship of directors would be lived up to more effectively in practice if corporations had persons other than officers on their boards, if no individual held more than a fixed maximum of directorships, and if directors were paid and were expected to earn their pay. Their hope that it may be possible to secure these results by adequate publicity seems overly optimistic. They make little attempt to explore the question of how and at whose instigation officer boards, multiple directorships, and inactive directorships have come to pass and whether those who are responsible for their prevalence are likely to be moved by exhortation or publicity. In fact, they reveal their own doubts by suggesting that, if exhortation fail, federal legislation be enacted to compel corporations engaged in interstate commerce to elect a certain number of non-officer directors, to limit the number of directorships which one person may hold, and to enhance, in some unspecified way, the shareholders' privilege of electing directors. Such legislation might be useful, but it would have little effect on the central problem of trusteeship, which—speaking now of trusteeship for shareholders—is the difficulty of finding effective legal controls for implementing the obligations of men in possession and control toward absentee owners who are their theoretical masters.

Less tentatively, and without waiting for the results of a preliminary hortatory effort by the committee, the authors recommend that Congress enact legislation requiring corporations engaged in interstate commerce to furnish their shareholders with data on their directors, including qualifications, other directorships held, and attendance at board meetings; that such corporations also make public information about certain items, including wage rates; that the Bureau of Standards conduct comprehensive tests on products and make public the results; and that the standards of the accounting profession be improved.

The first suggestion goes somewhat beyond the requirements of the proxy rules of the SEC, which are now applicable to cases in which shareholders are asked to authorize proxy holders to reelect members of the existing board. Since small shareholders in large corporations rarely have any practicable alternative to reelecting the present board if the controlling group desires such reelection, the value of the proposal that they be given such additional information is somewhat limited. In what amounts to a one-party election, information given to the electors about the official party candidates is of little use in enabling them to reject the candidates. A requirement of publicity as to such matters as attendance of directors at meetings might, however, have considerable tendency to bring the inactive directorship into disrepute despite the fact that such directors could not easily be retired if the dominant management group should choose to insert their names in the proxies as candidates for reelection. There would seem to be no doubt that, in the case of corporations whose shares are registered on an exchange, the SEC could compel the disclosure of such information by an amendment to its present proxy rules. The accounting problem, also, is one that the commission can deal with effectively, as it is now doing.

The proposed publication of information about wages, on the other hand, is foreign to the commission's duties as the guardian of the interests of investors and is linked up with the authors' theory of management's trusteeship for labor. There would seem to be little merit in the authors' suggestion that such information would disclose employment opportunities to workers, for a corporation which needs workers and is prepared to pay them well will, as a matter of self-interest, reveal enough of the facts to acquaint prospective workers with the situation. The proposal would, as the authors remark, "shine the white light of publicity upon the substandard employer," but it may be questioned whether the result would be an unmixed blessing. Many employers pay substandard wages because the receipts from the business are substandard, and their employees often knowingly accept the situation rather than make demands which might, if granted, force the employer into bankruptcy. In such a situation, it is doubtful whether anyone would gain by publication of the facts.

A further suggestion is that the Bureau of Standards or some similar body make and publish tests of the quality of the products made by each manufacturer. This is the only concrete proposal which is designed to implement the theory of trusteeship for consumers. The suggestion is interesting, but the difficulties which would be involved in any attempt to put it into effect are much greater than the authors recognize.

The fact that it is only in the field of trusteeship, as distinct from that of bureaucracy, that Messrs. Dimock and Hyde suggest legislative measures makes the trusteeship portion of their monograph of somewhat greater professional interest to lawyers than the bureaucracy part. The trusteeship proposals are, however, for the most part, either relatively unimportant or, like the Bureau of Standards suggestion, too foreign to the primary subject of the authors' research to gain any strength from their studies. The bureaucracy portion of the monograph, on the other hand, is a substantial contribution to our knowledge of the internal organization of the giant corporation, of the problems to which the inevitable complexity of that organization gives rise, and of the methods by which defects that are characteristic of corporate administration may be minimized, insofar as those human beings within the corporation who have power to introduce administrative reforms have sufficient incentive to adopt the role of reformers.

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Federal Estate and Gift Taxation. Vols. 1 and 2. By Randolph E. Paul.* Boston: Little, Brown & Co., 1942. Pp. xx, 818; x, 819–1615. $20.00.

Statutory subjects are the delight of publishers of services, and the despair of authors. The sections of the statute provide not only a ready-made outline, but a series of neat pegs on which to hang digests of interpretative cases. Annual revisions of the statute and daily accretions of new cases only make the service indispensable and require regular new editions. The volume of digests may become tremendous (and has, in the field of federal taxation); but that is primarily the reader's problem. If he is to specialize in this field, he ought to be a tough fellow, and to have grown up with the subject, so that he knows by experience and instinct the little variations in successive acts and in successive courts; why a decision in 1933 by Mr. Justice Cardozo is a good precedent;[1] a decision by Mr. Justice Sutherland in 1932 is a doubtful one;[2] and a decision by Mr. Justice Sutherland in 1935 is not to be relied on at all.[3] Authors who have wished to interpret the principal federal taxes, however, and not merely to digest decisions, are plagued not only by the complexity of the subject—the number and the range of statutes and decisions—but by the amount of good, honest, legal reasoning and analysis that can be devoted to each of the great number of important topics The desire to be thorough has led to a recent flow of essays and studies and law review articles, rather than to an integrated consideration of some tax in all its various as-

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1 Burnet v. Guggenheim, 288 U.S. 280 (1933).

2 Heiner v. Donnan, 285 U.S. 312 (1932).

3 Helvering v. St. Louis Union Trust Co., 296 U.S. 39 (1935), overruled in Helvering v. Hallock, 309 U.S. 106 (1940).