

LAW AND CONTEMPORARY PROBLEMS

VOLUME 24

WINTER, 1959

NUMBER I

FOREWORD

Americans have been troubled for several decades about—to use Justice Brandeis' phrase—the “curse of bigness.” Even though the onrush of technology has made it necessary to rely on the very biggest concerns for achievement of certain objectives, such as the production of steel or of intercontinental ballistic missiles, the United States remains committed to the premise that small business has a unique and indispensable role in our society. Reaffirmation of this commitment is evidenced by the permanency recently granted to the Small Business Administration, by establishment of Small Business Committees in both houses of Congress, and by enactment last summer of several laws intended to provide tax relief and new sources of credit for small business.

No extensive justification need be attempted here for a policy that seeks to preserve small business. Often, the existence of small business fosters vigorous economic and intellectual competition, which has, in the past, often engendered significant progress. Many instances could be recited of small firms that became the vehicles for new and successful ideas. Moreover, the ownership of one's own business—like the extensive home ownership that has been encouraged in this country—may yield benefits in terms of an enhanced initiative and responsibility, sometimes less attainable by mere employees, however well-paid. The increased responsibility may, in turn, result in a net gain in economic efficiency. In the political realm, the danger to democracy that ensues when economic power is concentrated in the hands of a few persons, be they a few big businessmen or a few labor leaders, is well understood.

The significance of small business induced *Law and Contemporary Problems* to publish a symposium in this field in 1945. Financing the small entrepreneur, which was the focal problem of that symposium, is, of course, re-examined in the following pages. To what extent, it is inquired, is smallness a disadvantage when either long-term financing or working capital is being sought? When is aid from the federal government or from state or local agencies available to rectify any such disadvantage?

Tax considerations must also loom large in the small businessman's calculations. For instance, in determining what equipment to purchase, he must consider what depreciation he can write off for tax purposes. Sometimes the very complexity of

the Internal Revenue Code and of state tax legislation may leave him frustrated and envious of the large concern that can afford the services of expensive tax consultants. Sometimes, on the other hand, the complexity of the tax structure may aid him by providing a lure with which to attract investors who either may be seeking a long-term capital gain in a small "growth corporation" or, by virtue of the latest tax revisions, may consider that an unsuccessful investment in a small corporation is hedged in advance by the privilege of taking an ordinary, rather than a capital, loss.

Perhaps it is merely another aspect of what one prominent personage has denominated "creeping socialism," but the small entrepreneur must cope with government on several fronts besides taxation. With defense expenditures so prominent in the national budget, he must determine how to get a share in military production or research and development contracts—a task made all the more difficult by the increasing use of the weapon-system concept in procurement. Regulatory commissions and agencies, too, must frequently be confronted—either to obtain franchises and licenses or to seek governmental aid in resisting questionable practices employed by large competitors.

The small business may lack the resources to survive lengthy and expensive proceedings before a regulatory commission or a protracted strike by its employees. Often, it will not have the wherewithal for obtaining expensive machinery or personnel requisite for effective competition in some industries. Whether these and other factors have actually resulted in a trend towards greater economic concentration in the United States and other countries is a question that economists have hotly debated. Controversy also rages as to whether small business can improve its position substantially either through self-help, in the form especially of co-operatives, or through further governmental assistance, which inevitably raises the specter of possible governmental control.

The present symposium is projected against a backdrop of timeliness—indeed, of urgency. Accordingly, it is hoped that the ideas here ventilated will provoke discussion and thereby, perhaps, prove helpful in clarifying, and even facilitating the solution of, some of the problems presently confronting small business.

ROBINSON O. EVERETT