THE MODERN CORPORATION AS ANALYZED BY ADOLPH A. BERLE: A CRITIQUE

by

ROBERT ERWIN PAULUS

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TABLE OF CONTENTS

Chapter

I. INTRODUCTION 1

Subject of Thesis
Adolph A. Berle, Jr.
Construction of Thesis

II. AN OVERVIEW OF BERLE'S ANALYSIS OF THE MODERN CORPORATION SOCIETY 6

The Modern Corporation and Private Property
Definition of Property
Revolution in Property
The Problem of Control
In Summation

III. THE ECONOMIC SYSTEM AND THE MODERN CORPORATION 21

The Economic System as Means and Not End
The Corporation as an Economic Institution
The Corporation as a Quasi-Political Institution
The Rise of Concentrates, Trusts, and Other Financial Institutions
Economic Power of Corporations and Its Significance
Ideology of Corporate Managers
Need for Continuing Economic Growth
In Summation

IV. CORPORATIONS AND THEIR INVOLVEMENT IN SOCIAL ACTION 46

Need for a Value System
Transcendental Margin
State Planning and the Corporation as a Social Tool

V. GOVERNMENT AND CONTROL OF THE CORPORATIONS 58

A New Concept of the Corporation
Restraints and Balances on the Corporation
Suggested Revisions
In Summation

VI. CONCLUSIONS AND AFTERTHOUGHTS 75

Afterthoughts
Adolph Berle As Scholar
Conclusions

BIBLIOGRAPHY 84

CHAPTER I

INTRODUCTION

Subject of thesis.--The subject of this thesis is a study and analysis of the modern corporation and its place in society, as seen through the works of Adolph A. Berle, Jr. Because of the vastness of the problem of the modern corporation, it was determined that a smaller assault on the problem would result from limiting the study to the works on one person who had studied the problem. Such a person was seen in Adolph A. Berle. The focus of this thesis, then, was the problem of the modern corporation as seen through the eyes and writings of Berle. While both Berle and the modern corporation will be critiqued, the primary emphasis was on criticizing Berle's analysis of the modern corporation.

Berle's seven major works in the area of corporations were chosen to supply the majority of information. Other material was considered and consulted, but it was determined that Berle's works, when considered more or less as a whole, were worthy of being examined in themselves. In choosing this topic, it was realized that a narrower field had to be delimited to make the material more readily useable for analysis. It was decided that after a presentation of the overall view Berle held of corporations and their place in and impact on society, two important questions would be given a closer examination, analysis, and critique. These specific questions are discussed later in this chapter.

In discussing this thesis and its subject matter with various students of political science, two questions were often raised. The first

question was why do a thesis on the works of Adolph Berle? What value is there in centering your work on the works of one man instead of tackling a complex subject area which would allow you to more freely discuss and project your personal political views? The second and perhaps most frequent question was who is Adolph Berle?

The replies to both questions were very similar. Berle (along with his first co-author, Gardiner Means) was one of the first political thinkers to recognize many of the new problems which were to arise as a result of the changes in the structure of the American economy. His prime concern was whether or not the American economy would adjust itself to the economic revolution wrought by the increasing presence of the corporation. Berle foresaw that the impact on society through the changes in the economic structure would be great, and that the prime mover for these changes would be the corporate movement. The titles of four of his most important works in the area of corporate studies and the economy, The Modern Corporation and Private Property (1932, with Gardiner C. Means), The Twentieth Century Capitalist Revolution (1954), Power Without Property (1959), and The American Economic Republic (1963), show his academic concern with this problem area.

The modern corporation as an institution in American society is drawing more concern from the academic and political circles than it ever has in its past. Thanks to the work and publicity focused on corporations by people such as Ralph Nader and columnist Jack Anderson, the public is becoming more aware of the influence of the giant corporations. This public concern is paralleled by studies made in the academic world which point out the need for more controls, more regulation, and more understanding of the relationship between the economy and the society as a whole. It is

expected that this topic will become more central to political studies and discussions in order to clarify the problems, the concerns, and possibly the guidelines for governmental action in properly aligning the corporate structure within society.

Adolph A. Berle, Jr.--Adolph A. Berle, Jr. was born in 1895 in Boston, Massachusetts. His father was a prominent Congregational clergyman who had contributed to the early American efforts to adjust Protestantism to the new urban and industrial problems and realities of American life. Adolph Senior was a strong believer in the responsibility of the parents to provide a rigorous and early education in the home. As a result of his father's efforts and successes, Adolph Jr. entered Harvard University at the tender age of fourteen and received three degrees, including the LL.B., by his twenty-first birthday.[1] Adolph Jr. served as a professor of corporate law at Columbia University and also as a member of Franklin D. Roosevelt's "brain trust." During his career, Adolph Jr. held several positions in the Federal Government, including Assistant Secretary of State and United States Ambassador to Brazil.[2] His career often led Adolph Jr. to serve on the boards of various corporations and to intermingle with others in his profession who were intimately concerned with corporations, either through a practical angle or an academic one. The fruits of Berle's experiences, his thoughts, prescriptions, and fears form a body of seminal thought which provide the scholar interested in this field a jumping-off point for intensive analysis.

In summation, then, Adolph Berle was recognized an important figure

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[1]Richard S. Kirkendall, "A. A. Berle, Jr. Student of the Corporation, 1917-1932," Business History Review, 35 (Spring, 1961), 43.

[2]Who's Who In America (Chicago: Marquis Who's Who Inc.), p. 168.

in the study of the corporation as a political problem. While not all political writers recognized Berle as being so prominent an authority or source in this area, it was the contention of many that he will eventually be a central figure of study by political scientists interested in the study of the place of the modern corporation in the American economic republic.

Construction of thesis.--Berle as seminal thinker, his views, ideas, theories, prognostications, and prescriptions concerning the rise, power, usefulness, and place of the modern corporation were the interest areas of this thesis. While a substantial part of the thesis was dedicated to knitting together an overview of Berle's thoughts and tracing some of his basic themes, along with discussion and analysis, a sizeable portion was directed toward a more in-depth study of two questions which Berle never completely answered but which did play an important role in his considerations of the modern corporation. The first question was should corporations be involved in social action, that is, action directed not primarily at reaping a profit for the corporation but toward promoting the general welfare as seen by the corporation? This question revolved around the notion that corporations have a civic responsibility other than bearing their fair share of taxes which should be met by some form of social action, the cost of which is usually tax deductible. If the notion that corporations are to be involved in social action is accepted, a corollary is how should the corporation decide what social action is desirable? Will a public committee be set up to decide or advise, will the corporation turn to the government for direction, or will the corporation go ahead with that social action they see to be in the best interest of the community?

The second question was in what ways, if any, is the federal

government responsible for the overall control of the actions of the corporation? In several of his works Adolph Berle developed a theme which recommended that a constitutional amendment be adopted which would provide direction for the handling of economic power as represented by the modern corporation. This question required a careful examination of the relationship between corporation and government, between the economic sector of society and society as a whole. It represented the ultimate question of who is to dominate the society, the elected and representative government or the modern corporation.

The material which was examined for inclusion in the above outline was found, as mentioned earlier, in the seven major works of Adolph Berle's corporation studies. By carefully examining the major works in chronological order, it was possible to determine the rise and fall of the trends of Berle's thoughts and the development of various ideas which are key to his overall analysis. By attempting to weave his thoughts together into a picture of his whole theory concerning the modern corporation, inconsistencies and blind spots in his thoughts and works became visible. These too were highlighted in various areas of the analysis contained in the thesis. The mode of analysis, then, was to follow Berle in his discovery of the problems raised by the presence of the giant corporations and to raise pertinent questions and point to obvious failings during the course of his description of what actions, laws, and societal changes are necessary to fully allow the American corporation to produce all that it possibly can and at the same time to allow the American people to become the beneficiaries of the increase in produced and distributable real wealth.

CHAPTER II

AN OVERVIEW OF BERLE'S ANALYSIS OF THE MODERN CORPORATION IN SOCIETY[1]

Adolph Berle's basic analysis of the modern corporation can be readily divided into two parts: the first part is primarily theoretical and the second part is primarily concerned with the practical applications of the inferences found in the theoretical discussion. The first part of the analysis has to do with, as Berle termed it, the "revolution in property." This part of the analysis, discussed in the next section of this chapter, concerned itself with discussing the problem of defining property in the modern context. Berle was one of the early students of property who first discussed the implications involved in the separation of ownership of property from control of property. His analysis went into the problem of control of property, primarily talking about active or producing property as opposed to passive property, although later in his writings he began to consider the importance of controlling capital and other forms of passive property.

The second part of his analysis investigated the effects this "revolution in property" had upon the economic system and society in general. Berle recognized the place the corporate system occupied in the economy, and went into the implications caused by the prominence of the

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[1]This and the following chapter are synthesized presentations of Berle's analysis of the modern corporation. All critical comments are his, and not the writer's.

corporate system for the society and the governing powers. The second part of the analysis considered the corporation not only as an economic institution, but also as a political one. His views and findings also led Berle into a study of power and the need for understanding the power held by the various institutions in the American society. This second part of the analysis was discussed in the next chapter.

The Modern Corporation and Private Property.--The title of this monumental work by Adolph A. Berle and Gardiner C. Means accurately depicted the subject matter. The book was a study of the relation which corporations bear to property.[1] With that as a starting point, the book continued to cover the problem of the relationship which the corporation will ultimately bear to the state. Any study of Berle's analysis of property must begin with this volume.

> Despite the contributory work of earlier writers, this book had an authoritative character as a legal and economic analysis of the large, publicly held, corporations. It comprehensively documented the evolution and significance of the separation of ownership and control. In doing so, it brought together the legal and financial aspects, the available statistics, and the resulting theoretical problems for law and economics. The study emphasized the implications of the "public" corporation for the institution and the theory of private property and concluded by posing basic issues concerning the internal government and the public regulation of corporations.[2]

This landmark study was received as a summation of all known knowledge in the field at that time, as well as a bold attempt to push the frontier of knowledge further back. By use of the empirical method, the study was able to demonstrate the correctness of Berle's and Means'

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[1]Adolph A. Berle, and Gardiner C. Means, The Modern Corporation and Private Property (New York: Harcourt, Brace and World, Inc., 1932) p. xli.

[2]Forest G. Hill, "Veblen, Berle, and the Modern Corporation," American Journal of Economics and Sociology, 26 (July, 1967), 288.

statements.

Berle and Means did not condemn the passing of large amounts of power into the hands of the corporations' managers. They accepted that fact as inevitable, if not totally desirable and to be expected. The problem for the modern corporation, as seen by Berle and Means, was for the corporations to recognize the need to institutionalize methods of effectively restraining the use of corporate power by the managers so that external restraints would not be utilized by the Federal Government. In other words, Berle and Means preferred that internal restraints be made rather than external legal restraints.[1]

To properly understand this preference for internal restraints, one must realize that Berle and Means viewed the corporation as a limited but largely autonomous unit of private government, capable of legislating its own affairs.[2] This statement requires the student to project the corporation, as a private government, into the framework of a federal constitution wherein the problems of power and restraint of power are handled on the most local level possible, thus preventing some faraway source of power from being required to interfere into local problems. A viewpoint such as Berle's and Mean's requires the use of political analogies and the view that corporations are in actuality governmental units. This is a hypothesis to be treated in more detail later in this work.

The power which corporation managers' are able to control is a result of the immense amount of private property which the corporations have accumulated. This property, which is under the control of managers and not owners, was the basis of the Berle and Means study. These authors gave

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[1] Ibid., 289. [2] Ibid., 291.

central attention to the separation of ownership and management, thereby pointing up problems of managerial responsibility and public policy in the case of large corporations with widely diffused ownership and self-perpetuating managements.[1] Having given proper recognition to the starting point of this study, it was requisite that the study continue to a more detailed exploration of Berle's views on the "revolution in property", the definition of property and its attributes, and the problems involved in control when these attributes are in the hands of different people.

Definition of property.--Producing a strict, clear, precise, comprehensive definition of property appeared to be an easy task until it was attempted. When one studies property and its attributes, one begins to respect a little more the difficulty Berle had in matching any definition of property with reality. From a sociological viewpoint, property would be considered as anything which one actually, physically, possessed and were therefore able to ultimately control the actions thereof.[2] A primitive "owning" a spear produced by the tribal spear-makers would be a case in point. Undoubtedly the materials and labor were communally gathered and shared, but upon selecting a freshly made spear, "ownership" was clearly designated and passed into the hands of a single individual. Unfortunately for today's scholars and lawyers, "property" is more difficult to delimit. "Property is a word so broad as to include almost every definable fragment of value capable of being transferred."[3] "Every fragment of value" would

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[1]Ibid., 280.

[2]Michael D. Reagan, The Managed Economy (New York: Oxford University Press, 1963) p. 41.

[3]Berle and Means, Modern Corporation, p. 222.

necessarily have to include not only physical things but also those intangible "things" such as mathematical formulae or brilliant ideas which are so often the target of duplication or imitation in the world's markets.

In his introduction to The Modern Corporation and Private Property, Adolph Berle discussed the legal definition of property:

> Lawyers are accustomed to conceiving of property in terms of ancient classification. If tangible, it was real - land or rights derived from land; or it was "personal" - mobile, capable of being used, taken away, moved, transferred and so forth by its owners. If intangible, it was a "chose - in-action" - a claim on or against other individuals or entities capable of being enforced or protected in the courts. Some of this was "negotiable," passing under the law-merchants or adaptations thereof. The proprietas (the relation of the individual or owner to this property-real, personal or claims) was assumed to be fixed.[1]

The problem, as Berle knew so well, was that in terms of the modern corporation and in terms of modern forms of wealth, the proprietas was not fixed, at least, it was not always fixed in one individual. For the solution of this problem, the ancient classification system provided no answers.

Attributes of property and ownership.--There are two basic attributes of ownership which may help in reaching a better understanding of property. The first is risking collective wealth in a profit-seeking enterprise; the second is having ultimate management responsibility for that enterprise.[2] It was the divorce of these two attributes which required a more precise definition of property. This divorce was also responsible for requiring the American economic system to adopt a new form of economic organization of society.

Paralleling the two basic attributes of ownership, there are two basic sets of attributes in property, theoretically considered. In

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[1] Ibid., p. xi. [2] Ibid., p. viii.

considering property according to the first set, it is seen as being a medium for creation, production, and development. In considering property according to the second set, it is seen as offering the possibility for reception, enjoyment, and consumption.[1]

As in the two attributes of ownership, the two sets of attributes of property are also found to be divorced from each other in the modern economic system. The risk-taking owners are the ones who are offered and who receive enjoyment and consumption from their property as a result of their successful risk-taking venture. The possessors of ultimate management of property (more commonly called "managers" than "owners", even though from a sociological viewpoint they do qualify as "owners") are the ones who utilize property as a medium for creation, production, and development.

"The twentieth-century corporation has proven to be the great instrumentality by which these two groups of property attributes have been separated one from another."[2] Corporations, which began their history as privately owned organizations are now, in the majority of cases, "public" corporations which concentrate the investments and wealth of a great number of people into the hands of a management which is barely responsible to the "owners" for more than a fair return on their investment. The "owners" from a traditional, historic viewpoint, are virtually powerless to control their property and therefore lack one of the two basic attributes of property. The corporate managers, who at one time were solely the hirelings of the owners of the corporation, have now evolved into possessors of one-half of the basic attributes of property.

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[1]Adolph A. Berle, The Twentieth Century Capitalist Revolution (New York: Harcourt, Brace and Co., 1954) p. 29.

[2]Ibid., p. 30.

The problem is clearly one which calls for more definite legal distinctions and definitions so as to clarify the positions of the owners in relation to their property and the position of the managers in relation to the property they control and the position of the owners vis à vis the managers. These relationships and the problem of control were further investigated in the next two sections.

Revolution in property.--The need for further distinctions and more precision in the definition of property came about as a result of what Berle termed the "revolution in property." "Property, in its ultimate sense, has been diffused. The power element has been separated from it and has been concentrated in a relatively few hands. This combination of events is more than shifting of papers, more important than mere change in stockholdings. It is the evolution of a new social-economic structure."[1] This diffusion of property took place in the "revolution", which resulted from the "going public" of the major corporations. It is necessary to note that an enormous expansion of the scope of the term "property" has taken place as a result of the revolution. Not only is property divorced from the decision-making power of its supposed owners (holders of stocks of the corporations), but it has come to encompass a set of conceptions which previously were not considered to be property, such as an organization, its personnel, employee relations, customer relations, connections with various suppliers of raw materials, and other concepts which today are extremely valuable to business.[2]

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[1]Adolph A. Berle, Power Without Property (New York: Harcourt, Brace and Co., 1959) p. 54.

[2]Berle and Means, Modern Corporation, p. xii.

Major results of the revolution.--One major result of the "revolution" is that society is once again straying from a physical property base. Historically speaking, the base of society has more often not been based on physical property than it has been. Often society has been based upon such intangible ideas as allegiance to a person, usually a king, emperor, or slave owner, or allegiance to a living unit, such as a nomadic tribe or a tribe of gleaners. The rise of capitalism brought with it physical property as a base for society. Society and one's position within the capitalistic society was determined not so much by what you knew or who you were (in an honorific sense) as by what you owned or what you sold.[1] Today, however, physical property as a base for society has almost completely disappeared from the United States. The largest item of personally owned "property" is no longer physical assets such as land or corporations, but rather it is productive assets in the form of stocks of corporations. Individually owned enterprise, once the base of the individual's status in society, has almost completely disappeared.[2] Today, a person's relationship with his employer, his government, and so on is the basis of society.

A second major result of the "revolution" is the ever increasing

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[1]Adolph A. Berle, "High Finance: Master or Servant," Yale Review, 23 (September, 1933), 20.

[2]At the end of 1963, individually owned wealth totalled more than $1,800 billion. It was distributed thusly:

owner-occupied homes:	$520 billion	
consumer durables:	$210 billion	
productive assets:	$525 billion:	shares of corporation stocks
	$210 billion:	fixed income, financial assets-government securities, life insurance values, etc.
	$360 billion:	liquid assets--chiefly cash in banks

(Berle and Means, Modern Corporation, 1968 Revised Edition, p.x.)

dispersion of wealth. In Adolph Berle's eyes, this was one of the most significant events of the twentieth-century. This important phenomenan for which the rise of the corporate system must take the responsibility is "the splitting of property" into two levels. The

> new system simultaneously permits accumulation of physical property and widening dispersion of wealth . . . the wealth accumulated from these hundreds of billions of dollars' worth of aggregated plants, machines, assets, mines, materials, and so forth has been fragmented and represented by many billions of shares of stock. These shares have been increasingly (though still quite inadequately) disseminated throughout an entire population. There are some 26,000,000 shareholders in the United States in 1969; the number steadily grows. Few of us would endeavor to draw a picture of the distribution of wealth in the United States in the year 2000. Yet it is likely that the number of shareholders will approach, if it does not overpass, 60,000,000 and many millions more will share through devices of distribution such as pension funds.[1]

This is a revolutionary fact: most "owners" own stock, insurance savings, and pension claims, and do not manage their property. Most managers and corporate administrators do not own the property they manage. The corporate collective holds legal title to its tangible productive wealth for the benefit of others.[2]

Berle's thesis on property.--Berle suggested that the fundamental change is in the concept of proprietas, the relation of the individual or owner to his property. By taking this view, Berle was able to recommend a simplifying thesis in regard to property. He suggested that the concept "property" be divided into two categories: "(a) consumption property on the one hand, and (b) productive property on the other . . ."[3] As an adjunct to his thesis, Berle stated that productive property has been divided into two

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[1]Adolph A. Berle, Power (New York: Harcourt, Brace, and World, Inc., 1969) p. 169.

[2]Ibid., p. x. [3]Ibid., p. ix.

layers: "(1) that part which, although not managed by active owners, is administered to yield a return by way of interest . . . or distribution of profit, and (2) that layer dominated and controlled by the representatives or delegates of the passive owners, whose decisions are now subject to the political process . . ."[1] These two aspects, the managerial - productive (management) and passive-receptive (stock and security ownership) are the central elements in the revolution in property. They are the specific elements whose interactions (especially in the area of control and distribution of benefits) give rise to the problems of the social-economic system in America. Berle contended that it is the proprietas in regard to productive property, and the change in that proprietas, that has become subject to direction, made through the democratic process, and political determination.[2]

By emphasizing the split of the two aspects of productive property, one is able to more clearly and effectively apply the necessary directing pressure. Also, by widening the chasm between the two aspects of productive property, by institutionalizing this split and by protecting the various rights in the law books, lawyer Berle felt that governmental pressure would be more natural and more readily acceptable. By separating these two aspects, and by placing the management in a position where it expects and has to take general political directives as well as where the management feels more independent from the stockholders, the problem of control becomes less aggravated.

The problem of control.--The problem of control was discussed here more from a theoretical than a practical aspect. The practical problems and

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[1] Ibid., p. xii. [2] Ibid., p. ix.

their implications, which are extremely relevant to this thesis, were presented in a later chapter.

As a result of the rise of the modern corporate system, the stockholder has surrendered control over his invested wealth. He has become a supplier of capital, a risk-taker, while the ultimate control over his investment is vested in the directors of the organization in which he has invested. One traditional attribute of ownership is attached to the stock owner, the other is attached to those actually in control of the corporation.[1]

This split resulted in a condition in which the individual stockholder and his interests are made subservient to the will of the controlling group of managers, even though the basis of their control is the aggregated contributions of many individual stockholders. The pertinent legal doctrine, as defined by relevant court cases,[2] supports the doctrine that the judgment of the controlling group of managers must prevail in all instances except those times when the combined votes of the stockholders can replace the managers. This is tantamount to saying that in any given instance the interests of the individual investor must be sacrificed to the economic requirements of the enterprise as a whole; and this sacrifice must be, or at least in most instances usually is, based solely upon the combined wisdom and judgment of the board of managers.

> Passive property,-specifically, shares of stocks or bonds,-gives its possessors an interest in an enterprise but gives them practically no control over it, and involve no responsibility. Active property,-plant, goodwill, organization, and so forth which make up the actual

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[1] Ibid., p. 297.

[2] Ibid., p. 244. Cites the basic relevant decisions in the area of stockowner-board of director relationships.

> enterprise,-is controlled by individuals who, almost invariably, have only minor ownership interests in it . . .[1]

One aspect which further isolates the stock holder from active participation in the managing of his "property" is the increased distribution of shares of ownership. The more shares which are sold, the less influence any one owner is likely to have.

The productive, active nature of property is not derived from it being "owned" whether in physical or distant form. It is productive because it is managed, organized, and administered along coherent lines so as to change the resources to which it is applied. Thanks to the surrender by the wealth holder and thanks to the skills of the manager, exchangeable wealth is produced.[2] The interrelation between ownership of property and management of property is displayed by the fact that in spite of the complexity of the modern corporation, wealth is still produced.

Berle seemed to be saying that because ownership has become divorced from control of property that ownership has become unimportant. This view is one which reflects his legal and financial background. For him, power to make decisions and to control are the important aspects of ownership. From a sociological viewpoint, he who can dispose of or enjoy the property is an owner. This viewpoint modified Berle's by stressing the usefulness and possible pleasure the stockholder can derive from his investment. Insofar as the assets of the corporation itself are concerned, it is not the stockholders that can dispose of or enjoy them. Thus, it is true that stockholders have been removed from the intimacy of ownership of the corporations

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[1] Ibid., p. 304.

[2] Adolph A. Berle, The American Economic Republic (New York: Harcourt, Brace and World, Inc., 1963) p. 35.

and placed on a level where their claims to a share of the corporation's profits as dividends are almost equated to the legal demands a bondholder possesses.[1] The possession of stock certificates purchased by an exchange of wealth gives the stockholder his claim to enjoy or dispose of the dividends earned by his invested capital. The position of the board of directors gives them "ownership" (from a sociological viewpoint), meaning use and disposition of the industrial property in a very real, physical sense. It is this final area that is lacking clear definition in legal terminology. Legal terminology has not yet caught up with all the changes in the economic location of the various aspects of ownership.

Capital, control, and property.--"'Capital' is a basic concept in all economic systems. Never exactly defined, it includes that body of tangible and intangible goods set aside or used, not to satisfy current needs and wants, but to produce other goods and services."[2] This section was concerned with capital as an intangible item, principally as a form of investment.

Classical economists stress the important restraining influence over the control of a corporation available through the market mechanism of granting or not granting more capital through investment mechanisms. These economists stress the fact that capital is saved by individuals and invested along lines which are usually sound, or at least appear to be sound. Thus, if any corporation had a reputation for unsound actions or for making poor decisions, this would deny it any substantial sums of investment from the market. Capital investment as a form of control, or as a form of exerting

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[1]Reagan, Managed Economy, p. 42.

[2]Berle, Economic Republic, p. 60.

pressure by the owners, however, is in actuality a myth.

"Most capital, in the first half of the twentieth-century in America, ceased to be 'saved', at least consciously. It was conscripted."[1] By this statement, Berle was pointing to the fact that today most investment capital is internally or price generated. The greatest source for capital for the modern corporations is the price of goods. From the price the cost of production is paid, but there is also a charge for depreciation and for profit. Thirty to forty per cent of the profit and the depreciation allowance accumulates in the corporations' treasuries for use as capital for future investment. These accumulations remove the dependence of the corporation upon the market as a source of investment capital.

> Capital, it seems, now is formed less by individual choice of men and women than by requiring charges levied on the production of the economic machine, including the productive agencies of the political state. The change in source and in the place of accumulation is crucial.[2]

As the sources and places of capital accumulation change, power over its direction naturally changes. Control of new investments of the corporation is removed from any investigation and judgment other than the officers of the corporation. By isolating the capital-gathering process into the realm of the prices corporations charge, almost complete power of control is removed from all but the managers.

A slight shift in the power factor is presented by one additional source of capital. Approximately one-fifth of the capital needs of the corporations are met by the amount of bank credit made available through commercial banks.[3] This factor, especially when used to any degree by a corporation, usually results in a bank member being placed among the group

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[1] Ibid., p. 62. [2] Ibid., p. 64. [3] Ibid., p. 68.

exercising control and decision-making power. This can tend to affect the direction of the corporation, but the influence is not as great as expected by classical economists. The independence of action afforded to the corporations by their providing three-fifths of their own capital needs is growing each decade.

In summation.--In presenting this first part of an overview of Adolph Berle's analysis of the modern corporation in society, the theoretical aspects were investigated. The "revolution in property" was discussed not from an historical viewpoint, but rather from a technical one, that was concerned with the changes in legal terminology which the revolution made requisite but which have not followed. Also, the problem of control both in isolation and from the viewpoint of contribution of capital were studied. Conclusions at this point must be kept to a minimum, but it is clear that the nature of the economic system has undergone drastic revision, whether or not the basic changes have been recognized by the public-at-large. It is also clear that one of the central causes of the revision was brought about as a result of the change in locus of economic power from the hands of the actual owners of the corporation to the hands of those in whom actual working control was vested. The purpose of the next chapter was to provide more insights into the practical effects the "revolution in property" had upon the economic system.

CHAPTER III

THE ECONOMIC SYSTEM AND THE MODERN CORPORATION

> Though its outline is still obscure, the central mass of the twentieth century American economic revolution has become discernible. Its driving forces are five: (1) immense increase in productivity; (2) massive collectivization of property devoted to production with accompanying decline of individual decision-making and control; (3) massive dissociation of wealth from active management; (4) growing pressure for greater distribution of such passive wealth; (5) assertion of the individual's right to live and consume as the individual chooses. Of this revolution, the corporation has provided a vital (albeit neutral) instrument and vehicle. It has become and now is, the dominant form of organization and production.[1]

The Industrial Revolution began the economic revolution in the nineteenth century. The revolution was carried on and extended into the twentieth century by the corporate system. This section investigated Berle's analysis of the role of the corporate system in the economic revolution. The prime concern here was the completion of the overview of Berle's extensive analysis of the place of the modern corporation in American society.

The economic system as means and not end.--An economic system, whatever its political category or affiliation, is only an instrument, a means to an end. It is not an end in itself, nor does any one system point to only one end. Primarily, the function of an economic system is to supply the jobs, materials, goods, and services which are needed to construct the desired civilization. The purpose of the economic system is to make possible the development of its civilization in accordance with the desires of

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[1]Berle and Means, Modern Corporation, p. xxv.

its decision makers, be they the people or a king.[1]

Berle contended that, using the total achievement of the political-economic system as a basis from which to judge, the American economic system was the most successful in the present-day world. Berle based this contention on the never before attained level of production and the great amount of distribution of the economy's product which was made to the American people. Berle also stated that "This does not mean the system is ideal. Its shortcomings are many and obvious."[2] But as a starting point for working to improve not just the economic system but the product and distribution, that is the goals of the system, Berle felt that the American system offered more opportunity for positive correction and advancement than any other system.

Capitalism as an economic instrument.--Many people would agree with Berle on the basis of their faith in capitalism or in America. Many people err, however, in viewing capitalism as an ideal end, without realizing or accepting the fact that it is only an instrument for providing the desired end. "Capitalism is not a way of life, but a method of achieving economic and social results - a method indeed evolving so rapidly that the capitalism of 1954 has but a bowing acquaintance with that of 1854 and little if any real resemblance to the capitalism of 1804."[3] Professor Rexford Guy Tugwell, in discussing the changes found in the American brand of capitalism and the extensive change he found in it coined a new descriptive phrase for the economic stage of the mid-twentieth century: "the economy of abundance." This abundance was provided not by "capitalism" but by the

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[1]Berle, Economic Republic, p. 5. [2]Ibid., p. 3.

[3]Berle, Capitalist Revolution, p. 181.

effective utilization of the technical advances which have been made.[1]

Contention exists in whether or not a socialist economy could more efficiently handle these technical advances and direct them to more desirable ends than the capitalistic system prevailing in the United States today. Berle believed that, at least historically, the American form of capitalism proved to be more apt in handling the technical revolution than any socialistic economy present at that time. The success of the United States was based on its being more efficient and more flexible in collectivizing capital through the institution of the corporation.[2] The end results, as seen by Berle, might have been different had there been a more mature socialistic economy that was capable of innovation and flexibility. An accurate comparison of the two systems was not possible (and might not yet be possible) at the time of the beginning of the twentieth-century economic revolution.

The corporation as an economic instrument.--From Berle's point of analysis, the corporation was the instrument which made the advancement of the United States possible.

> The industrial economic system was thus required at one and the same time to accumulate capital for increased production and also to distribute wealth. With design, this was accomplished, partly through the action of government but chiefly through the device of the modern corporation.[3]

The fantastic and immeasurable achievement of the twentieth-century American economic system, whether one chooses to call it capitalistic or corporate is secondary. The important achievement can be determined only by evaluating the product as to how much it advanced the postulated goals and

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[1]Berle, Power, p. 176. [2]Berle, Capitalist Revolution, p. 23.

[3]Berle, Power, p. 194.

desires of the American people. (Such an undertaking would be far too extensive for use in this study.) Berle agreed with this sentiment:

> For twentieth-century capitalism will justify itself not only by its out-turn product, but by its content of life values . . . In American thought, an economic system, like a political government, is made for men. If it denies rights of men to life as they understand life, or to liberty as they understand that, or to property, whatever modern property shall turn out to be, the community gathers itself for a kind of revolt whose results are unforeseeable.[1]

The human content of the economic system, then, is the real basis on which an economic system must be judged. This clarifies the underlying premises which must be utilized in judging the corporation and the economic system it has introduced. An economic system is not an end but a means to serve men. The government of the state is responsible for ensuring that the economic system works to balance want and production so that all members of the society will have sufficient amounts of needed goods for the life which the society has defined as being adequate. "The important point is, therefore, that a political and economic system is a means to a greater end - an entirely good society. That goal (it will never be reached until the human mind stops developing) is not, . . . determined primarily by economic considerations."[2]

The corporation as an economic institution.--The corporation is the center of the American economic system, rivaled for dominance in the economic system only by the various financial institutions and the United States Government itself. Its power to touch the lives of every individual American is unquestionable; its power to regulate and protect itself from

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[1]Berle, Capitalist Revolution, p. 114.

[2]Berle, Economic Republic, p. 7.

outside interference is also almost unquestionable.

The large corporations and their development rest upon two historical developments in the economic and industrial areas. The first development is the evolution of the factory system, the basis of the industrial revolution, which brought together an increasingly large number of workers under a single management. The second and crucial development was the aggregation of the wealth of innumerable individuals under the same central management in the corporation.[1] These two developments, in combination, had proved their worth as a form of economic organization so that by 1968 well over ninety per cent of all production outside of agriculture was carried on by one of more than a million corporations.[2] And even agriculture, the last great stronghold of individually owned productive property, was feeling the inroads made by the corporate farmer.

According to the figures furnished by Berle in his book, Power Without Property which was published in 1959, "some five hundred great corporations dominate through outright ownership two-thirds of the industry of the United States . . ."[3] In 1954, he pointed out, 135 corporations owned forty-five per cent of the industrial assets of the United States, a sum equal to almost one-fourth of the manufacturing volume of the entire world.[4] The extent of involvement in the American economy by the large corporations cannot be disputed.

If the above cited figures appear to be ominous (or encouraging, depending upon one's point of view) they should be more so after some closer

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[1]Berle and Means, Modern Corporation, p. 5. [2]Ibid., p. viii.

[3]Berle, Power Without Property, p. 18.

[4]Berle, Capitalist Revolution, p. 25.

consideration. These figures represent the wealth and assets of the largest of the giant corporations. These giants cast a long shadow which either directly or indirectly falls upon innumerable smaller businesses or corporations. For instance, price changes in one of the major corporations, say United States Steel, General Motors, or Standard Oil, would cause reverberations in the price structure all the way down to affecting the prices of steel nails at the local hardware store, the price of a Chevrolet at the local dealer, and the price of premium gasoline at the corner filling station. These effects, while not written into anybody's organizational charts, are direct results of the giant corporation's changing its position. Much more of the industry and the American market structure is dominated in one form or another than the previously cited figures depict. A troubling point here is that there is no way for the little guy at the local level to affect the other end of the process. The corporate giants are almost impervious to control or rebuke from anyone save possibly the Federal Government, and even that is not a certainty. On the basis of past performance and past expansion, it is almost a certainty that, unless the Federal Government says otherwise, the power of the corporate system, including the indirect and direct power of the leading giants, will continue to grow. Adolph Berle agreed that this is extremely likely.[1] If it is not true now, it will not be too far into the near future before practically all economic activity will be carried on under the corporate form.

> The corporate system further commands attention because its development is progressive, as its features become more marked and as new areas come one by one under its sway. Economic power, in terms of control over physical assets, is apparently responding to a

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[1]Berle and Means, Modern Corporation, p. 17.

> centripetal force, tending more and more to concentrate in the hands of a few corporation managements. At the same time, beneficial ownership is centrifugal, tending to divide and subdivide, to split into ever smaller units and to pass freely from hand to hand. In other words, ownership continually becomes more dispersed; the power formerly joined to it becomes increasingly concentrated, and the corporate system is thereby more securely established. This system bids fair to be as all-embracing as was the feudal system in its time.[1]

Having discussed the centrifugal tendency of the corporate system in the previous chapter, it is incumbent to turn to a discussion of the centripetal tendence, that is, the tendency for control of the corporation to become concentrated in the hands of a few corporation managers. This tendency is supplemented by the fact that these managers own little if any of the interest in the corporation which they are managing. It is conceivable, and probably not rare, that controlling factions have no ownership at all. "The separation of ownership from control produces a condition where the interests of owner and of ultimate manager may, and often do, diverge, and where many of the checks which formerly operated to limit the use of power disappear."[2]

Control and ownership.--This separation of the two functions, control and ownership, forces one to recognize that "control" is something apart from ownership on the one hand and from management on the other. If control is so readily transferred (later it shall be shown that it is not a one-way street) it must be a characteristic apart from either.

Direction over the activities of the corporation is furnished by the board of directors. Control can therefore be said to reside in that individual or group of individuals who have the actual power to select either the entire board of directors or at least a voting majority of the board.

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[1] Ibid., p. 9. [2] Ibid., p. 7.

This power to choose the board of directors can be a legal right derived from some attribute, say, majority stock ownership, or through some legal device, as owning a majority of the stock having voting rights but not a majority of stock offered, or through the exertion of personal influence.[1]

This definition of the "control" recognizes that the evolution of the corporate system has seen the development of a situation in which the dominant forces within the corporation are frequently not the directors but individuals or groups who have no titular place (necessarily) in the corporate scheme. Nevertheless, their power of control is complete. Before continuing into the various ramifications surrounding "control", it may be appropriate to briefly describe the five major types of control.

Five types of control.--Although Berle distinguished five types of control he would be the first to admit that there is no sharp dividing line between them. The first type of control is also probably the least prevalent today. It consists of control because of almost complete ownership. Such control would be, today, limited to the small corporations owned by a family or a few individuals. The second type of control is similar to the first; it is control exerted through majority ownership. The differentiation is slight and is only a matter of varying degree of amount of stock owned. The third type of control is control through a legal device without majority ownership. This type of control was mentioned earlier, and an example would be where the majority of the voting rights were vested in a small block of stock that did not correspond to a majority of the stock that was on the market. Some of the larger corporations that were and are dominated by a single family exert control through a measure such as this; the

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[1]Ibid., p. 66.

DuPont and Ford families would be examples, possessing control through a legal device. The fourth type of control is minority control and is found where the stock of a corporation is fairly widely distributed but one individual or group has the largest significant block of stock; around this block a majority could be formed. John D. Rockefeller utilized this type of control over Standard Oil Corporation for many years. In most instances, the minority block would consist of fifteen to thirty per cent. The fifth and last type of control would be management control. This is the most prevalent form today. It occurs where there is no single significant block of stock around which to form a control group. Control is then completely vested in the hands of the management, and through control of elections, proxies, and other instruments, the management can perpetuate themselves indefinitely. Of these five types of control, the first three are forms of control resting on a legal base and revolve about the right to vote a majority of the voting stock. The last two are extra-legal in that they are resting on a factual rather than on a legal base. Nevertheless, they are at least as effective as the first three.[1]

This power of control that has been discussed, though somewhat limited, is in large measure absolute. The law and relevant court cases have placed around it "a mantle of sanctity, the legal 'presumption' that

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[1]For 1932, the figures on types of control are as follows. It is expected that since 1932 the figures have changed, with more control moving to 3 and 4.

	By Number	By Wealth
In hands of receiver:	1%	negligible
1. Private Ownership:	6	4%
2. Majority Ownership:	5	2
3. Minority Control:	23	14
4. Legal Device:	21	22
5. Management Control:	44	58
	100%	100%

(Berle and Means, Modern Corporation, p. 67).

management action is taken for the best interests of the corporate institution."[1] The law has established three main rules of conduct which do limit management, but even these limitations are not so stringent. They are: (1) a decent amount of attention must be paid to the business by the corporation's directors; (2) the directors' actions must be in complete fidelity to the interests of the corporation; (3) the directors must show at least a reasonable amount of business prudence.[2]

Berle's view of control.--Berle attached much scepticism as to the desirability of the institution of "control" being based on other than a legal basis. He admitted that "control" cannot be prohibited by law and that all that can be touched by law is the actions resulting from "control's" decisions.[3] His fear was in seeing management perpetuating itself if and when it got "control." This fear was somewhat allayed later in Berle's career when it appeared that the financial institutions, whose rise will be discussed later, might remove "control" from the hands of some management groups.[4] Seeing the rise of several groups having claim to the product and profits of the corporation, Berle saw the need for neutralizing the "control" element so that it would not be so concerned with perpetuating the goals of its limited group.

Berle stated that he felt it was almost essential for the survival of the corporate system that the "control" of the great corporations should develop into a purely neutral technocracy which would balance the claims of various groups both in the community and in the corporate structure and

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[1]Berle, Power Without Property, p. 63.

[2]Berle and Means, Modern Corporation, p. 197.

[3]Ibid., p. 212. [4]Ibid., p. 217.

assign to each a portion of the stream of income and product on the basis of established public policy rather than on the basis of private greed.[1]

One reason for his desire to see changes made in "control" was that Berle saw some instances when the management obtained "control" that they used their power against the interests of ownership. Since the powers of control and management were to some extent created and recognized by law, this in some measure appeared to legalize the diversion of profits into the hands of the controlling management group.[2] This aura of legality prevented many stockholders from disputing what appeared to be a divergence from the best interests of the owners. Due to the central position of the management and the "control", the stockholders were unable, even through such instrumentalities as the proxy vote, to properly (from their viewpoint) retain their rightful share of the stream of profits.

> It follows . . . that the shareholder in the modern corporate situation has surrendered a set of definite rights for a set of indefinite expectations. The whole effect of the growth of powers of directors and "control" has been steadily to diminish the number of things on which a shareholder can count; the number of demands which he can make with any assurance that they must be satisfied.[3]

The corporation as an economic institution is a massive organization. Through its treasuries pass a large part of the real wealth of the United States. Its affairs involve manufacture and production at all levels, including distribution at the local level. Control of these behemoths is almost totally vested in their management, so that in a very real sense the corporations are able to say that they are almost totally self contained. In the one area where they are dependent upon the public, the market place, the corporations are able to assure themselves of a large part of the market due to the lack of competitors. Their power is only

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[1] Ibid., p. 312-313. [2] Ibid., p. 294. [3] Ibid., p. 244.

limited by their prudence and the possibility of governmental intervention. Because of their size and influence in directing an important portion of the American society, it is difficult to think of a corporation as being only an economic institution.

The corporation as a quasi-political institution.--Berle argued that the modern corporation should be viewed not just as one form of social organization, but as the dominant institution of the modern world. He stated that, "In every age, the major concentration of power has been based upon the dominant interest of that age."[1] The modern age, according to Berle, is based upon the corporation. Thus, the corporation has, in fact, become both a method of property tenure and a means of organizing economic life. The corporate system parallels the feudal system, in that both attracted to themselves a combination of powers and attributes. The prominence they attained accorded each to be dealt with as the major social institution of the age.[2] Such a great concentration of power and such a diversity of interests raise the long-fought issues of power, regulation of power, and protection of the various interests involved. In effect, the national state has been changed internally by the growth of an institution which has attained a certain predominance not only in the area of economic life, but also in the areas of social organization and political determination. The corporation now has the power to determine the direction in which society will evolve as well as the direction of change involving economic institutions, if the Government does not act to regulate this power.

The major protection American society has from the corporation, according to Berle, is that besides the fact that American political

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[1]Ibid., p. 313. [2]Ibid., p. 3.

thinkers have been frightened at any suggestion that the corporation might emerge as a political institution, the corporations themselves have been frightened that they might evolve into political institutions. It was Berle's contention that this is one role the corporations do not seek.[1]

Berle, however, must not have completely believed his own dictum. In two of his books, The Twentieth Century Capitalist Revolution and Power Without Property, Berle stated in their introductions that the time seemed to have come to study the corporation as a quasi-political institution as well as an economic one.[2] He saw in their accumulation of power if not the accumulation also of political power, then the potential of conversion to political power.

The corporations' constituencies.--The corporation can be viewed as a quasi-political institution in that it does have constituencies that it tries to effectively respond to, at least at certain times. These constituencies, which must be balanced against each other to achieve harmony, include the "owners" who supply the capital for the corporation, the workers who do the actual creation of the products, the consumers whose needs give value to the products of enterprise and who at times provide needed raw materials, and the control who wields the power of determining the corporation's future. The corporation also has the political task of achieving functional harmony between the corporation and the society as a whole.[3] In the corporate system, responding to the above constituencies is, according to Berle, the equivalent of receiving the "just consent of the governed."[4]

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[1]Berle, Capitalist Revolution, p. 179.

[2]Ibid., p. 5 and Berle, Power Without Property, p. vii.

[3]Berle, Capitalist Revolution, p. 70. [4]Ibid., p. 60.

The corporation, from this viewpoint, is a nonstatist political (or quasi-political) institution, which places its directors in the same position as public office-holders.

The corporations' charter.--Besides being a political institution because of its attainment of a certain level of power that is capable of being extended into nearly every corner of America, Berle also stated that the corporation, in theory at least, is a political organization because the state invested it with power to exist. The corporation is a creature of the state which chartered it. Its operations are sanctioned and at times regulated by that same state. The state also at times takes steps to aid and encourage the activities of the corporation because it sees the similarity between the goals of the corporation and the needs of the people of the state. "Historically there is sound basis for insisting that the corporation has some color of state authority, its creation being in furtherance of state encouragement of commerce and industry."[1] Berle went on to state that popular reaction against the corporation may take similar lines to reaction against the actions of the state because of this theory. To date, the Federal Court system has not seen any truth in this position of Adolph Berle.

At the present time, the corporations do not desire to be considered as either quasi-political or political institutions. They justly fear the increased regulation which would be accorded to them along with their new-found recognition. But the political nature of the corporation as sketched out in this chapter cannot be denied. The conversion from economic to political power is not a complicated one, and it is one wherein no sharp

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[1]Ibid., p. 104.

boundaries exist. Recognition by the corporations of the need for them to protect their own best interests often encompasses their conferring with their governmental counterparts in the hopes of receiving some benign policy toward their affairs. These and other political "meddlings" of the corporation must be recognized for the political action they are. Some sort of legislation is required to define more accurately the permissible limits between corporate action as protection of their affairs and corporate actions which interfere with political actions meant to protect the people's affairs. Recognition of the political status of the corporate system must be accorded so that the electorate can more honestly and fairly direct policy along desired channels.

The rise of concentrates, trusts, and other financial institutions.--After studying the corporation as an economic institution and as a political one, it is appropriate to study, or at least mention, those institutions which either control the individual corporations or have the potential to do so. Lumped together with financial organizations is the concentrate which shares, to some degree, the attributes of the financial institutions which are beginning to take over "control" of the corporations.

> Large corporations, in and of themselves, are impressive vehicles of power. Not less interesting is the fact that in a considerable and growing number of industries (covering at a rough estimate seventy percent of all American industry) a pattern has emerged-that we may christen the "concentrate." American law, if not American economics, has in general prevented monopoly. But it has sanctioned and perhaps even encouraged a system, industry by industry, in which a few large corporations dominate the trade.[1]

Berle went on to state that more than one-half of all American industry is operated by the "concentrates." The concentrates are involved in the major

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[1]Ibid., p. 26.

industries and are often limited to four or five competitors per industry. Examples abound, the most familiar being the automobile industry and the steel industry. The result of concentrates' taking over an industry is stabilization of price due to the lack of competition. Competition as a check against the various competitors' raising prices or lowering the quality of the product disappeared from the concentrated industry.

The concentrates also often engage in what Berle termed "satellite industries", such as is found in the automobile industry. Satellite industries involve utilizing other companies or corporations so that the concentrate is depended upon either as sole supplier of goods to sell or as sole purchaser and user of goods produced.[1] The vast number of automobile dealers would qualify as a satellite industry, as would those companies not owned by the automobile manufacturing corporations which make automobile accessories and parts which the manufacturers do not.

The financial institutions.--The last several decades have also seen the rise of several financial institutions such as trust funds, mutual funds, insurance companies, and pension plans whose actions have dramatically affected the corporate structure of the United States. These institutions are important because they may be reversing the flow of "control" which Adolph Berle initially pointed out and described.

In the late 1960s, Berle began expressing his serious concern for a rising trend involving investment in corporations. The trend prior to that time had been predominantly one of managers slowly acquiring control in more and more corporations through a slowly evolving process fed by a wider dispersion of stock ownership.

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[1]Ibid., p. 28.

Later Berle saw the process had begun to go one step further. The power had begun to be transferred from the corporate managers to people who did not have even a first hand familiarity with the enterprise.[1] In recent years, institutional investors have begun to accumulate more and more of the stock offered by corporations. Among the most powerful of these institutional investors were the trust departments of the larger banks. These banks not only directly are managing huge private trust funds, but they also are serving as advisers to major pension and employee-benefit funds. Berle stated that "In effect, about fifteen or twenty of the big banks through their trust departments could today mobilize voting control of a very large percentage of American industry . . . Such a concentration is a very dangerous thing from the point of view both of the public and the corporate management."[2]

This new element is important to note because the aggregation of these stockholders' votes within the institutional investors is a more or less permanent arrangement. These investors are in the habit of building up their portfolios, and seldom do they sell quality stock. This means that once "control" is established in one or a group of investment banks, challenge to their "control" will be even more difficult than a challenge to the management had been.[3] Another factor which strengthens the position of the institutional investors is that from ten to fifteen per cent of capital utilized by corporations comes from the same group of trusts, insurance companies, and banks.[4]

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[1]"The New Realities of Corporate Power," Duns Review, 92 (December, 1968), 43.

[2]Ibid., 44. [3]Berle, Power Without Property, p. 53.

[4]Ibid., p. 44.

Berle stated that he feared a decrease in the effectiveness of the operation of the corporations which were taken over by the financial institutions. He felt that power is best exercised when it is close to reality. Bankers, having only figures on paper to guide them and no actual working knowledge of the corporations, would tend to make poorer decisions.[1] Berle stated that the modern corporation managers have been successful because they have been responsible, not only to their own consciences, but also to their peers in the business community. "I have far more faith in management than I do in the institutions whose representatives are not dependent on the results of their work in a particular corporation."[2]

In 1968 Berle predicted that one-third of the stock of all corporations listed on the New York Stock Exchange would be held by institutional investors by the year 1970. If this is a fact, then these investors today have working capital in a great part of the American corporate system.[3]

Economic power of corporations and its significance.--Berle's works center on tracing the growth of influence and economic power of the corporations. It is important to understand that he did not view all the changes which were evolving as undesirable. Berle stated that these changes were usually for the best, and at any rate, they were controllable by the state should they prove to be not in the best interest of the society. In his most important work, The Modern Corporation and Private Property, Berle listed five of the major implications for society as a result of the increase in economic power on the part of the corporate system. They are:

> (1) Most fundamental of all, it is now necessary to think, to a very important extent, in terms of these huge units rather than in

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[1]"New Realities," 44. [2]Ibid. [3]Ibid.

> terms of the multitude of small competing elements of private enterprise . . .
> (2) Competition has changed in character and . . . The principles of duopoly have become more important than those of free competition.
> (3) An increasing proportion of production is carried on for use and not for sale . . . . To the extent that production is for use by the producing organization there is no such incentive. [to make poor quality goods.]
> (4) The nature of capital has changed. To an increasing extent it is composed not of tangible goods, but of organizations built in the past and available to function in the future . . .
> (5) Finally, a society in which production is governed by blind economic forces is being replaced by one in which production is carried on under the ultimate control of a handful of individuals . . . .[1]

The implication of these statements is that a smaller group of people than ever before have control over a larger amount of economic power than ever before. Berle, in a discussion of the power corporations controlled, gave these representative figures. In the calendar year 1964, American corporations took in just under sixty-nine billion dollars in profit. They also recouped depreciation charges totaling thirty-four billion dollars. The corporations had to pay the United States over twenty-seven billion dollars in taxes, and they paid their stockholders just over seventeen billion dollars as dividends. For the year 1964, then, the corporations were able to retain and accumulate in their capital funds almost twenty-five billion dollars from their profits and the complete sum from their depreciation charges. This left them the sum of fifty-nine billion dollars available for investment. It is easy to understand what Berle meant when he said the most important single power of the American corporation is its ability to invest its capital as it pleases.[2] The significance of the extent of corporate economic power is obvious.

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[1]Berle and Means, Modern Corporation, p. 45-46.

[2]Berle, Power, p. 203.

The power to invest capital in a particular area or to not invest it is the power to develop an area, the power to give jobs, services, and security to a community, or it is the power to deny these necessities to a community. Berle agreed that such untrammeled power is not consistent with the demands placed upon the Federal Government since the passage of the Employment Act of 1945. There develops a struggle for power to apply capital between two concepts. "One is the corporate manager's desire to make profits for his institution. The other is the notion that capital should be put where it is socially most needed to provide services, goods, jobs, as government power holders appraise need."[1] Berle stressed the idea that at the time of the final determination, the State must have the ultimate power to enforce its decision because it has the ultimate responsibility to the community. In those few cases where the corporate managers remain recalcitrant, Berle recommended enpowering the State to force the corporation to change its managers in preference to changing the corporate system by burdening it with more laws or regulations.[2]

Granting the wide scope of influence the economic power of the corporations have, Berle still maintained that their power is never absolute, that it is indeed controllable by the State. The limits on the application of the economic power as expressed in various laws and regulations are, at least for the present, sufficient restraint.[3]

Ideology of corporate managers.--The greatest weakness Berle picked out of his analysis of the corporate system was the ideology of the corporate managers. Berle stated several times that he feared the inbred

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[1]Ibid., p. 206 [2]Berle, Power Without Property, p. 87.

[3]Ibid., p. 88.

quality which he saw among the managers. He stated that because these managers were almost totally self-perpetuating in their positions and because the courts very seldom attempted to control or reverse management action, the managers were becoming isolated individuals. These isolated individuals took on the nature of tiny oligarchies who were drawn from and judged by one limited source: the business and financial community. Thus, the only real guidelines available for the corporate managers is the real, although undefined, philosophy of the business community.[1]

This admitted weakness is one which deserves more attention than the literature has accorded to it. Today's world is placing ever-increasing demands upon its governments to provide more of the economic goods which are seen as being needed for an adequate level of existence. In turn, the governments are turning more to the industrial world to direct their production toward more socially useful goals that would, to some extent, fulfill the perceived needs of the community. If the industrial and financial community is not tuned into the changes that are being voiced, their actions will not be supportive of the society's goals. Conflict will arise, and the result would most likely be further restraints on the business community or perhaps socialization of the industries led by "deaf" businessmen. The challenge has been made to the business world by the government in such acts as the Employment Act of 1946. Berle bet that the corporations and their managements would and could meet the rising demands of the society for more goods distributed more widely. The penalty for failure, as Berle knew well, would be a drastic change in the economic system as a result of the entrance of the Federal Government on a much larger and much more

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[1]Berle, Capitalist Revolution, p. 180.

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Need for continuing economic growth.--Berle knew well the increased requirements that the State and society placed upon the economic system. As stated earlier, an economic system is a means to a desired end. The general populace now perceives that dreams can be realized in American society because of the strength and versatility of its productive facilities. This perception has resulted in increased demands upon the American industrial system that it should assure continued growth of American production, accompanied by a distribution of its benefits to substantially all the American population.[1]

To meet these increased demands, the economic system must incur three obligations. To some extent these are being accomplished, but more must be done to raise the society to the level it desires. The first obligation of the American economic system is to increase the growth rate of its gross national product. This increased growth is required to meet the demands for increased employment opportunities, for increased distribution of the goods of industry, and for making a higher standard of living available for all American citizens.[2] Berle stated that a five per cent rate of annual income growth would be needed to meet the task of maintaining and advancing the American society as it desired.

The second obligation of the economic system, according to Berle, is to assure full employment. What is meant is that the system must not only produce but produce continuously, so that great numbers of individual lives are not unduly interrupted by lay-offs or halts caused by over-production. Business cycles with periodic and predictable depressions used to be seen as

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[1]Berle, Power Without Property, p. 120. [2]Ibid., p. 121.

inevitable; now they are considered to be immoral and preventable. American consensus seems to feel that the State has the power to act to prevent the recurring low points in the business cycle and it is expected to use its power to protect the people.[1]

The third obligation of the economic system is that each individual should have the opportunity to participate by work in the economic life of the country. This means that any person who becomes unemployed should be able to find a job immediately, whether the job is one furnished by the government or by the business sector. Berle paralleled the right to work with the right to public utilities service. Anyone who is willing to pay for the utility must be granted access to it in the form of service. Anyone desiring to work should also be granted access to opportunity to work.[2] This is a demand that economic justice shall be on the level of each individual, and not on the level of mere statistics wherein five per cent unemployed is not considered unjust.

National economic planning.--The obvious requirement needed to meet these three obligations is an increase of organization for more adequate national economic planning. Berle understood this simple fact. He felt that by reorganizing the now available tools of research and regulation which exist in the hands of the Federal Government this level of planning could be reached without a great deal of effort.[3] His vision, as he would have to admit, did not include a blueprint for convincing some sectors of the society that such planning is in the interest of the society as a whole. Nevertheless, Berle's foresight and discussion could serve as a first step toward educating the various sectors of the public that planning can be a

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[1]Ibid., p. 122. [2]Ibid., p. 123. [3]Ibid., p. 124.

tool for the welfare of all.

In summation.--This chapter studied the overview of Berle's analysis from the practical viewpoint of the actual changes in the economic system which were derived from the divorce of control from ownership. A proper perspective of the economic system was established upon determining that human content and values were the proper goals of an economy, and not profit to the exclusion of all else. The corporation as an institution was discussed on two levels: the first level studied it as an operational part of the economic system and the problems of establishing "control" over such an influential organization; the second level viewed the corporation as a quasi-political institution which was capable of exerting various forms of political pressure and influence at different locations in the society. A small side trip was made to incorporate the rise of the financial institutions to a place of potential dominance in the corporate system. The possible effects the corporation could have on society were also viewed as well as the significance of the economic power wielded by the corporations. The weakness of the inbred nature of the corporation managers was mentioned so that some explanation of the difficulties faced by those in society desiring to change the goals and direction of the corporate system would be available. In closing this chapter, a somewhat general discussion was entered into paralleling the discussion of the previous chapter. The desired ends were discussed in more or less general terms so that the problem would be seen. The corporate system is not oriented toward providing the goals which a developed society demands. The control and decision making abilities, while potentially in the hands of the state, are still held firmly by the corporation managers. This is one area where political conflict is expected to

be necessary so that change may be instituted.

Conclusions at this point have to be kept to a minimum because of the nature of this study. Some of the important general conclusions were highlighted above. This study provided insights into the area of the economic system which is usually thought of as being "private" in nature. It was the purpose of this study to show that the only "private" aspect of the corporate system was the means used to make decisions as to where the capital went. The giantism of the corporations forces one to realize that they are tremendously influential in the everyday life of society. One other conclusion that deserves final notice is the fact that the "economy of abundance" is capable of meeting the goals of the society if the society is willing to exert pressures upon the oligarchical few who control the economic reins of the system.

CHAPTER IV

CORPORATIONS AND THEIR INVOLVEMENT IN SOCIAL ACTION

This chapter and the next one each considered one question either posed by Berle or alluded to by Berle in light of the material which has been discussed, as well as any additional material available. Specifics are not desired so much as a firm grasp of the theoretical and intellectual aspects of the various problems which came to be considered as a result of their relation to these two questions. An analytical view of Berle's handling of basic issues, issues which are central to the problems of American society today, was presented.

The first question was should corporations be involved in social action? Social action is action such as that designed to promote the general welfare or ones that are intended to influence the nation into believing good myths about the corporation. Such actions are usually done for philanthropic reasons but they often have other, overt results. An example would be a large corporation agreeing to partially endow a small college if the college would teach certain technical skills required by the corporation. The public would view the endowment as a charitable act on the part of the corporation, the government would allow the corporation to deduct the amount spent from its yearly income, and the corporation would have assured itself of a steady supply of technicians, at the public expense.

Some corporations were involved in social action-type enterprises under the Johnson Administration. IT&T running Camp Kilmer for the Job Corps would be an example. This type of social action was different from

the variety discussed in this chapter: it was a type of social action which was directed by the federal government and one which was paid for by the government. The interest here was those social actions which were decided upon by the corporation and which involved large expenditures of capital and which resulted, either directly or indirectly, in a positive gain for the corporation, which gain is at least partially paid for by the taxpayers who had no say in the planning of the action.

One of Berle's central themes has been that the economic concentration of power surrounding the corporate system has metamorphosed into a powerful political and social force, with the result that the corporation now exerts far-reaching influences on American society. This social and political power was never directly desired by the corporate managers, but was taken on more or less as by-products during the normal corporate activity. Berle further stated that since the corporations hold the power they must accept the responsibility that accompanies it. Specifically, the corporation has an obligation to the needs of society as a whole, which is what is meant when it is said that corporation power is held in trust for the entire community. Because this power is held in trust by the corporations, it must be used according to the dictates of the values which are democratically established by the society. In other words, those values which are expressed by the words and actions of the elected public officials.[1]

Need for a value system.--A recognized value system is required to act as an arbitrator between the various interests in society. Such a system is requisite so that actions will be directed, at least part of the

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[1]John H. Bunzel, "Liberal Ideology and the Problem of Power," Western Political Quarterly, 13 (June, 1960), 376.

time, in directions other than self-centered ones.

> . . . a power organization, be it country or corporation, government or school, cannot long maintain itself unless it is supported by a more or less choate and accepted system of ideas and values . . . The point is that without such a supporting structure, power is ultimately self-defeating.[1]

Berle felt that unless the social actions of the corporations were directed by some other source the actions of the corporations would become too blatantly selfish and would incur the wrath of the aroused populace. It was his desire to see moderation and balance enter so that the responsibility for the good-will expenditures were either shared or held by some other unit.

Berle's interests in this area were to protect the power structure of the corporate system. He did not desire to see it attacked for something which he considered to be a minor activity. Several additional points must be introduced to balance his contentions more in favor of the public interest. Earlier in this work, the narrow, almost self-contained ideology of the corporation managers was discussed. The fact that Berle recognized the existence of this weakness encourages one to suspect that it actually exists, possibly to a greater degree than Berle recognized. Because of the self-contained image given by Berle's statement, it is only natural to expect that were the corporate heads to determine to meddle in any social action it would be, to some extent either wrongheaded or self-serving. By wrongheaded is meant that the solution the corporations supported would not actually attack the root of the problem. During its tenure at Camp Kilmer, IT&T attempted to handle psychologically maladjusted youths in a military manner, as if they were on a production line. While the desired goal

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[1]Berle, Power, p. 30.

(improved training in job skill areas) was acceptable by any standards, the applied technique showed lack of understanding on the part of the administrators as to the special quality of the problem. A self-serving action would be one which resulted in an increase in favorable publicity or goodwill, disproportionate to the cost involved.

Another balancing point that must be discussed is the factor of tax deductibility for most of the socially motivated actions of the corporations. If the corporation is to choose freely to involve itself in some social action, and if it is to receive a sum of publicity from its actions, it hardly seems right to saddle the taxpayers with the cost of the project. At present corporate tax rates, approximately one-half of the sum spent on the corporate planned project would be deducted from the paid taxes of the corporation.

The idea of social action is a necessary one, as the next section will show. What is being argued here is the desirability of having the corporations administer the social action programs as selected by them. After the following discussion on the place of social action, more will be said about the proper role of the corporation in social activities.

Transcendental margin.--In gazing back over American history in attempting to find the causative factor in America's commitment to hard work and growth, Berle came up with the Protestant Ethic. "Actually, it embodied the driving value system of nineteenth-century America. The Protestant Ethic has proved far more dynamic in the development of American economics than has perhaps been assumed."[1] Berle agreed with many writers that the Protestant Ethic was responsible for the hard work and devotion to success

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[1]Berle, Economic Republic, p. 189.

that characterized the early industrial period in America. Berle also held that it was the Protestant Ethic which encouraged the first bursts of philanthropy on the American scene.

In discussing the impetus to work for the good of the society, Berle said that,

> In all cases, it seems, the motivations transcend the calculable "interest" of the individual. They are, therefore, "transcendental"- not in the religious sense of the term, but in its original meaning of overpassing any intended personal advantage of the individual or his immediate family. Value systems causing an economic system to accelerate differ in all conceivable ways. But they have one factor in common. They engage the willingness of the individuals to labor and sacrifice for ends aside from their private advantage, and for the benefit, as they conceive, of a larger community interest, local, nationwide, or worldwide.[1]

In line with his statement about the desirability of value systems such as the Protestant Ethic, Berle defined a general principle that covers the workings of a value system. He termed his principle the Theory of the Transcendental Margin. "The transcendental margin is the product of a value system that causes effort and expenditure beyond that calculated as conducive to the personal advantage of an individual or his immediate family group."[2] In Berle's analysis, the transcendental margin was used to explain development which mobilized resources and profit far beyond the requirements of the individuals involved.

The value system, in Berle's theory, exerts itself by establishing moral imperatives both in the individual and in the society. The individual is expected to give work, effort, or money, at a sacrifice to the community in which he lives. The society also has imperatives placed upon it, commensurate with the value system. After a certain period, the value system crystallizes into established law, which is then enforced by the state so

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[1] Ibid., p. 200. [2] Ibid., p. 202.

that part of yesterday's voluntary contribution becomes today's compulsory service or increased taxation. The state then, eventually, becomes the center from which development is directed and planned (although some private actions are still undertaken.)[1]

The American economic system, as all economic systems, is a means to an end. An economic system at least ceases to be an end when it has provided for the basic necessities of the population. In acting as a means, the economic system is formed by and reflects the value system of the society. To grow and become more productive, an economic system must invest more in production than is consumed by the people. This means that a substantial portion of its resources must be directed toward transcending the sum total of needs of the populace.[2] The value system, in working with the economic system, provides the moral impetus for the workers and the society to make this investment in the transcendental margin.

The important point in this discussion on the transcendental margin is to note that it is usually the state which is invested with the power to direct the expenditure of capital, whether it is in the form of taxes or compulsory labor. Some will say that this is a case of the state moving into areas where it does not belong. Others will recognize it as the state, as the representative and opinion leader of the people, stepping in to insure continual operation of important social actions. It is also important to notice the original source of the value system which made possible accumulation of the "transcendental margin": the people. The people are vested with the sole right to voluntarily decide what they do with their time which they have decided they can spare. The social projects can then

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[1] Ibid., p. 203. [2] Ibid., pp. 211-212.

be viewed as people reacting to a situation to meet a need in the best way possible.

In a complex, crowded society, however, individuals seldom on their own accord devote any individual time to social action. More likely than not, they pressure their governments to perform the services. This opens up the idea of planning by the government and the use of the corporations as a social tool.

State planning and the corporation as a social tool.--For most efficient use of capital, theoretically, a central source of direction and planning is required. This idea, however, has a bad taste for most Americans, even if the planners are their elected officials. Nevertheless, today more and more social planning is falling into the job descriptions of state and national officials faster than they can handle the transfer of facilities.

In America, Berle pointed out that the State functioned in two different ways in social action matters. As far as it is possible, the State likes to do its work informally. The State prefers to point to a public consensus in an area and to use that consensus as a tool of persuasion to gently coerce individuals into observing the standards laid down. A second way the state functions is one of compulsion, where the State may act to require the observance of laws or regulations. In such instances, the State usually acts directly through the various official government offices. In either instance, the State acts as a director; it recognizes that it has a function of guidance.[1] This may be a less threatening way of looking at the idea of the state being the "planning" instrumentality of

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[1] Ibid., p. 41.

the society.

Early in his career as a professor of Corporation Law at Columbia Law School, Adolph Berle had a controversy with the late Professor E. Merrick Dodd, of Harvard Law School. Professor Dodd held that corporate powers were powers in trust for the entire community. Professor Berle argued that the powers were held in trust for the shareholders of the respective corporations. Since the time of that controversy, Berle has said that the argument has been settled squarely in favor of Professor Dodd's contention.[1] Berle's approaches to such controversies have always been from one of trust and faith in the institution of the corporation. He quite plainly believed that in almost all instances the corporation could be trusted to act in good faith not only for itself but for the society as well. His only hedge on the corporations is that he felt it was necessary to keep the government strong enough to balance or restrain the corporations should they ever move too far or too fast in some area. In the area of social action, Berle stated that he felt the corporation would generate a conscience or a soul that would direct it in its social endeavors, as well as in its ordinary actions that affected the public.

Government-business partnership.--Later, after this idea had been somewhat disproved or after sufficient doubt had been cast upon it, Berle thought of a government-business partnership in the area of social action would be ideal. He expected that the government, as the rightful representative of the people, should promulgate new social ideals and plans, thus inspiring businessmen to a renewed sense of social responsibility and

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[1]Berle, Capitalist Revolution, p. 169.

action.[1] This latter view, and the one which predominated his later works, cast the corporation in the role of being a social tool for the government. The government would aim it in a certain direction, pull the trigger, and watch the American corporation overcome all adversity to correct another horrendous problem.

The main problem with giving corporations any portion of social responsibility is that they are not geared to operate in any manner but one: self-aggrandizement. This is not a fault in itself, but in the field of social action, it can be a severe liability. Another problem with Berle's suggested partnership is that once the corporation began working in the area suggested by the government, there would be little control which the government could effectively exert. This would tend to put the business system's managers in a position to control society without any corresponding reciprocal control by society. This is a fact taken by Michael D. Reagan in his book The Managed Economy. He stated, "The fundamental argument against the more expansive version of the ethic of social responsibility is that, even if it could and did work, it should not. For it is anti-democratic to the core . . ."[2]

It was Berle's fervent hope that corporations would be recognized as the beneficial central figure of American society. Unfortunately for Berle's views, the great corporations let him down. Their actions were more in tune with the fabled actions of the Robber Baron Era than they were with the idealized, almost romantic portrait painted by Berle. Berle stated that because the corporations desired to expand both their productive capacities

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[1]Kirkendall, "Student of the Corporation," p. 58.

[2]Reagan, Managed Economy, p. 147.

and their gross profits the corporations would develop an extreme sensitivity to the wants and needs of the people. By developing this sensitivity, the great corporations would be able to direct their production along lines determined by the social pressures of the community. This responsiveness on the part of the manufacturers is a fine ideal, but in practice and in actual life it does not exist. Corporations produce a large number of gadgets and "new-improved" products which the public does not know it needs until the producers' advertisements and incessant commercials convince the buyers that they are incomplete individuals without the new product.

The suggestion that corporations are more anxious to meet the public needs than they are to reap profits is a bold falsehood. The lack of corporate concern for their customers has been shown by research into items such as General Motor's Corvair which was designed to meet the public's desire for cheap transportation but at an expensive cost if one were to be involved in a serious accident. The lack of concern about the pouring forth of pollutants and harmful chemicals into the environment and into public lakes and streams is a further example of the corporations' unconcern for the ideal of the general welfare of the people.

A closer look at assumptions.--Berle draws an impressive picture of the accountability, responsiveness, and socially directed nature of the giant corporations. If his assumptions were to be correct, his scheme would be more than impressive, it would be desirable. Unfortunately, however, Berle's picture does not match reality. Berle desired, as stated earlier, that the corporation managers should be neutral technocrats whose function was to balance the various claims to the goods and services of the corporation against each other. No one claim was to have a preferential handling,

except that society and society's needs would be a basis for decision making. Corporation managers, however, are not neutral as Berle had desired them, nor are they functioning as technocrats. Berle postulated the continual improving of the standard of living through improved and increased production and better distribution as the real goals of the corporate system. Unfortunately, the real managers of the corporation have postulated the goal of more and improved profit margins, and this goal has superceded Berle's. Society, in the corporation's decision making actions, has taken a back set. Thus, Berle's plan loses on both counts. A third idea of Berle's had to do with the responsiveness and accountability of the corporations to the people. As has been stated earlier, the corporations prefer to manufacture wants and needs in the populace instead of attempting to discover where areas of need and concern lie. The accountability of the corporations was supposed to be developed through the offices of the various governmental officials. A cursory examination of corporate history would show that seldom if ever are the great corporations ever called to task for their malfeasance. Local states find they do not have the capability and sometimes the desire to hold the corporations in their states accountable for their actions. A fine example is the state of Delaware which is controlled, more or less, by the DuPont family. No government official is capable of getting a law passed that would work against the interests of the DuPont family, much less enforce one with any success.

The record of federal accountability is not much better, but there is a trend toward more governmental involvement in investigation of various consumer complaints. The history is not so shining, but there may be hope for the future. Accountability, however, is not the informal action that Berle expected it to be. He envisioned that a friendly chat by a

responsible government representative should be sufficient to set straight a malfunctioning corporation. The corporations, however, have developed intricate delaying actions to allow them to continue their inappropriate actions while the final act of accountability is tied up in various courts for extended periods of time.

Reagan was correct in saying that it was democratically unsound to involve the corporations in a concept of social responsibility. While it may be possible to have the government work with the corporations on a partnership basis on small projects where their technical skills are required, it would probably be in the better interest of the government and society if they restrained from involving the giant corporations in any type of socially directed activity where the corporation was given other than a minimal role. The corporations, as Berle testified, are great in the areas of being a tool of production, a means, but the tool should not be involved in deciding for what end it is to be utilized. Berle's error came in confusing the instrumentality of the corporation with its directing capabilities. His picture of the corporation as being the center of a feudal type society neglected the fact that in the feudal society the people were disenfranchised and somewhat miserably taken advantage of by their feudal lord. On closer examination, it is preferable to leave the corporate managers in their offices directing the activities of the corporations on a strictly economic basis.

CHAPTER V

GOVERNMENT AND CONTROL OF THE CORPORATIONS

The second question concerns the relationship between the corporate system and the Federal Government. In Berle's works this is a vague area in that he never clearly and concisely defined his views. Throughout the course of his various works he did mention the relationship, but each time was usually under different circumstances so one could not judge whether what Berle was then postulating was his idea of the ideal relationship or only an alternative until the time for the ideal relationship arrived. Nevertheless, a few threads were usually visible in all of his different approaches to the corporation-government relationship. One of these threads was the idea that, at minimum, the corporation should be well treated because it is necessary to the well-being of the society. A second thread was that corporations would usually be self-regulating, or at least regulated without the direct interference of the government. A third thread which occasionally surfaced was Berle's ideal that the present legal and constitutional system did not adequately provide for the proper handling of the special problems raised by the presence of the corporate system.

Some of Berle's ideas concerning the corporation-government relationship at times appeared to contradict both other statements that he had made as well as reality itself. This section will attempt to pull together the major statements by Berle concerning the various aspects of the relationship and provide some form of systematic, balanced analysis. This section will not attempt to go into a systematic study of Berle's theory of who

rules and why, instead, it will concentrate on applying his thoughts to the actual situation involving the two large power holders of the day: the Federal Government and the Corporate System. Hopefully, the various threads and an examination of Berle's analysis will result in a more complete understanding of his views on this topic.

A new concept of the corporation.--The closing paragraph to The Modern Corporation and Private Property gives a strong clue to "The New Concept of The Corporation" held by Berle. This section will carry on an analysis of this paragraph and the modifications this view may have undergone in other works by Berle.

> The rise of the modern corporation has brought a concentration of economic power which can compete on equal terms with the modern state - economic power versus political power, each strong in its own field. The state seeks in some aspects to regulate the corporation, while the corporation, steadily becoming more powerful, makes every effort to avoid such regulation. Where its own interests are concerned, it even attempts to dominate the state. The future may see the economic organism, now typified by the corporation, not only on an equal plane with the state, but possibly even superseding it as the dominant form of social organization. The law of corporations, accordingly, might well be considered as a potential constitutional law for the new economic state, while business practice is increasingly assuming the aspect of economic statesmanship.[1]

Confusion could be a logical outcome of comparing the above quote with the following one:

> The control groups have, rather, cleared the way for the claims of a group far wider than either the owners or the control. They have placed the community in a position to demand that the modern corporation serve not only the owners or the control but all society.
> This . . . alternative offers a wholly new concept of corporate activity. Neither the claims of ownership nor those of control can stand against the paramount interests of the community.[2]

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[1]Berle and Means, Modern Corporation, p. 313.

[2]Ibid., p. 312.

What one has to deduce from these two statements is that Berle expected the national state or the political boundaries at least, to disappear and to be replaced by the broader and less distinct borders of the corporation. It will be recalled that earlier Berle had stated that he expected the "control" of the corporations to become a neutral technocracy balancing the claims of one organization against claims of another group, according to rules or priorities set down by the people. Confusion would result unless one realized that Berle expected the loss of the State to be replaced by the corporate system as the responsive and representative organism of the people. The corporate managers would become, in actuality, the "civic servants" who are guided by the higher needs of the society and its people.

Who is to control whom seems to be the theme of Berle's political views. Invariably he would state that at some distant or unstated time, probably heaven on earth, the corporation would have full control of the direction of this planet as a result of the people vesting their power freely in the corporate system. In the meantime, however, Berle did see the need for some restraint or balance in the actions of the corporate system, possibly while it is passing through its puberty period. These restraints, for the most part, were either part of the woof of society and operated automatically, or were self imposed by the corporations so that they might more efficiently and effectively serve the customers.

The next section will detail some of the actual restraints or balances Berle saw in operation today. The following section will study some suggested improvements or additions to these restraints. It should be kept uppermost in mind that the concern of this chapter is determining if, in the final analysis, the government is intended to ultimately control the

corporations or vice versa.

Restraints and balances on the corporation.--In crude terms, Berle attributed economic power to the person or persons able to stand between other people and the resources, goods, or services that they need or want. Such a person can control the "price" he gets for the goods he controls, if he sufficiently controls the whole market for that good.[1] Berle felt that the persons having this power, usually a group of corporation managers, must recognize the extent of their power and determine the best method to utilize that power. By being involved in determining a socially acceptable means of wielding their power, the corporation managers would be making political decisions. The more control the managers had over such decisions, the more they made the corporate system a political institution.[2] Berle insisted that the power in economic organizations should be subjected to the same tests of public and social benefit as would have been applied to the actions of any other power source, namely, the government.[3] How is the corporate power structure held accountable to its society? How does the consumer cast his vote of confidence, no-confidence for the various manufacturing corporations he utilizes as suppliers of necessities? What balancing and restraining systems did Berle point out as being responsible for containing the corporation?

The first restraining factor which will be mentioned is the obvious

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[1]Berle, Power, p. 162.

[2]"A. A. Berle, Jr., Sees A . . . Revolution U.S. Style," Business Week, 54 (October 30, 1954), 115.

[3]Berle and Means, Modern Corporation, p. 310.

need for profits on the part of the corporations.[1] This need for profit helps to control the shape of the oligopolistic nature of the corporate system. If one unit in a particular industrial field began gaining too disproportionate a share of the market, the other units would begin losing sales and thus profit. To prevent this from happening, the various units tend to agree on various aspects of competition, such as informal price and quality fixing agreements.[2] These informal agreements work when the smaller units quickly adopt and follow any change in product or in price made by the leading units. Thus, those items which are demanded by the public, and which demand is shown in increased sales, are reproduced and made more available to the consumers. By thus directing their buying power to the most desirable of the available items, the public affects the profit structure of the industry and nudges the competitors into producing the desired products.

One controlling factor that has lost most of its power but which should be mentioned is the actions of the investing capitalist in the capital market. In days past, prior to the era where the corporations would furnish sixty-five per cent of their own needs for capital, the direction given by the capital market in areas of what to invest and how were very influential on the growth directions of the corporations. Now, however, the capitalist has almost completely vanished from the picture and with him has vanished much of the controlling force of his market-place judgement.[3] This shows that one of the classical economists' favorite checks on corporate power has been greatly weakened.

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[1]Berle, Power Without Property, p. 90.

[2]Berle, Capitalist Revolution, p. 58.

[3]Ibid., pp. 39-40.

Value system.--In his discussions of the laws of power in his last book, Power, Berle concluded that "the philosophy underlying power institutions is ultimately determinative."[1] Earlier was mentioned Berle's predilection for the Protestant Ethic and his Theory of the Transcendental Margin. Berle failed to realize, however, that the philosophy and ethic of the corporate system could be summed up in one word: profit. If he realized this, he nevertheless continued to firmly state that the corporations should be concerned with meeting the needs of the society primarily and with profits only secondarily. Realizing the great position the corporate managers had attained by mid-twentieth century, Berle insisted that they must consciously take account of philosophical considerations.[2] The problem, however, was that there existed no social outline of the direction society was expected to take. Neither the people nor their representatives had ever specifically filed a future goals guide with the corporation leaders. The leaders, therefore, were entirely free to decide what directions they proposed to investigate.[3] Berle realized the importance of a value system, but he saw no one attempting to furnish such a guide. The philosophy which the corporate managers naturally adopted, profit, was not and is not one which usually meets the needs of the society. Any value system which the government provided by way of regulatory laws or court reprimands was negative in outlook and did not provide a positive guide of what the corporations should attempt to do. Left to their own devices, the corporations made, from the society's standpoint, a poor decision of which philosophical structure they would base their actions and decisions upon.

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[1]Berle, Power, p. 90.

[2]Berle, Capitalist Revolution, p. 166. [3]Ibid., p. 181.

"The fear is that, without an adequate philosophy to shape its generosity, big business may erect a vast new paternalism as sterile as the welfare state."[1] This last statement could be interpreted as an expression of desire that the government should outline the future needs and goals of the society that the corporations could utilize as a guide.

Berle, in trying to replace an externally provided philosophical basis for the corporations, stated that the corporations should develop a "Corporate Conscience" which would be a set of ideas, widely held by both the producing and the consuming communities, that certain uses of power are "wrong" and contrary to the interest and value system of the community-at-large.[2] This "corporate conscience" idea, however, foundered due to lack of moral imperative from the community. The corporations would not adopt any actions or value systems unless they absolutely had to do so.

Public opinion.--The most important of all restraints and the most effective in Berle's system, is the force of public opinion.[3] Berle said that the modern American corporation understands well enough that it has a "constituency" to deal with, and that if the constituency is not satisfied, it is liable to invoke the powers of the political state upon the corporations. Unfortunately, from a practical standpoint this is a too seldom used power. It is supposedly a stated fact that consumers want more durable and longer lasting products, but they have yet to exert any concerted pressure upon their governmental representatives to enforce their wishes upon the corporate system. Thus, corporations continue in building in a short term

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[1]"The New Conservatism," Time, 68 (November 26, 1956), 99.

[2]Berle, Power Without Property, p. 90.

[3]Berle, Capitalist Revolution, p. 54.

life or obsolescence into their products, assuring themselves of high profits. Berle has an idealistic view of the people and their representatives. "If there is a job to be done, say in checking concentrated economic power, it will be done whenever the people really want to do it."[1] The American people have proved to be of the type who are capable of concerted action only in moments of national crisis. Waiting that long to attack corporate concentration of power may be too late. Berle also erred in expecting the representatives of the people to quickly and firmly respond to their voters' prodding to reduce the economic power of the corporations. The level of political involvement of the corporations in supporting various office holders is usually sufficient to prevent any adverse action being taken against them. There are exceptions, but as IT&T and the drug companies have shown, there are private ways to circumvent politically any adverse actions made in public. If public opinion is to be the central restraining and balancing factor in Berle's attempts to improve corporate actions, it is likely that the corporate system will feel little effective pressure to restrain or improve their actions. Stronger, more automatic, procedures are required to enable the society to provide control for their economic element.

This stronger control, the control of last resort, must come from the political power of the state. All other forms of balance and restraint rest on the idea that the state will provide the ultimate check, should it become necessary.[2] Politics and economic powers are constantly interacting on some level. Two conclusions concerning the exercise of governmental

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[1]Bunzel, "Liberal Ideology," p. 377.

[2]Berle, Capitalist Revolution, p. 58.

power are easily made. The first is that governmental power is negatively exercised. It prohibits certain uses of economic power by the corporations, but it seldom, if ever, insists or requires certain actions. Secondly, the government leaves to the corporations the main task of production, supply, and distribution. Although the government occasionally makes special assistance available for developing some underprivileged area, it usually leaves the main initiative to the corporations to determine in what markets they would be involved.[1] These two conclusions allow one to see that the driving force in the American economic system is not the government or governmental pressure, but the profit mechanism. In discussing the range of control the state did have available to it, Berle said that in preference to changing or attacking the system the most obvious remedy is not to change the system but to change the managers.[2] Berle recognized the current trend of accepting the state as being dominant over the economic system. He felt that by talking of the powers of the state that were available to control and regulate the corporations, the corporations would be sufficiently reminded to keep their own shops clean in order to prevent state intervention. By holding individuals to be at fault, as was done in the case of various price fixing trials, Berle felt that the corporate system would operate as it was designed. While Berle was not a proponent of active state intervention, he did realize the need for protection of property and protection of individual's rights. For this office, he felt that the state was best equipped.

In examining the state's powers to influence corporate actions, Berle described several conditions which he stated showed a need for

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[1] Ibid., p. 94. [2] Berle, Power Without Property, p. 87.

revisions in the laws concerning the regulation of the economic power. He felt that the laws were inadequate protection for both the society and the corporations. Some of the suggestions for revision Berle made lead one to think that he was dealing more harshly with the corporations than he did at the start of his career. Other revisions, however, are inclined toward institutionalizing the power of the corporations in such a way that they become independent of the political powers. The next section will discuss Berle's major suggestions for revising the legal system of control and regulation of the corporate system.

Suggested revisions.--As was mentioned earlier, Berle's professional background was law. His works and his suggested revisions all showed a great respect for the law and the influence of the law. This, as a matter of fact, was one of his failings. Berle expected all things to operate as described in the law, and he did not cope with those instances when the law was circumvented. In his study of corporation law, Berle stressed the need to define and clarify the evolving law so that it could play its role as a restraint upon power.[1] Berle viewed the law on corporations as being haphazard in nature and not representative of a coherent position or policy toward the power of the corporations. Berle was particularly fond of quoting Bracton as saying, "There is no king where the will and not the law has dominion."[2] Berle stressed the need to take decisions away from the personal prejudices of both government officials and corporate heads who were prone to use the existing law to support their own views. Berle saw the perfect outline of a democratic economy as one that accepted a

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[1]Kirkendall, "Student of the Corporation," p. 48.

[2]Berle, Capitalist Revolution, p. 115.

concentrated economic power, checked by and responsible to the public consensus. In this economic system, Berle saw a nice balance between the democratic, people protecting forces and those forces whose power and authority is derived from property rights in the place of a popular mandate.[1] The law would work to protect both forces from the incursions of the other.

In designing his legal system, Berle's thoughts followed two different paths or forms. The basic tenets of both were to allow the people to exist alongside of the fully operating corporation. One of the forms demanded that the basic law of the nation be rewritten to include an institutional representative of economic power. The other form worked through the judicial branch and called for the courts to recognize certain attributes of the corporations. These two forms both had the same end in mind: to allow the corporations a free rein to operate as unfettered as possible within the limits set by society.

First form of revision.--The first form of revision Berle recommended was to recognize economic power as a fourth power in the categorization of separation of constitutional powers. Berle stated that "It would be an absurd caricature of the American economic power structure to suggest that all economic power . . . is lodged in private corporations."[2] He went on to state that the American political state exercises a great deal of economic power in that it regulates the prices of some services, as transportation, and it requires formal hearings and approvals before some other prices are changed. This intermingling of private economic power and federal or governmental control is not to the liking of the business world. They would prefer that "politics" stay out of business matters. Business, according to

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[1]Berle, Power Without Property, p. viii. [2]Ibid., p. 93.

Berle, fears the combination of the economic power of the United States along with the Statist power. The Founding Fathers took steps to prevent two disparate powers from being combined in the hands of one man or one body. Now that the economic power of the United States has grown to be so influential, Berle feels that it should be treated on an equal basis with other power structures.

> What we may be seeing in this controversy over "Government in business" is the emergency of a fourth category in this doctrine of constitutional separation of powers. This is that economic power, statist or private, must not be joined to or controlled by - nor may it control - any other form or power.[1]

This quote seems to be saying two things: (1) neither power - economic or statist - should attempt to dominate the other; (2) the economic system should be given status equal to that given to the judicial, executive, and legislative branches of the Federal Government. In a democratic society which effectively utilizes its economic system as a means to a desirable end, this is intolerable. Without the popular control furnished by the executive and legislative branches, minimal though it may be, there would be no hope of containing and restraining the actions and decisions made by the small oligarchical clique which operates the giant corporations.

The above quote led into the following statement:

> The primary consideration is not that the State shall not have economic power. It is that economic power exercised either by the State or by non-statist organizations shall not be combined with any other form of power, or used for other than economic ends.[2]

This quote is confusing for two reasons. One is that it is inconceivable for a popularly elected government making a determination on any matter strictly from an economic viewpoint. The regulatory commissions are charged by the Legislature with overseeing their industries not just for the good of

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[1] Ibid., pp. 96-97. [2] Ibid., pp. 97-98.

the industry, but with consideration for the good of the nation as well. Special subsidies are often furnished so that the industry, metropolitan transportation is one example, may operate at a less than efficient level. The second confusing point is expecting economic power to exist in a vacuum where it does not automatically combine with a few molecules of another type of power. Any type of economic decision made by the state automatically tinges that decision with the taint of state sanction. If one accepts the fact that corporations are political organizations as well as economic ones, as Adolph Berle does, then one has to admit that corporate decisions are not solely economic ones but also contain at least a hint of political flavoring. Berle is trying to make a virgin out of a sullied and well used creature.

One clue which Berle gave in 1966 about the organization of his fourth category's functions was that "antitrust enforcement should be removed from the courts and transferred to an administrative agency."[1] Berle believed that an administrative board consisting of representatives of various community interests would be able to establish a more coherent and smoother operating system of regulating the corporations than the present judicial system. Hypothesizing that this would be the fourth branch that would protect the fourth constitutional power, although Berle never furnished a sketch of the makeup of any organizational framework to surround his new category of power, one can begin to imagine the inherent trouble in such a system. It is an accepted political fact that any administrative agency which is purported to regulate a certain industry soon comes under the sway and influence of that industry. Such a regulatory body can hardly

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[1]"The Antitrust Laws Should Be Changed," Challenge, 15 (September/October, 1966), 18.

be considered the best means of protecting the interests of the people. Berle, however, contended that economic problems handled by administrative agencies would give better service to both consumers and the economic organizations.[1]

Berle's suggestion that a fourth constitutional power be added to the spectrum of the separated powers is not acceptable. As Berle himself pointed out so often, the economic system is a tool to be used to provide the society with its wants and needs. If that tool began to talk back or offer suggestions as to the desirable ends, how much would those suggestions reflect the views and needs of the user? A tool is not a protected commodity; a tool is a used commodity, one that is directed and influenced by the political power of the state.

Second form of revision.--The second form of legal revision Berle suggested was that corporations lose their status as persons within the purview of the Fourteenth and Fifth Amendment Doctrine. In 1889, Justice Stephen J. Field, in Minneapolis Railway v. Beckwith,[2] held that, "Corporations can invoke the benefits of the Constitution and laws which guarantee to persons the enjoyment of property, or afford to them the means for its protection." Berle's view is that the corporation should not be considered as one person but as a composite of natural persons. These natural persons will not lose any rights if the corporation loses its status as a person. The corporation will still be able to sue and expect its property rights to be protected.[3] Berle suggested a rule to cover the contingency that the

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[1]Adolph A. Berle, The Three Faces of Power (New York: Harcourt, Brace and World, Inc., 1967), p. 70.

[2]Ibid., p. 33. [3]Ibid., p. 36.

Black-Douglas doctrine of depersonizing the corporation should be effected in the near future:

> The corporation would have standing to represent and defend the aggregate of individual rights held by or entrusted to the corporation. These ordinarily would be the property rights of shareholders; perhaps also the contract or other rights created through bargains reached collectively with employees; possibly even rights under agency or other arrangements reached in agreement with, let us say, salesmen and dealers.[1]

The corporation, as such, would not be entitled to any of the constitutional rights that inhere in individual persons such as the right to privacy or freedom of speech or the right to not incriminate itself.[2] Depersonized corporations, however, would not loose the capacity to have writs served against them. When corporations commit acts which deny another's protected rights, the corporation would still be held responsible to explain its actions.[3] The catch in Berle's suggestion is that when the Supreme Court overthrew its own original ruling, Berle expected them to say that corporate action denying "equal protection of the laws" is in essence state action because the action's legitimacy is derived from a grant of state power made originally when the corporation was chartered.[4] In effect, the state might then be held responsible for allowing the corporation too much power or not sufficiently directing the corporation, and the corporation is given legal status as a segment of the state. This could cause problems in that a corporation may first insist that the state must be sued, or the corporation itself may sue the state, for not having given complete direction in a case which ended up in court. Secondly, it is possible that

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[1] Ibid., p. 37. [2] Ibid., pp. 37-38.

[3] Berle, Capitalist Revolution, pp. 106-107.

[4] Berle, Three Faces, p. 47.

if the corporation is viewed by the courts as having some legal connection to the state, then the state's permission would be required before a corporation could be sued. This is an area where the intermingling of state power and authority would muddy the issue of the responsibility of the state.

It is not difficult to agree with Berle that the corporation is not a natural person and that the judicial doctrine that affirms the personal nature of the corporation does need revision. It is doubtful, however, that it is desirable to recognize the corporation as a creature of the state, unless such recognition is done so as not to confuse the relations between the two. Berle's plan leaves it sufficiently vague as to the responsibilities of the state in regard to those areas where the corporation has committed a wrong. Should the corporation be tried for misuse of state power or should it simply be sued for damages as is now the case? This is a touchy area. While Berle's reform proposal outwardly has an agreeable nature, an inner examination shows that it may simply be a ruse to defer the responsibility of the corporations by rubbing some off on the state.

In summation.--The relationship between the Federal Government and the corporation, according to Berle's various statements, is not too clear. The obvious highlights are that the corporation is to have wide-ranging freedom with little hindrance on the part of the state. The state is to continue to provide constitutional protection for the corporation and possibly constitutional status for it as an equally protected power status. The government's right to intrude into corporate affairs, on the other hand, should be subjected to rigorous checks and standards as written by an administrative agency. The three threads mentioned at the beginning of this

chapter have been pulled through the weave of Berle's constructs designed to increase the role and the effectiveness of the modern corporation in American society. From the view of this study, it is difficult to see how Berle expected the government to contain the corporate power structure which he is so insistent upon strengthening and institutionalizing. While government control, on a temporary or limited basis, may be a somewhat acceptable idea to Berle, the impression for the long-term is that the corporation is expected to replace the government as the influential center of American society.

CHAPTER VI

CONCLUSIONS AND AFTERTHOUGHTS

For the most part, the important conclusions were supported by a full explanation of views contained in the body of the thesis. This chapter will focus on reporting the conclusions which affect the perspective from which one views Adolph Berle's works. This chapter will also focus for a brief review of what may have been clues to revisions in his thoughts in various areas, but were never sufficiently substantiated in any of his works to gain position in his theory. In order to present as balanced and fair a representation of Berle's thought, it is incumbent that these few diversions from the general pattern of his thought be presented.

Afterthoughts.--There are two afterthoughts which are mentioned in this section. The first one has to do with Berle's attitude toward government. During the course of this work, it was evident that Berle did not expect a great deal from government in the future. He expected the corporation to gain dominance as the central social organization, with the state performing secondary functions. In his last book entitled Power, however, Berle stated that "My belief, . . . is that all systems will yield to the slow but steady evolution toward democracy."[1] Berle recognized the value of democracy as far as its freedom-giving powers to innovators and people with different ideas. He felt that democracy had served the development of the modern corporate system well and he expected it to continue

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[1]Berle, Power, p. 217.

doing so. His prognostications included the presence of government, something he had not mentioned before. "As the situation is developing in the United States, two currents are likely to converge. Production of all kinds will increasingly be dominated by huge corporate organizations . . . Bigness is inevitable. The other current - government - will be increasingly necessary."[1] Here for the first time, he clearly stated that governmental functions will be necessary to continually balance or counteract the actions of big corporations. His statement may be interpreted, however, along similar lines as those seen earlier in this work. Nevertheless, he at least saw fit to keep a democratic government around in the future to control, to some degree, his corporations.

Berle carried to his death bed the view that a value system is the basis of civilized society. He believed that the impetus to a value system was buried deep within each human being.

> Deep in human consciousness is embedded the assumption that somewhere, somehow, there is a higher law which imposes itself in time on princes and powers and institutions of this terrestrial earth.[2]

On present day earth, however, Berle realized that the higher law was not active among the business leaders, and he realized that they, along with the government leaders, were not capable of responding to this higher law. He did repudiate the idea that the profit motive provided sufficient motivation for the enrichening of all mankind. He stated that the system of profit must be discarded should it not meet the needs of the community.[3] Realizing the deficiencies of the government and business communities as far as providing leadership to a better society, Berle recommended that society

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[1]Ibid., p. 257. [2]Berle, Capitalist Revolution, p. 69.

[3]Berle, Economic Republic, pp. 80-81.

turn to the universities, artists, and other philosophers as suppliers of access to the higher ideals.[1] This, of course, is a highly idealistic solution which is also not very practical. No government official would turn to an artist or a philosopher and expect to get direction which had concrete value. Government leaders, as well as business men, are extremely practical men, politicians, who seem to give little credit to the philosophical approach to thinking. As for expecting university professors to provide the needed guidance and balance, this too is not practical. For the most part, those professors who are listened to are the ones who realize from where the financial backing of their universities come. The other professors are looked upon as "ivory-towered" professors who have no practical grasp of reality. Any professors in between these two categories would probably be ignored strictly on the basis of them being college professors. For consistent representation of a value system, unfortunately, Berle has to rely upon the morality of the populace being evident at election time.

Berle's afterthoughts in themselves do not appear to be very significant. Their existence, however, showed that Berle was continually reviewing and revising his analysis of modern society, with each modification helping him to approximate reality a little better. It is conceivable that were he to have rewritten some of his earlier statements about the place of the corporation managers in society he would have shifted their future roles, or at least put them on a more equal basis.

Adolph Berle as scholar.--This paper was not meant to be a white-

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[1]Charles F. Madden, ed., Talks With Social Scientists (London: Feffer and Simons, Inc., 1968) p. 62.

wash for the ideas and works of Adolph Berle, nor was it meant to be an outright attack against everything Berle wrote. Berle is not viewed as a "great white father" image nor is he viewed as an enemy of the people. Berle's works have much merit to them from a scholarly point of view. They clearly and intelligently represent a certain point of view without being propaganda. Their author was a man of some skill in arguing his point of view, and he was honest enough to admit the failings of his system when such failings became obvious. Berle can be termed a protector of the corporate system, but it might be fairer to say he protected an ideal system he envisioned for he readily attacked some of the more infamous acts of the various corporations. The result of this work might leave one with the decided opinion that Berle was completely wrong and misguided. Such a conclusion would be misguided in itself. This thesis did purposely cover the weak points of Berle's system, but there are many other points which were not closely studied that might have merit. While the overall view given by Berle was not found to be an acceptable one, Berle as a scholar and gentlemanly representative of his point of view definitely is acceptable as an object of study.

From the standpoint of modern-day political scientists, the works of Berle are lacking in their ability to convince because of the absence of great quantities of quantitative matter. It must first be remembered that Berle's training was in the field of law, and that he was convinced and satisfied with well-thought out arguments. One point in his favor is his first book, The Modern Corporation and Private Property, which was coauthored by Gardiner C. Means. This volume was well received because of its empiric nature and because of the vast amount of statistical material the authors had used to verify their conclusions. This material was later made public

in several articles by the two. The remainder of his works did draw conclusions based upon empiric studies made by others who were more skilled in this area, but the basis of his books was his own well thought out ideas and conclusions. While to some this may be a failing on the part of Berle, this study did not find any conclusions that might have been drastically different had more data been utilized to verify the findings.

Berle is studied and should be further studied by scholars in any field concerned with the modern corporation because Berle's works are important studies in the various problems represented by the modern corporation. Berle was one of the original thinkers concerned with the corporation, and consequently, he had developed a complete theory which accurately defined the problem areas and which structured the various unknown areas into areas that could be more accurately studied. Berle made great contributions to the field by presenting and defining definitions of various concepts whose meanings are changed by the presence of the modern corporation. In summary, Berle was a true scholar who utilized every tool available to him to analyze and define the problems and the products of a new, fairly unstudied, field. His works represent a beginning that must be carried on by friends and critics alike.

Conclusions.--The principle conclusions which were presented in the body of the thesis are enumerated here to clarify the findings of this thesis. The findings discussed here represent not so much subtractions, attacks, and criticisms of Berle's findings but additions and modifications. While other conclusions were reached, the important ones were discussed below.

Berle's analysis of the modern corporations is an example of a

political scientist transposing his personal ideology into reality. Berle was raised with a strong work ethic and a high regard for the Protestant Ethic ideals. His background tints his view of mankind and makes it hard for him to see evil or selfishness in anyone. This seriously affected his analysis of the modern corporation and the group of men who manage the corporations. It is relevant to keep this in mind as one reads his descriptions and views of organizations.

Berle's legal training also affected his work. Lawyers expect an organization to operate according to the lines drawn up in the organizational charts and expect no substantial influence from areas other than those that are officially described. Unfortunately, in the real world the organizational chart does not represent the lines which influence follows nor does it represent the actual mode of operation. This oversight in Berle's analysis should also be remembered, especially when he is stating that an organization functions in a set mode.

One conclusion which Berle assumed in his analysis will be repeated here for purposes of stressing its importance. An economic system, be it capitalism, socialism, Marxism, or Maoism, is still only a means to an end. The important content of the economic system is not the mode of production, the level of production, or the number of different goods that are produced. The human content, the amount of effective distribution, is the important element. In producing, the system must take great pains to insure that no human is denied rights or life as a result of the blindness of the system. Production should be an intermediate goal of the system, but only in so far as distribution of goods to meet needs is the ultimate goal. This necessitates, at least in the American economic system, the removing of the profit motive as the prime motive of business, and the increase in planning by the

government as the effective representative of the people. The human content must be given first priority and ample protection by the state.

This thesis concluded that the need for state planning is paralleled by the need for state control or regulation of the financial organizations and the giant corporations. The financial organizations are annually drawing more and more power into their control. Berle stated that he feared the day when they would possess "control" of the major corporations and used that power, in whatever way, to further their own ends. It is possible that that day has arrived, although this study did not purport to study that situation. The giant corporations, regardless of who their masters are, are also in need of control. The uncalled for expansion of conglomerates, or to use Berle's terminology, concentrates, should be brought under federal control and regulation. The financial necessity for investing such large amounts of capital in purchasing such diverse corporations should be explained to the people. If the purchases are solely means of utilizing excess profits, the government should force the corporations to lower their prices. Federal regulation of profit margins should be legislated and enforced, as well as restructuring of corporate profit taxes and deductibility of expenditures for social welfare type actions. Corporations are a tool for producing great wealth and distributing the same to all of the people of the United States. When they fail to meet these stated objectives, the government should step in and institute controls to insure that the welfare of the people is protected. The government, as effective representative of the people, should control the corporations instead of vice versa.

Another conclusion was that the corporation should be recognized as having the power of a private government in that some of the rules it makes

takes on the quality of legislation for the various publics affected by the decision. This sector of private government, however, should not be treated as an equal type of protected power as Berle recommended when he opted for instituting economic power as the fourth element of constitutional power, but rather, they should be treated as a lower unit in a framework of federalism. As a lower unit, the corporations would be controlled and closely monitored. The corporation should be utilized as the effective tool of production it is to better serve the needs of the people of the United States.

Berle spent some time when discussing economic systems in berating classical capitalists who defended capitalism even when it was obvious, at least to Berle, that capitalism was at fault and that the deficiencies of classical capitalism made it unsuitable for meeting the needs of the modern world. Berle, however, falls into the same trap in that he makes the corporate system sacred and refuses to allow the government to do any major tampering. Berle lost his perspective and continually forgot his own dictum that the mode of production is still only a means to a defined end. Berle began to write as if the corporate system was the only possible means to the end and that the end naturally included the corporate system as the dominant form of social organization. In this area one might say that Berle lost his sense of balance and objectivity.

In closing, comment upon the state of the corporate system seemed in order. The corporate system is rapidly approaching the point where it is no longer solely an instrument to the accepted end of a better society. The corporation may soon become the tool who told his master what to do. The time is past when incremental changes and modifications in the system would prevent any untoward actions on the part of the corporate system. Major

modifications and restructuring are necessary to prevent a major systemic change in the American system of life. It is imperative that the corporation become an object of study, both on a theoretical and on an actual basis. The mechanizations and political actions of the corporations must be revealed to publicize the need for change. The idea of a corporate state is foreign and unacceptable to the philosophy of America. Unless some basic restructuring takes place in the near future, however, it is conceivable that the modern corporation will have effectively gained control of the actions of the United States' government.

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THE MODERN CORPORATION AS ANALYZED BY ADOLPH A. BERLE: A CRITIQUE

by

ROBERT ERWIN PAULUS

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AN ABSTRACT OF A MASTER'S THESIS

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This thesis presents a study and analysis of the modern corporation and its place in society, as seen through the works of Adolph A. Berle, Jr. Berle's seven major works in the area of corporations were chosen to supply the majority of information. It was determined that Berle's prominence in the field made his views and analysis of the problems of the modern corporation an appropriate field of study.

This topic was selected for several reasons, any one of which would have been sufficient justification for undertaking this study. First, Adolph A. Berle, Jr. is one of the earliest exponents of the corporation and its place in modern society. Berle held that the corporation would eventually become the major form of social organization in the United States. The Modern Corporation And Private Property, Berle's first major work which he coauthored with Gardiner C. Means, was received as a summation of all known knowledge in the field at the time, as well as a bold attempt at extending the frontier of knowledge in this particular area. The empiric nature of the study furthered its influence and acceptability among those who were concerned with the modern corporation. Berle's later works were to complement his original classic, although none were to attain the stature of The Modern Corporation And Private Property. Because of the seminal nature of Berle's work and because of the recognition accorded to Berle as scholar, lawyer, and governmental adviser, any study would be justified in selecting his work as a major topic.

A second reason for selecting this particular topic is the importance of the institution which is examined. The nineteenth and twentieth centuries have seen the corporation rise from the status of small business to the position of being the dominate form of economic organization in the United States. The amount of economic power the modern corporate system

wields is almost incalculable; the amount of political power and influence it wields is even more incalculable. The purpose for selecting this topic is a synthesis of desire to further understand the place of the corporation in America and a desire to further familiarity with the works of Adolph A. Berle.

This thesis is divided into two basic parts. The first part attempted to present an accurate and concise over-view of Berle's analysis of the place of the modern corporation in America. The second part of the thesis analyzed Berle's response to two important questions: (1) should corporations be involved in social action, and (2) should government control the corporations.

The conclusions drawn from this study, in particular from the analysis of Berle's response to the two questions, were in large measure opposed to the conclusions drawn by Berle. A generalized summation of Berle's conclusions would be that the corporation could and should involve itself in social action because it is the most efficient problem solver of the various institutions. Berle labeled the modern corporation as the dominant form of social organization, which would require it to act in cases where other institutions of society failed to act. As for government control of the corporations, Berle preferred for the corporations to be self-regulating with only minimal interference from any other power organization. The conclusions of this study were that it might be dangerous to the democratic form of government to allow the corporation to operate in social matters without definite control by the government. Strong government control is also required in the daily operations of the corporation.