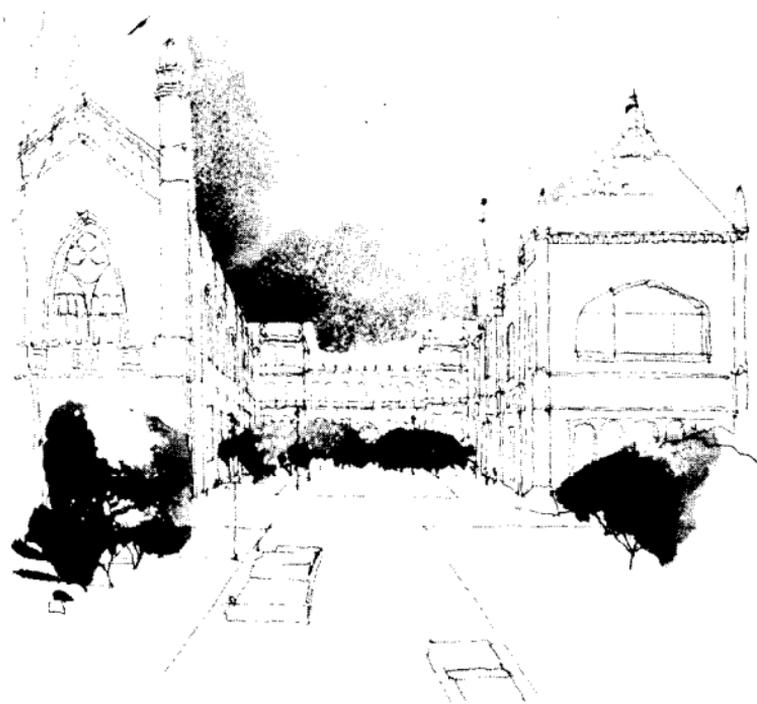


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Modern Man and His Corporation

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Modern Man and His Corporation

AMERICANS have been taught by persistent experience to expect great and growing wealth from their economic system—even our paupers are richer in goods than most of the elites of history. Americans are now beginning to ask more of the corporate leaders of the economy: that the economic system make life pure, safe, and sweet—that it provide man with all the manufacturable components of happiness.

During the past academic year there was a concerted drive for proxies to instruct General Motors to mend its ways. Almost all major electrical utilities became deeply embroiled in pollution controversies. Financial institutions have been vigorously urged to lend for urban renewal and minority businesses.

An important legal decision on July 9, 1970, tells us a good deal about whence the wind blows. Several stockholders in Dow Chemical Company requested that the annual proxy statement allow a vote on whether the company should make napalm. The Securities and Exchange Commission supported the management's refusal to allow the referendum. The Federal Court of Appeals in Washington, D.C., unanimously held for the several stockholders:

We think there is a clear and compelling distinction between management's legitimate need for freedom to apply its expertise in matters of day-to-day business judgment and management's patently illegitimate claim of power to treat modern corporations

with their vast resources as personal satrapies implementing personal political or moral predilections.

If proxy statements are to become forums for debates on political and social policy let me advise you to purchase at once securities of the paper and printing industries.

The demand that corporations "voluntarily" serve social and political goals is not completely new. Contributions to charitable and educational institutions have been an approved expenditure of corporate resources for about half a century. In these areas the courts have not required any showing that the stockholders-whose interests are entrusted to the corporate directors-receive any demonstrable benefits beyond those received by all members of the society. And this has been most fortunate for the community funds, the colleges, and the other beneficiaries of corporate gifts, because hardly anyone really believes that such gifts could be defended on the basis of any benefits special to stockholders of the companies making the gifts.

The proliferation of demands, however, is accelerating at an awesome pace. Consider the recommendations to the business community in the July 20, 1970, issue of *Time* Magazine, -the *Time* which waits for most men.

1. Concentrate on promoting black employees as well as hiring and training them.
2. Re-examine "strictly business" decisions. Defined by example: extend business credit as freely in slums as elsewhere.
3. Sell more nutritious food to the poor.
4. Bring people and jobs together.

Perhaps four such ideas are all one is entitled to for fifty cents, but I timidly suggest a fifth:

5. Publish intellectually more nutritious fare for the poor businessman,

Now let us retrace our steps and begin again.

1 The members of a society possess sets of values of all possible degrees of acceptance. The incest taboo and an aversion to the settlement of disputes by murder are shared by almost every person-in fact rejection of the basic moral code is the operational content of insanity. These widely held views are imposed upon every person in the community, and criminal sanctions are commonly imposed upon a detected violator of the conduct required by the moral code. Other views, although widely held, are not imposed upon a minority-for example, the British no longer impose disabilities on those citizens who do not avow the doctrines of the Church of England. This tolerance may be explained by generous admission that other faiths, or no faith, cannot be demonstrated to be incorrect, or the tolerance may be explained by the burdensome costs of suppressing a large, extraordinarily belligerent minority. Still other values are held by much smaller groups: I may be the only person who wishes all families to engage in responsive readings from *The Wealth of Nations* in days of economic crisis.

A wholly free society is one which allows the pursuit of all values held by individuals and small groups where they do not impose large costs upon the remainder of the society. A wholly tyrannical society is one in which every permissible value is specified by some authority -a monarch, an oligarchy, or a majority. No society has ever been wholly free: a variety of moral judgments which are probably not essential to the survival of the society are always imposed upon every individual. For example, until recently American society has been diligent in its attempts to specify what is forbidden pornography. Again, moral values underlie the regulations on sexual conduct, and even, I suspect, the compulsion to school attendance. Conversely, no society has been so successful in its tyranny that all non-orthodox values are sup-

pressed: indeed, if it could be so successful, it need fear change only from external attack.

I simply assume without argument that you and I wish to live in a free society. This governing assumption tells us little about what to do. It does not imply that the state should refrain from regulating any specific kind of behavior. For example, no thinking person believes that sexual freedom should extend to the use of force or fraud, or involve people incapable of judging the consequences of their behavior. The costs of suppressing undesired conduct may be high: that is why we should not legislate against bad manners. The costs to the community of permitting deviant behavior may be low or (it may eventually transpire) negative. A free society is to be defined by the spirit of magnanimity with which it treats minority views rather than by some fixed agenda of rights of individuals.

The process by which a free society operates is as important as its rules of conduct. The society says: here is a list of commanded and prohibited activity, and here are the sanctions for violating the rules. *All other behavior* is tolerated, even if it is by no means always admirable: only the explicit processes of a democratically chosen legislature may alter the list of commanded and prohibited behavior. This legislative process permits a full examination of any proposed change in the compulsory rules of conduct, and it prescribes due process methods of deciding whether the rules have been violated in any particular case.

WE NEED not enter into the details of which laws a society should pass. I believe that entirely too many laws are in fact passed and entirely too many restraints put upon freedom of the individual. Quite aside from the question of what should be regulated by the state there is a grotesquely optimistic impression abroad in the public as to what the state can

do. Even Adam Smith believed the state could and should reduce cowardice! The original tasks of government were to win wars and maintain domestic order. Our society has not been conspicuously successful recently in performing either of these most ancient of governmental functions. Yet now we are pursuing frighteningly difficult goals such as progress, tolerance, and education. To try for what one cannot achieve is not simply gallant or quixotic, for the attempts interfere with the government's performance in areas where it is unquestionably competent to act. To devote resources, including judicial resources, to enforcement of an essentially trivial law on truth-in-lending, when the basic area of law enforcement is full of inefficiencies and cruelties, is symptomatic of the irresponsible dissipation of the state's powers: thus we prosecute minor cases of usury, which should not be a crime, while defendants in jails wait interminably for their trials. We may well eventually come to despise the powers of the state which fails in so many, many ways; I would much prefer to strengthen the state's achievements in its areas of comparative advantage.

This ancient, and I believe profoundly wise, doctrine of specializing in the areas of one's special competence, is of great but limited scope. It says that Congressmen should pass laws, Presidents enforce them, and steel producers set the price of steel. It does not say that business life is outside the proper concerns of the state. If an industry has a satisfactorily competitive structure, it should be left alone; if it exercises appreciable monopoly power, the state should do all in its power to eliminate that power. All too often, alas, the state itself has created and protected that monopoly power, and a paramount goal is to summon the political skill and integrity to withdraw from that game. The vigorous enforcement of the Sherman Act is a second major responsibility, and

one which has not been pursued with excessive zeal. It is infinitely more economical and effective to discipline businessmen with the sanctions of competition rather than the sanctions of political regulation.

2 I hope these remarks are platitudes, because platitudes are true, or at least not so untrue as to arouse argument. Let us apply the platitudes to the problem of corporate behavior.

If there are rules which we wish every business to obey, they should be formulated by appropriate democratic political procedures and enforced by the state. Thus we ask every food manufacturer to label the contents of his foods, every apartment house to have certain installations for fire avoidance and fire combat, every restaurant to have the health of its employees tested, and so forth.

The attempt to thwart the production of napalm by Dow Chemical now appears in a different light. The stockholders who asked for the proxy vote wished, failing to change the law of the land with respect to what weapons the armed forces could employ, to eliminate the sheer availability of napalm. If a second chemical company produced napalm (as is in fact the case), they would sooner or later seek to vote also that company out of production.

It would be a wholly exact analogy if, for example, a group sought to eliminate an unpopular book. They would ask that publisher X's proxy allow a vote on whether the company should continue to publish *Das Kapital* or *The Merchant of Venice* or *The Mountain of the Dolls*. If Marx or Shakespeare or other unesteemed authors then sought a new publisher, the procedure would be repeated.

In each case the minority is seeking to achieve by commotion what it cannot achieve by legislation. There is nothing improper about their actions: the sole question is how much the

society should assist them in their endeavors. My own view is that they should not be assisted in any way, and in particular have no privilege of inclusion of votes on proxy statements. The very vote is a form of harrassment. There should be a single objective criterion for inclusion of referenda on proxy statements, say, petition by one percent of the stockholders or one percent of the stock. If appointed to the Supreme Court, I promise to reverse the Court of Appeals on the Dow Chemical Case.

Such attitudes and such rules favor the status quo, of course. But the status quo ought to be favored for one overwhelming reason: there is only one status quo. It reflects-no doubt crudely and with a lag-the single most feasible position on which the majority of the society can agree. There are literally hundreds of alternatives to the status quo, and to pick out any subset of them and give this set of proposed changes a preferred forum seems neither sensible nor just.

I should add that of course this method of drying up the supply of napalm or books will not work. If the military services want napalm enough to pay a handsome price for it there will be adequate supplies forthcoming. If people are willing to pay enough for a forbidden book, it will become a best seller. In fact, if the price is high enough, the leaders of the fight against napalm will start making it for the Air Force. I do not consider it distressing that almost every man has his price-that simply is another way of saying there is something more important to the man. I am shocked by how low that price often is.

The tactic of corporate persuasion to censor a commodity has a reasonable hope of success only when the corporation possesses substantial monopoly power: it is a large or exclusive seller and new suppliers cannot get started. Under this special circumstance-which is encountered

primarily in the public utility area-the corporate decision is the social decision. It is precisely for this reason that on decisions that matter, the corporation is allowed discretion only so long as it guesses correctly the preferences of the legislature (and therefore, as a rule, the majority of the voters) . The stockholders, and in particular those who wish to advance a social cause which has not been adopted by the legislature, will find that the sovereign is somewhat jealous of his prerogatives. The general situation, however, is that suppliers of a commodity are numerous and inconspicuous, so censorship by stock proxy votes must be a symbolic rather than an operative technique for influencing society. So let us leave censorship, to be judged both ineffective and repugnant.

3 Why do we wish an electrical utility to produce less noxious smoke than the law permits? Why do we wish employers to favor black employees more than the law requires? Why should food manufacturers make foods more nutritious than consumers demand? Why should a grocery store refuse to sell grapes? Once the law has been obeyed, why should not a business-like a man-be free to do what it wishes? Why should it be asked to do more than the law or the market demands?

The case for seeking a more reform-minded business community, as best I can formulate it, consists of two parts:

1. There is a set of essentially uncontroversial goals which the society should attain as fully and rapidly as possible. Cleanliness of air and environment, the raising of depressed citizens from poverty, ignorance, and vice, the elimination of cruel prejudices, the safety of products-what sane man can dispute a single one of these goals of our time?

2. Although all these goals are more than sufficiently widely shared to receive statutory support, and all have in fact been incorporated into laws, a law cannot prescribe every possible method of achieving them. We enact into law that a child must be cared for by a parent, but we do not and cannot prescribe the full details of adequate care, and leave to parental love and neighborhood pressures the task of seeing that the care is not the minimum a judge can command. So it should be with the civic responsibilities of the corporation.

The first point—the universality of acceptance of certain goals—seems to me subject to qualifications, whereas the second point is surely correct.

Of course, everyone wishes the fine things under discussion, but the popularity of these goals is largely illusory. No one will ask for an unsafe automobile, to take an obvious example, but it is not so obvious that we can agree upon a safe one. Suppose it has a maximum speed of 12 miles per hour, or is so padded that a driver is in mortal discomfort? Similarly, no one wants a row of slums in his city, but the arguments grow like yeast when the details of their improvement or replacement are raised.

Even when the specific nature of the goal is undisputed, the question of its price reintroduces dispute. Do Americans want pure air if electric bills are increased forty percent and automobile operation rises \$200 a year? Do they wish cities to be rebuilt no matter what the cost? Costs can be less obvious: does *Time* wish black employees to be promoted before better qualified non-black employees?

In fact, if the goals were really widely accepted, there would be no need to implore businessmen to implement them. If automobile buyers demanded any safety device—and this includes paying for it—the manufacturers

would hasten to supply it. If customers and employees wish to deal with black executives, they will quickly appear in numbers. If no one eats grapes, no store will stock them.

The very reason for exerting pressure on the businessmen is that at least in some industries, they are few in number, so it is much easier to achieve a social change than it would be by appealing to each individual consumer, worker, etc. If seven million purchasers of new automobiles want a certain safety device costing \$100 and three million purchasers would rather have the \$100, manufacturers will make both kinds of automobile. But if the half dozen major suppliers (including importers) can be persuaded, then there will be only the one kind of automobile. Clearly a form of censorship is latent even in the simple preaching of social goals to businessmen.

THERE ARE three main arguments against assigning a broad program of social responsibilities to businessmen.

The first, which follows close on the heels of what has just been said, is that if businessmen can be persuaded to do good things, they can be persuaded to do bad things-or so much of good things that they become bad. If the business community can be persuaded to hire one race, it can be persuaded to fire another. The open, competitive, libertarian nature of the economy will be impaired in the measure that such persuasion succeeds. (For reasons given later, I do not expect it to succeed as a rule, but this does not constitute a useful defense!)

The second objection to corporate do-goodism is that it impairs the efficiency of the corporation in its main work. The great contribution of a company is to make a fine product and sell it for less, not to supplant the church as the social conscience of the community. A single corporation can make a superb automobile or mousetrap-it can make a noticeable contribu-

tion to our standard of living, but not if it dissipates its resources in promoting social welfare.

The argument that institutions work best when they concentrate upon their special tasks is an ancient one. Macaulay used it in a review of a book by the young Gladstone, who wished the state to devote its efforts to the propagation of true religion.

Without a division of labour the world would not go on. It is of very much more importance that men should have food than that they should have pianofortes. Yet it by no means follows that every pianoforte-maker ought to add the business of a baker to his own; for, if he did so, we should have both much worse music and much worse bread.¹

The immense gains from specialization appear to demand the most emphatic restatement in an age of general-purpose institutions. When universities have so fully completed their tasks of discovering and communicating knowledge that they can devote primary attention to wars and pollution; when banks have so efficiently collected and invested capital that their main remaining task is to finance minority capitalism; when governments have done so well with peace, order, and equity that they can now eliminate prejudice; when, in short, all institutions are told to serve all purposes—then it takes a measure of courage to restate the case for specialization. The efficiency of specialization, however, is testified to by hundreds of years of the most challenging experience; the promisory notes of the general-purpose enterprises have still to be redeemed.

We come now to the third, and conclusive, reason for not plaguing the corporation to serve social goals: the corporation cannot in general do so. The primary discipline of the corporation is its stockholders and customers. If Noble Deeds, Inc., begins to spend ten per-

1. *Critical and Historical Essays* (London, 1878), II, 436 (“Gladstone on Church and State”).

cent of its net income on social betterments, whereas other corporations find two percent sufficient, one of two things will happen:

1. Stockholders of Noble Deeds will agree to accept social betterment as part of their annual dividend, and the shares of Noble Deeds will hold their value.
2. Stockholders of Noble Deeds will find it a less attractive holding, and its price will fall as the demand for the stock falls. The assets of Noble Deeds will become cheaper and invite a takeover by investors with more traditional goals.

It is easy to guess which of these outcomes will take place.

Exactly the same choice arises if Noble Deeds seeks to recoup its benevolences by charging a higher price for its product. Consumers will then choose between paying \$10 for Noble Deeds shoes plus \$1 of social good, or paying \$10 for other shoes and choosing their own charitable causes. It will be found that freely choosing consumers usually consider themselves the premier charitable cause.

This discipline of the corporation by its customers and investors (and laborers and lenders) is one of the most admirable features of the corporate world. The management of the day does not have any large discretion in its behavior, it has the capacity for doing neither much harm nor much good. Since business managers are entrusted with the management of our economic resources, not of our moral obligations, it is only proper that they be allowed no large role in an area in which they are professionally incompetent.

If the preaching to corporations will do little harm, why not leave it alone? Perhaps the answer is that it should be left alone. The classical economists did not propose a stage in which men could work off their philanthropic

energies, and the annual corporate stockholder meeting, already dull enough to be a true church, may supply this forum. The reply to this cynicism leaps out: futile actions delay effective actions in dealing with real problems. The reply would be more persuasive if real problems were not so often created by men rather than addressed by men, but nevertheless, I accept the reply. If we wish to cure our social problems, or at least prevent their oppressive growth, let us stop preaching to corporations. In fact, let us stop preaching until we are reasonably confident of the usefulness of the sermon!

4 If we do not preach to corporations, how can we get non-polluting automobiles and how can we advance the welfare of minorities? If we do not preach to both corporations and unions, how can we stop the flow of inflating prices and wage rates? The answer, let me say promptly and emphatically, is that anything a corporation can do, and many more things it cannot do, we can do better-in other ways. To withdraw from pleading to and threatening corporations does not involve withdrawing from any desirable (or for that matter, undesirable) social or economic reform. Consider the examples just mentioned.

Begin with inflation, perhaps the most timely problem in the list. Enormous pressure is now being exerted upon the President to impose wage and price guidelines-rules of price and wage increases backed up by pleas of patriotism and threats of public vilification. The hard fact is that individual corporations and labor unions stop inflation, which is due to basic monetary and fiscal policies completely within the control of the federal government. Not only can the federal government control inflation-although this task was absolutely and irresponsibly abandoned between

1965 and 1968--by these means, but no President can control inflation by any amount of abuse poured upon a few alleged malefactors. Indeed it should be below the dignity of the sovereign to harrass corporate or union leaders. The social responsibility of a corporation in an age of inflation is to maintain its own economic viability, not to attempt to conceal the incompetence or political timidity of the political leaders.

Consider automobile pollution. In a somewhat over-simplified form the problem is this: It may be worth \$300 to each family each year to reduce automobile-produced pollution by eighty percent, and the cost of doing so may be only \$200 per family--an excellent bargain. But if any one automobile owner spends the \$200 to combat pollution, his contribution to better air is of negligible value to himself: in the Chicago area he receives only one-millionth of the return, so if thirty-three car owners adopt the cleaner device, each spends \$200 and the thirty-three together receive back one penny's worth of purer air. The proper procedure is to tax the source of the pollutants, whether fuel or automobile, at rates such that all drivers bear the costs of the reduced pollution, just as they all share the benefits. The current attempts to persuade individual automobile drivers voluntarily to use more expensive and cleaner fuels are attempts to persuade people to throw their money, not away, but at their millions of neighbors.

Consider, as the last of innumerable possible examples, the reduction of discrimination in the employment of Negroes. Here it must be emphasized that coercion of individual employers cannot be an effective method of raising the skills and earnings of Negroes. At most, corporations would be forced to adopt quota systems, and the quotas are loaded with individual injustices to employers, Negro workers,

and non-Negro workers. There is a necessary task of striking down barriers to employment erected by occupational licensing, usually enforced by the perversion of the state's power, and striking down also discriminatory admission policies of labor unions. More important by far, there is the task of raising the physical and general educational and vocational skills of Negro workers, an immense task to which the state is making large contributions. The awesomely difficult task of elevating the average status of the Negro in America must be pursued along many routes, but I cannot believe that persuading businesses to act with social responsibility is one of these routes.

Americans have a much inflated view of the importance of individual businesses to America. If a multiple-entry meteor were to destroy every plant of General Motors-and let me say that I would not only deplore such a catastrophe but will be glad to sell at a bargain price an insurance policy against its taking place-the finest econometricians in the land would not be able to detect the difference in Gross National Product after five years. Our repeated petitions to business leaders to solve our problems is giving them an illusion of power which they do not possess. In a good economic system, and ours is a superb economy, individual businesses can do very little good and therefore very little harm, and that is as it should be.

Let our businessmen return to making shoes and locomotives and toothpaste. Let us not seek to transform the greatest economy in all history into a third class welfare agency. Let the reformers address their schemes, whether noble or ignoble, to the real source of power, the public, and to the real administrators of that power in our society, the leaders of the political system.