THE NEW DEAL AND THE CORPORATION

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THE MODERN CORPORATION, as the dominant organizational force and the vehicle of mass production, was the outstanding feature of the American economic and social scene during the first three decades of this century. Leaders of finance and business had grown in stature and importance since the Civil War, with hardly any check. Their names and the names of their enterprises and products had become household words. A steadily increasing portion of the population had become the customers, employees, and security holders of "big business." The depression which followed the stock market collapse of 1929 was not unnaturally identified in the public mind as largely the failure of the modern corporation and of these leaders.

It was politically inevitable that the party out of power in 1932 should associate the Republican party with big business, charge both with failure, and promise "a new deal."[1] But Roosevelt went further. In his remarkable acceptance speech he set forth his analysis of the forces that had produced the economic crisis:

> In the years before 1929 we know that this country had completed a vast cycle of building and inflation; for ten years we expanded on the theory of repairing the wastes of the War, but actually expanding far beyond that, and also beyond our natural and normal growth. Now it is worth remembering, and the cold figures of finance prove it, that during that time there was little or no drop in the prices that consumers had to pay, although those same figures proved that the cost of production fell very greatly; corporate profit resulting from this period was enormous; at the same time little of that profit was devoted to the reduction of prices. The consumer was forgotten. Very little of it went into increased wages; the worker was forgotten, and by no means an adequate proportion was even paid out in dividends; the stockholder was forgotten.
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> And, incidentally, very little of it was taken by taxation to the beneficent government of those years.
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> What was the result? Enormous corporate surpluses piled up—the most stupendous in history. Where, under the spell of delirious speculation, did those surpluses go? Let us talk economics that the figures prove and that we can understand. Why, they went

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[1] The New Deal was announced at the Democratic Convention in Chicago, to which Roosevelt flew from Albany to accept the nomination. The last paragraph of the acceptance speech began: "I pledge you, I pledge myself, to a new deal for the American people." 1 Roosevelt, Public Papers and Addresses 659 (1938).

chiefly in two directions; first, into new and unnecessary plants which now stand stark and idle; and second, into the call money market of Wall Street, either directly by the corporations, or indirectly, through the banks. . . .

Then came the crash. You know the story. Surpluses invested in unnecessary plants became idle. Men lost their jobs; purchasing power dried up; banks became frightened and started calling loans. Those who had money were afraid to part with it. Credit contracted. Industry stopped. Commerce declined, and unemployment mounted.[2]

As a non-technical description of the extremes of the business cycle, this could hardly be improved. As an overture to a program of action, it is more ambiguous. It might, although with some strain, have served as a prelude to a widespread attack on private enterprise, and a demand for a radical reconstruction of the economy. Such a purpose was explicitly disavowed.[3] It might, more plausibly, have called for drastic curbs on big business, and a strong antitrust program. No such intention was stated. The specific measures implied in the analysis would call for controls on speculative credit, for lower prices, for higher rates of dividends, for higher wages. As we shall see, the New Deal tried to accomplish all of these during the eight years of its duration,[4] but not always simultaneously and by no means consistently. When the New Deal was nearing its end, as it later turned out, it attempted to formulate a basic philosophy of the desirable structure of the economy, but before that inquiry was concluded the New Deal itself had been shelved, and the inquiry had lost all current significance as a result of the defense and war measures.

In reviewing the actions of the New Deal pertinent to the role of the corporation, it is convenient to consider it as a succession of phases.[5]

In the first period might be grouped those measures, covering roughly the first two years of the new administration, which were intended to bring relief and recovery. For our purpose, the most ambitious project was the National Recovery Administration,[6] with its design to achieve absorption of idle plants, spread employment through shortening of working hours, and provide stable prices by codes of fair competition. A fair balance was to be struck by industry, labor, and consumer representation.

[2] Ibid., at 650–51.

[3] Ibid., at 649.

[4] The New Deal was not formally declared at an end until after American entry into the war. But it was certainly over when the National Defense Advisory Commission was reconstituted in May 1940 and may justifiably be considered as having ended earlier.

[5] For a somewhat different classification of New Deal measures, from a more general standpoint, see Mitchell, Depression Decade 405–407 (1947).

[6] 48 Stat. 195 (1933).

This carried to a perhaps logical extreme the President's concept of the interdependence of all parts of the population, and his belief that their basic problems could be solved through cooperation under the guidance of the government. The strain placed on this mechanism proved too great. The Blue Eagle was a bedraggled bird when the Supreme Court brought about its end.[7] Significantly, the portions of it which survived in separate form were the labor organization provisions (the Wagner Act[8]) and the wages and hours provisions (the Fair Labor Standards Act[9]). The sanction for industry cooperation was not only withdrawn, but such activity was later sharply rebuked.

At the same time, the government followed a determined course to raise the price level, largely through a new monetary and credit policy supplemented by federal expenditures. The many aspects of this policy are not easy to correlate and they served several purposes. The refinancing of home and farm mortgages was justified on the ground of removal of fear of due dates and improvement of the purchasing power of millions of persons by easing the burden of interest payments. The large financial assistance rendered to business enterprise by the RFC was similarly inflationary. In general, the increase in the price level which was steadily sought, partly by this means, and partly by abandonment of the gold standard and other monetary and currency measures, was said to be for the purpose of enabling the country to repay its debts in dollars of the same value as those in which they were contracted. There can be no doubt however, that the encouragement to business activity resulting from the new profit margins was welcomed, if not, indeed, a principal object.

While the raising of the price level through monetary policy may have been regarded as a temporary expedient, the agricultural program was proposed as a permanent feature of the economy. Farmers were to be given the benefit of a tariff equivalent to that enjoyed by business, and a program of production control would ensure maintenance of the desired price level. Thus, to a general price level of 1926 prices, selected as a goal, there was added a parity price level for farm products, based principally on 1909–1914 price relationships. The pressure for higher prices was not applied universally; in the public utility field, large and often dramatic reductions of tariffs were achieved by a variety of devices, ranging from ordinary "regulation" to "yardstick" and also to encouragement of public ownership.

[7] Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935).

[8] 49 Stat. 372 (1935).

[9] 52 Stat. 1060 (1938).

The contradiction of certain of these measures with the philosophy announced at the outset of the New Deal is obvious, but not conclusive. The basic thrust of the business cycle approach was the terrible consequences of instability. If all the factors of the domestic economy were in reasonable balance, the price level for stability might be selected for convenience, apart from its international consequences. As a party dedicated to prompt action, the New Deal might select that level which could be most quickly and easily used to establish such a balance. It could legitimately take into account the burden of the existing debt structure, to which indeed other measures were also being applied. In assessing the New Deal, one is constantly confronted with the problem of separating the need for meeting urgent immediate tasks from long-run objectives and viewpoints. That such a separation was not always made by the sponsors of these measures is hardly a matter of conjecture—or reproach.[10]

A second phase of the New Deal, present from the beginning but increasingly emphasized in 1935–36, was concerned with "reform." This had more direct impact on the form of enterprise, although it was directed primarily against existing financial institutions and practices rather than business organization as such. These are the measures providing for greater central control of banking, limitations on speculative credit and on bank holding companies, divorce of security affiliates of banks, the control of new issues and of securities exchanges, and, to a limited extent, of corporations whose securities are listed on the exchanges. Considerable emphasis was placed on the protection of the investor. In this indirect way, and through such later legislation as that dealing with corporate reorganization, a fairly extensive pattern of investor protection was created. While the whole is by no means equivalent to federal incorporation under a "model" law, it goes a long way in curbing the abuses of which investors complain.[11]

To this phase, also, belongs the legislation directed against public utility holding companies.[12] In connection with the latter, specific criticism of their size was voiced, and the President, in recommending the legislation, inveighed against "private socialism." But the nature of the power industry as essentially local was also stressed, and the legislation was treated mainly as directed against a creation of bankers which had no relation to

[10] An excellent and semi-authoritative defense of the policies pursued in the early New Deal can be found in Tugwell, The Battle for Democracy c. XI (1935).

[11] For a comprehensive discussion of the securities regulation, see Loss, Securities Regulation (1951). For the objectives of the legislation see Douglas, Democracy and Finance (1940).

[12] 49 Stat. 803 (1935).

the economics of the industry, and had resulted both in increased cost to consumers and large losses to investors. The legislation was symbolically divorced from planning for power utilization by entrusting its enforcement to the Securities and Exchange Commission rather than the Federal Power Commission.

This emphasis is all the more curious in that the administration was committed from the beginning "to national planning for, and supervision of, all forms of transportation and of communications and other utilities which have a definitely public character."[13] The Federal Power Act,[14] the Motor Carrier Act,[15] the Federal Communications Act,[16] and the studies of the Coordinator of Transportation, among others, bear witness to the zeal with which this objective was pursued. But all this was in an area where public intervention was already familiar, although in some of the fields participation by the federal government had theretofore been slight. A well-established policy of detailed regulation was given national scope and made more pervasive, as well as more effective.

What these policies of national price fixing and controlled competition, which covered fairly comprehensively almost the entire field of agriculture as well as the more traditional fields of public service, might have led to if not diverted can only be conjectured. The NRA, although loved by few at its demise, still seemed to many to have been an experiment in a necessary direction.[17] It was revived for a "sick" industry in the Guffey Coal Act.[18] The National Resources Planning Board might have developed more far-reaching proposals for regulation of the economy along similar lines. But at this point, more or less, the New Deal entered upon still another phase, allowing for substantial overlapping. Stung by criticism of business groups that the New Deal had indulged in reckless spending and had stifled private initiative and enterprise, the President in his 1936 campaign launched an attack on the concentration of wealth and power "built upon other people's money, other people's business, other people's labor."[19] It was primarily directed against what the President called "high finance," but it also touched largely on the form of business enterprise as such. The figures gathered by Berle and Means[20] were used to draw a moral which those

[13] First Inaugural Address, in 2 Roosevelt, op. cit. supra note 1, at 13.

[14] 49 Stat. 838 (1935).

[15] 49 Stat. 543 (1935).

[16] 48 Stat. 1064 (1934).

[17] Compare, e.g., Frank, Save America First, Bk. III, c. 14 (1938).

[18] 49 Stat. 991 (1935).

[19] 5 Roosevelt, op. cit. supra note 1, at 486.

[20] Berle and Means, The Modern Corporation and Private Property, Bk. III (1932).

authors had carefully avoided. The theme of those authors was not monopoly but the fact that an increasing portion of individual property was represented by the securities of large corporations, and the need for a new code to protect the owners of this "property." That had been largely accomplished in the securities legislation of the preceding years, and was indeed to be further supplemented. But the President used the evidence of concentration to denounce monopoly, and added economic democracy to political democracy as America's ideal. He painted a depressing picture of what had been going on during the past fifty years, and particularly during the dozen years of Republican administration:

> During those years of false prosperity and during the more recent years of exhausting depression, one business after another, one small corporation after another, their resources depleted, had failed or had fallen into the lap of a bigger competitor.
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> A dangerous thing was happening. Half of the industrial corporate wealth of the country had come under the control of less than two hundred corporations. That is not all. These huge corporations in some cases did not even try to compete with each other. They themselves were tied together by interlocking directors, interlocking bankers, interlocking lawyers.
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> Under this concentration independent business was allowed to exist only by sufferance. It has been a menace to the social system as well as to the economic system which we call American democracy.[21]

The President declared his belief in "individualism" in business as elsewhere, but declared that all had suffered from "individualism run wild" and called for further exertion of national power so that "the power of concentrated wealth shall not be abused."[22]

The next year saw the administration involved in too many other activities to allow much attention to the problem of monopoly. In the forefront was the struggle over the proposal to reorganize the Supreme Court, which not only absorbed most of the time and energy of government supporters but cost the President that almost unqualified support by Congress which he had enjoyed formerly. This year also saw finally the enactment of the Fair Labor Standards Act and broadened farm legislation. It was the year of the "quarantine" speech. And finally it was a year of rising business indices until the "recession" or slump of the autumn.

But in all this the monopoly issue was not forgotten. It received brief mention in the State of the Union message, and it played a prominent role in the fireside speech in October which undertook to explain the reasons for calling a special session of Congress. Here the President returned to the

[21] 5 Roosevelt, op. cit. supra note 1, at 486.

[22] Ibid., at 488.

theme of his 1932 acceptance speech, that higher wages and lower prices were the key to greater employment and a better standard of living. Increased antitrust activity by the Department of Justice and the Federal Trade Commission indicated one way by which lower prices would be sought. It was not to be the only one. On April 29, 1938, the President sent to Congress a recommendation for

> a thorough study of the concentration of economic power in American industry and the effect of that concentration upon the decline of competition. There should be an examination of the existing price system and the price policies of industry to determine their effect upon the general level of trade, upon employment, upon long-term profits, and upon consumption. The study should not be confined to the traditional anti-trust field. The effects of tax, patent, and other government policies cannot be ignored.[23]

Like most sponsors of Congressional inquiries, the President described what he considered the evil developments in the economic scene, repeating and enlarging upon his earlier references to this theme. The discussion is more in economic terms—the limits of industrial efficiency, disappearance of price competition, managed industrial prices. The goal itself undergoes a change of emphasis from the original announcement of the New Deal. While stability is still stressed—"rigid prices and fluctuating pay rolls"—stability alone does not appear to be enough; the problem is "bringing idle men and idle money together." The social and political implication is given a more current setting.

> Unhappy events abroad have retaught us two simple truths about the liberty of a democratic people. The first truth is that the liberty of a democracy is not safe if the people tolerate the growth of private power to a point where it becomes stronger than their democratic state itself. That, in its essence, is fascism—ownership of government by an individual, by a group, or by any other controlling private power.
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> The second truth is that the liberty of a democracy is not safe, if its business system does not provide employment and produce and distribute goods in such a way as to sustain an acceptable standard of living.[24]

This was also to be the answer to those who complained of bureaucracy and "big government."

> The power of a few to manage the economic life of the Nation must be diffused among the many or be transferred to the public and its democratically responsible government. If prices are to be managed and administered, if the Nation's business is to be allotted by plan and not by competition, that power should not be vested in any private group or cartel, however benevolent its professions profess to be.
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> Those people, in and out of the halls of government, who encourage the growing

[23] TNEC, Final Report and Recommendations, Sen. Doc. No. 35, 77th Cong. 1st Sess. 16 (1941).

[24] Ibid., at 11.

restriction of competition either by active efforts or by passive resistance to sincere attempts to change the trend, are shouldering a terrific responsibility. Consciously or unconsciously they are working for centralized business and financial control. Consciously or unconsciously they are therefore either working for control of the Government itself by business and finance or the other alternative—a growing concentration of public power in the Government to cope with such concentration of private power.[25]

Congress duly created the Commission,[26] and the TNEC inquiry was launched. But, except as a charter for some distant future, the inquiry came too late. By the time the Committee reported, in March 1941, a greater part of the Nation's business than ever before was being "allotted by plan, and not by competition." The report recognized the anomaly of a study of the problems of economic concentration at a time when there had been created in Washington "an instrumentality of economic concentration the like of which the world has never seen."[27] While recognizing that public attention had been diverted "momentarily" from the problems which brought the Committee into existence, it asserted that the crisis only lent added importance to later reconstruction. "It is quite conceivable that the democracies might attain a military victory over the aggressors only to find themselves under the domination of economic authority far more concentrated and influential than that which existed prior to the war."[28]

The Committee took high moral and political ground as sanction for its conclusions.

Americans are committed to an enthusiastic defense of the ideals of democracy, but if that defense is to be successfully waged and its institutions made secure for the future, it is clear that our people must re-examine the elementary factors of our faith in democracy.

The first and most important of these is the simple intent of our political and economic creed that all power originates in all of the people and not in any part of them, however numerous, however powerful or able, any given part may be. In the life of a community the whole is greater than any of its parts and whatever power may be exercised for a time by any part of a community is a power delegated from the whole community for the good of the whole community.

Governments are instituted among men to serve men; men were not created to serve government.

If, however, the political organization which we call government is called into existence by men for the benefit of the entire community, a principle which as Ameri-

[25] Ibid., at 15.

[26] Pub. Res. 113, 75th Cong. 2d Sess. (1938).

[27] TNEC, op. cit. supra note 23, at 3.

[28] Ibid.

cans we must all acknowledge, it is equally true that the economic organizations, called into existence by men to meet their material needs, are likewise justified only to the degree in which they serve the entire community. If the political structure is designed to preserve the freedom of the individual, the economic structure must not be permitted to destroy it.

Business organization, like government organization, is a creature of man, a tool by which man endeavors to advance its material prospects. Like government organization, business organization has no right or function to control the activities and the lives of men.[29]

The Committee recognized

that the commercial and industrial life of the modern world is carried on, not by men in their individual capacities, but by men in their group or collective capacities. Most of the goods, commodities, and services which the people of this generation want cannot be produced or offered by individuals, but must be produced and offered by groups of individuals, that is to say, by industrial and commercial organizations.... The modern worker must find his place in the collective or group enterprises of modern industry which utilize tools that no individual mechanic can carry in his kit. He must be fitted into the vast technological structure which characterizes our economy.[30]

However, while disclaiming a solution in any panacea, the Committee affirmed its faith in competitive enterprise as the basic structure offering the greatest assurance of political and economic democracy, as well as the greatest possibilities for maximum employment and a high standard of living.

No one element in the economic system can be made responsible for the proper disposition of the gains of increasing technology. We insist that a free competitive system offers the best opportunity for the widest participation in such gains achieved through a reduction in prices of goods, in the stimulation of new industries and extension of existing ones, fuller employment, reduction of working hours, increase in consumers' purchasing power, and a more equitable distribution of the value added by manufacture.[31]

This meant the reversal of the trend toward centralization but only in this way could the "danger of final concentration in Government" be avoided. The recommendations comprised a much stronger attack on existing concentration by an enlarged and reinforced antitrust program, with attention to the patent laws, trade association activities, and other contributing factors. The government must also "actively encourage the development of new private enterprise by positive programs designed to foster and protect it." The anti-monopoly action would do that in part. More equitable tax laws would contribute to it. Ways must be found for

[29] Ibid., at 5. [30] Ibid. [31] Ibid., at 22.

providing credit for small business, "the seed-bed of a growing system of free enterprise." Finally, a wise program of aid to the underprivileged to increase their purchasing power would give a desirable stimulus to production. "It is an important axiom that we cannot maintain an economy of mass production unless we have an economy of mass consumption."[32]

One section of the recommendations dealt directly, rather than by implication, with the corporation as such. Stating that the private industrial corporation "is frequently a huge collective enterprise affecting the entire national community, owned by a few, managed by still fewer and bound together with other similar enterprises by a variety of devices," it recommends "national standards for national corporations."[33] The means for accomplishing this would be compulsory federal incorporation; the law would prohibit interlocking directorships, make corporation directors "trustees in fact as well as in law," define the scope of subsidiary corporations and standardize intercorporate financing, and would impose personal civil liability on corporate officers and directors who participated in violations of the antitrust laws.

Since the New Deal was over when this report was prepared, it may in a sense be considered as its epilogue so far as its approach to the structure of the economy is concerned. However, even for such a purpose it is too narrow. To take only one example, the report contains merely a passing—and ambiguous—reference to the Tennessee Valley Administration, which many New Dealers regard as an outstanding example of the New Deal's accomplishments and as a model for similar development in other regions. Its symbolic significance may be gathered from the fact that it is perhaps the only New Deal creation which is widely known in other countries. Moreover, a number of acknowledged New Dealers would not assent to the basic theses of the report. Their leading theorist of the nature of the modern corporation, A. A. Berle, was noticeably a non-participant in the activities of the Committee,[34] a fact not entirely accounted for by his then official duties.[35] The implications of the classic work which he and Means wrote on the modern corporation[36] would accord it a larger institutional role in the economy than the report contemplates, and would there-

[32] Ibid., at 31.

[33] Ibid., at 24.

[34] At the request of two members of the Committee, he submitted a memorandum containing suggestions for possible lines of investigation. It amounted to a blueprint for the investigation and will repay reading today. It is reprinted in Berle, New Directions in the New World c. IV (1940). The memorandum seems to have played little or no part in the proceedings.

[35] In the Department of State.

[36] See authorities cited note 11 supra.

fore require other methods of control and integration to make it serve better the general welfare, if, indeed, as extensive control. Two of the Committee members, long identified with the New Deal, found significant fault with the report although agreeing with most of the recommendations.[37] Still others might dissent from the inferences in the report that are critical of the big unions, which could hardly have achieved such size in so short a time without the potent aid of the Wagner Act.[38] Nevertheless, considering both the wide participation and the President's initial blessing, the report must be regarded as representative of a major segment of the thinking of the New Deal.[39]

What conclusions can be drawn from this obviously oversimplified review of the New Deal? If the recommendations of the TNEC are to be taken as the basic doctrine of the New Deal, then it may safely be said that the effort to apply them was too little and came too late. There is a measure of truth in the criticism that the New Deal began as a partner in

[37] Some of their comments deserve quotation:

"We do not believe that the program which this report presents would, in itself, have prevented the great depression of the thirties. Likewise, such a program will not be adequate to meet the problems of tomorrow. Whenever the community is overwhelmed by depression, it is inevitable that individuals should do everything within their power to plan for their individual economic salvation. Yet the area within the control of an individual or any small group is limited and such control almost inevitably takes the direction of seeking a larger net return through decreasing production. Therefore when we approach the problem of economic maladjustment on a piecemeal basis, we are likely to emerge with restriction rather than expansion. . . .

"It is crystal clear that there is no single, simple program which will solve our economic problems. Neither the discouragement of concentration of economic powers, on the one hand, crucial as we know this to be, nor the indiscriminate spending of public funds can in themselves guarantee their solution. No set of measures that can be recommended will be adequate unless there is a fundamental underlying and continuous commitment that the goal of national economic policy is the full utilization of our resources, both of men and of materials. . . .

"The Temporary National Economic Committee was charged with the fundamental problem of devising ways and means of utilizing fully our men, our machines, and our materials so that the economic paralysis of the early 1930's could not occur again. . . . Yet in our opinion this report emphasizes the avoidance of monopoly more than the broader and more fundamental approach." Personal statement of Isador Lubin, Commissioner of Labor Statistics, Department of Labor, and Leon Henderson, Commissioner, Price Stabilization Division, Advisory Commission to the Council of National Defense, TNEC, op. cit. supra note 23, at 51–52.

The two are clear "that in any major crisis of peacetime or wartime, Government leadership and Government participation are required to help get the job done and to avoid great social and economic hardship." Ibid., at 51. But they do not make clear their views as to what role government will need to play under other conditions.

[38] The recommendations of the economists of the Department of Agriculture also show less faith in "free enterprise" and competition than does the Committee. This is not surprising since agriculture has been the major field of central planning under the New Deal. At the very beginning the Department housed some of the most ardent critics of laissez-faire, i.e., Tugwell and Frank.

[39] Especially of its representatives in Congress. Dissents from the recommendations came largely from representatives of the administrative agencies.

business, then became its patron, and finally its critic.[40] It is perhaps even truer to say that so far as the structure of the modern corporation is concerned, the New Deal left it pretty much as it found it. Apart from the dubious issue of whether it "saved capitalism," in at least one respect the New Deal made the modern corporation more acceptable than it was in 1932. The extensive securities regulation, with its substantial new protection for security holders, has done much to restore the corporation's appeal as a vehicle for investment, and to rehabilitate it in public repute.[41]

This is only one of the many seeming contradictions to be found in the New Deal. Partly for this reason it has been called "grandly opportunist."[42] If there is one thread that runs through the several phases of the New Deal, it is the willingness to experiment and the determination to use governmental power to provide relief and to redress imbalances in the economy. Whatever virtues this flexibility had—and they were many—it was not conducive to the development of a basic and consistent approach to the question of the desirable structure of the economy. Although the New Deal talked and wrote more economics than any other administration, that question did not play an important role until the New Deal was nearing its end, and even then was colored with the doubt whether it represented principle or strategy.

Many factors contributed to this result. In the first place, few successful practitioners of politics are also professors of economics or likely when in power to pursue a single undeviating course. By temperament and training Roosevelt was less likely than many others to accept rigidities of doctrine. However, among his advisers there was the greatest array of academic and scholarly personnel ever to participate actively in government,[43] and it might have been expected that they would undertake to develop a general chart for the course of the New Deal. As we saw, that was attempted at a later date.

Two considerations probably account in the main for the failure to undertake such an inquiry earlier. On the one hand, the New Deal was preoccupied with immediate and urgent tasks. It was ushered in to the sound of closing banks, and surrounded by an army of unemployed. Legislation poured forth and agency after agency was created to deal with a

[40] Cf. Mitchell, op. cit. supra note 5, at 406.

[41] The same paradox is apparent in the public utility field. By enforcing increased investor protection, greater local control, and lower rates, the efforts of those who were promoting public ownership were appreciably checked.

[42] Mitchell, op. cit. supra note 5, at 368.

[43] Except, of course, during World War II.

host of matters from providing direct relief, to preventing foreclosures of homes and farms, resettlement, public works, and the rest of the almost bewildering variety of efforts to keep the economy in motion and to alleviate suffering. At the same time the New Deal was engaged in adopting welfare legislation, in which the United States had lagged seriously behind many other industrialized countries. Add to these the several "reform" measures such as the securities legislation, and the effort to assure labor and farmers a greater portion of the national product, and the aggregate is sufficiently impressive in view of the period into which it was compressed.

After making full allowance for these considerations—and giving full credit for those accomplishments—the fact remains that the ultimate goal of the New Deal was "work and security."[44] Would all of these measures bring the country close to that goal? It is fair to infer that most of the New Dealers either gave little thought to this question or did not have much doubt of the answer. When the New Deal was announced, there was as yet little talk of "underconsumption," "mature economy," and the like. The only developed criticism of the nature of the economy came from the socialists, and while it may be surmised that some New Deal personnel had strong leanings toward socialist views, American-style socialism was more concerned with social welfare than with the dictatorship of the proletariat. Socialists in or out of government may have had their doubts as to the possibility of saving competitive free enterprise; at the same time social welfare legislation was being adopted on a scale sufficiently broad to spell the end of socialism as a significant political force on the American scene for at least some time.

In short, the New Deal proceeded largely on the assumption that the great economic menace was instability; that this could be cured by the removal of "abuses" in the industrial setup and by giving labor and farmers a greater share of the output. In the meantime, steps must be taken both to relieve the victims of the depression and to restore momentum to production so as to attain a stable level. Classical economics tended to equate stability with full employment, and in this sense at least most of the New Dealers were at the time classical economists. Even brave new ventures, like Wallace's "ever-normal granary" were keyed to this concept. The New Deal learned by experience, reinforced by new economic theory,[45] that stability alone might not be the answer. The spectre of sta-

[44] So stated in the 1932 acceptance speech.

[45] The impact of Keynes on New Deal personnel was formidable.

bility with continuing large unemployment began to haunt the policy makers. Whether the course finally charted would have succeeded if tried over a sufficient period of time, or under what conditions or with what supplements, cannot be known. Considering the present state of affairs, it is unlikely that such a course will be tried extensively within the foreseeable future.

Indeed, after the NRA such a program could hardly have been inaugurated except after long and arduous struggle. It is an axiom of political action that a change in trend can be introduced only in a time of trouble. By 1936 the sense of urgency was passing and resistance to the New Deal was growing. That this resistance was overestimated by many, the rash obstruction of the Supreme Court and its consequence bear witness. That it was considerable is evidenced by the pressures which were required to enact the wages and hours legislation. But the program which was envisaged by the report of the TNEC required the change of a trend to which the New Deal had itself lent considerable impetus. The NRA was therefore the critical decision so far as the structure of the economy was concerned within the lifetime of the New Deal. Why, then, did those members of the New Deal who were disciples of Justice Brandeis with a suspicion of bigness, and who were able later to guide so largely the course of the TNEC, apparently acquiesce in that decision? No definite answer can be vouchsafed. They may have hoped that it was temporary; they may have been influenced by loyalty to a leader in whom they had faith and who espoused so many of their ideals. Or they may have thought that under the circumstances it was an experiment worth trying, despite their doubts. Absence of dogmatism has its dangers as well as its virtues.

Whether such a program would have succeeded if adopted at the very beginning is pure conjecture. Most of the institutional and technological forces were pressing strongly in a different, if not entirely opposed, direction. More importantly, such a program is paradoxically impossible to apply under depressed conditions. The continued stagnation and unsettlement until changes of any magnitude may be absorbed would have been laid at the door of the new action, and would probably have provided an irresistible obstacle. There would also have been the anomaly of administered prices for agriculture with encouragement of organized activity and price and production controls, on the one hand, and decentralization and flexible prices striven for in industry, on the other hand. These psychological and political difficulties must be added to doubts as to their economic effectiveness.

The other road that perhaps lay open to the New Deal was extensive nationalization, perhaps of the character recently followed in England. How far this was politically feasible is open to question, but it is difficult to set bounds, under the conditions which prevailed when he first took office, to the political potential of a leader so magnetic, with the largest party majorities ever achieved in Congress,[46] and with extraordinary capacity to organize or compel support. It has been suggested that "this was a moment when the country, and Congress, would have followed the President in making the banks national property. If that had been done, the other chief factors of the economy could have been subsequently socialized."[47] This may be so; it was not done, and some of the reasons for that have been suggested. It may be that Moley, one of the original members of the Brain Trust, had this in mind when, in referring to the action of the New Deal in the banking crisis, he asserted that capitalism was saved in eight days. More likely he was thinking merely of the re-established confidence in the banking system and the fact that most of the banks were enabled to continue to function, many with government aid. One who participated so directly in the activities of that period might well reach such a conclusion. In the light of a longer perspective, and without attempting to re-create all the fevers of those days, it seems more likely that if capitalism needed to and was "saved," the credit will be given to the various relief measures which eliminated acute distress, and to the welfare and other legislation which gave renewed hope. These also may appear in the long view to have been the principal contributions of the New Deal to the structure of the economy and the role of the modern corporation, along with experiments in new types of public development, such as TVA. While the former did not affect the corporation as such, they created limits to its bargaining power, both by direct action and by increasing the strength of labor and farmers. They also served to underpin the economy and thereby made less likely a decline so drastic as that which ushered in the New Deal.

[46] In 1932 Roosevelt's popular majority was seven million. He carried all but six states, and the Democrats had a majority of 191 in the House and 22 in the Senate. In 1936 Roosevelt carried all but two states with a popular majority of ten million. In the Senate there were 76 Democrats and 16 Republicans; the corresponding House figures were 332 and 89.

[47] Mitchell, op. cit. supra note 5, at 133.