

influences upon policy formulation inherent in normal arms-length relations between the Executive Branch and Congress.

Difficult to accept without question is Mr. Thomas' conclusion that the Joint Committee device provides an effective means for preserving democratic control over the atomic energy program. In a sense the five-man Commission operating on a majority rule basis provides some measure of democratic control of policy development, but even assuming that the AEC and the Committee dealt at arms length, it would mean at best that the closed-door decisions of a five-man Commission would be subject to legislative review only by, in effect, an eighteen-man closed-door Congress. However, considering the Committee's frequent self-identification with AEC policy objectives and its active initiation and sponsorship of AEC policies, what means are available for preserving democratic control over the AEC-Committee joint venture? Quite possibly the existence of the Committee makes possible more democratic control than would exist in its absence, but it is clear that the Joint Committee device provides somewhat less than adequate democratic control.

*Atomic Energy and Congress* is a valuable contribution to the unfortunately small body of literature relating to the politics of atomic energy in the United States. Mr. Thomas undoubtedly is correct in his conclusion that the nation has benefited substantially, from the standpoint of its national resources and strength, from the Joint Committee on Atomic Energy. It is much more likely, however, that history will attribute these benefits to the responsibility, integrity, devotion and ability of the members and staff of the Committee, rather than to the Committee as a unique governmental institution. In any event, it is unfortunate that Mr. Thomas has concentrated his efforts on an historical summary of events, based largely upon personalities, rather than probing more deeply the significance to our traditional democratic political institutions of existing legislative control of atomic energy.

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**Corporation Giving in a Free Society.** By Richard Eells. New York: Harper & Bros., 1956. Pp. 203. \$3.50.

Our non-profit institutions and foundations, one of whose principal sources of income is the return from their own capital endowment, have been particularly hard hit by inflation. Consequently a search for new benefactors began some time ago. It was apparent that the vast number of relatively small individual contributions would continue to be the main support, although an inadequate one. Large additions on a grand scale were required to meet the ever increasing needs, but the Rockefellers, Carnegies, Vanderbilts, and Dukes of a past era were no longer available.

*Corporation Giving in a Free Society* has been written by Richard Eells, manager of public relations research at General Electric, to convince corporations that they should make such contributions. These contributions should be made, however, only after arriving at a proper justification and an appropriate program. The book also supplies the standards for both of these requirements.

In the first chapter, "The New Philanthropy," Mr. Eells states his basic premise that "corporate enterprise has a paramount duty to fight for the survival of a basically healthy social pattern that liberates man's creative energies, and to combat the suffocating forces of mandated conformity" (p. 11). The author makes it clear that he does not believe that corporations are living up to this responsibility. Although the Internal Revenue Code allows 5 per cent of corporate earnings to be deducted for charitable contributions, less than 1.2 per cent of such earnings are going for this purpose. Corporate contributions have never reached 10 per cent of the total income of non-profit institutions, whereas, if the full amount allowed by the tax laws had been given, this figure would have been in the range of 50 per cent.

While admitting that if a "company . . . engages in charity 'qua charity,' it reflects an altruism more laudable than defensible as an exercise of corporate authority" (p. 7), the author quickly brushes aside the notion that corporations are strictly business enterprises whose contributions must be defensible as a matter of business expense. "In this type of thinking, a general theory of corporate giving becomes lost in knotty legal problems; in the economics of share ownership; in the changing views of legislators and judges; and finally in broad issues of public and corporate policy" (p. 6). Mr. Eells is not one to become lost in these knotty problems, or even face them. A dilemma may seem to exist, but in the shell game of enlightened self-interest, all dilemmas disappear. Still, a basic ambivalence as to whether or not there is anything contradictory in the notion of corporate gifts is apparent throughout the book, in spite of repeated protestations that only the broader interests of corporations are being served.

In the second chapter, "Authority for Giving," Mr. Eells relies mainly, and properly, on the now famous *A. P. Smith* case<sup>1</sup> to establish the legal authority for corporate giving without charter authority. He is quite right when he points out that the nub of the legal matter is directors' liability to suit by disgruntled stockholders and that both the case and the permissive legislation there in question were designed to formulate a "business judgment" rule in the area of corporate contributions. The desirability of this removal of self-help from the arsenal of stockholders is never questioned. The justification for such contributions, however, "is not what it achieves for the community alone, but rather what it does to protect the wider corporate environment that sustains the share owners' profitable investment" (p. 29).

In his chapter entitled "Tax Policy" the author makes a plea for tax laws which would encourage even greater corporate giving. This chapter is concerned

<sup>1</sup> *A. P. Smith Manufacturing Co. v. Barlow*, 13 N.J. 145, 98 A.2d 581 (1953).

mainly with proving that charitable deductions do not involve real losses for the government, but rather in the long run provide the basis for an ever increasing national income. Within certain limits this probably is true, but the entire discussion seems unnecessary, since what the author states must apply to all contributions, not just to those made by corporations.<sup>2</sup>

The next chapter is entitled "Public Accountability." A large part of this chapter unaccountably is devoted to a discussion of the recent Reece committee investigation of tax-free foundations. Mr. Eells properly points out that the issue in charitable deductions is not whether Congress might have appropriated funds for the same purpose. Indeed this is almost the negation of such deductions, since it would appear that the basic intent must be to encourage areas that government either may not, should not or will not enter. Contributed funds are only "public funds" in a very narrow and legalistic sense; they are not comparable to government revenues. But all this is a long way from the issue of corporate contributions, as such.

Apparently Mr. Eells is concerned because at some time in the future a Reece-type committee may look hard into the operation of a foundation established as an adjunct of a commercial corporation. Both the new and the older foundations must therefore forestall any attempt at government intervention and control. The author maintains that to do this corporations must develop a "voluntary system of public accountability." This continuing sort of public relations program will include "organized collaboration," "self-investigation," a clearing house operation and a system of public reporting.

Under the heading "Theory of Corporate Giving: A Philosophy of Government," the author discusses the criticism of corporate giving which maintains that if corporations stray out of the purely income-maximizing sphere into other and less differentiated areas of community endeavor, then new social functions will come to be recognized, and either regulation or some new enforced scheme of community agency will result. Either of these alternatives would be contrary to what the author calls "the *basic purpose* of corporate enterprise" (p. 80). This basic purpose is apparently mere self-preservation, although self-preservation for what is not made clear.<sup>3</sup> Free enterprise, the author maintains, requires not merely that government allow business associations their economic freedom, but that government be prevented from interfering unduly with the whole panorama of private associations, whatever their nature. Thus, any contributions which tend to build up these "private sectors" of society and preserve

<sup>2</sup> Presumably the individual entrepreneur, not acting in concert with other entrepreneurs, is not included in this analysis. This group, doing over 20 per cent of the nation's business, apparently escape the responsibilities found resting on incorporated concerns, although the logic of all Mr. Eells says must apply equally to any private business. Perhaps this is an oversight; but it is more likely that the author really is thinking only of very large publicly held companies. This distinction is never made explicit.

<sup>3</sup> Possibly for the continuance of corporate giving, which the author views as "one of the great fruits of the free enterprise system" (p. 188).

them in the ever increasing struggle against big government, are blows struck for free enterprise and a clear responsibility for corporations.

In one sentence the author also acknowledges that corporate power, and presumably that of any voluntary association, may be a threat to the liberty of individuals (p. 98). The solution offered to combat this menace is neither new nor satisfying. Its genesis is found in the works of Berle, Lienthal and others. What must be developed, it is held, is a "corporate conscience," i.e., good corporate citizenship. Conscience, countervailing power, and "constitutionalizing" of these private governments are all needed to channel properly and safely the vast social power of the large corporation.<sup>4</sup> One concludes this chapter, however, with strong doubts about whether these terms can ever be given sufficient meaning and substance. The "conscience" of a corporation, guided neither by the market nor the courts, is a problematic safeguard at best.

Credit must be given to the chapter entitled "Principles and Programs," wherein certain general rules to be followed by any particular company are set forth. The emphasis is upon formulation by each company of a donation policy that will reflect its own peculiar circumstances, thus tending to spread contributions through a great variety of disciplines and activities. An example used is that of a cosmetic manufacturing company contributing for basic research in the biological sciences and, since there is an affiliate company in France, making an additional grant for research in international law and economics. This idea is a good one, as there is probably some correlation between the need for research in certain areas and the amount of interest businesses will have in such research. The advantage of such a scheme is that it prevents accidental concentrations in particular lines of endeavor or in particular institutions or types of institutions. However, it does not guarantee that some areas will not be slighted.

One might well take issue, however, with the author's classification of certain areas as being inappropriate for government activity. Basic research has proved to be a valuable investment for many corporations; in many instances it surely is a legitimate corporate activity. Perhaps government programs do not exhibit the originality or initiative of private industrial research. But when one considers the present structure of our patent laws, particularly as related to the monopoly problem, more, rather than less, non-patentable government developments might seem to be indicated.<sup>5</sup> Mr. Eells also thinks that the corporation is a more appropriate institution for the study of automation-caused unemployment problems than is the government. But this is merely the problem of distributing market information to suppliers who might otherwise have difficulty in discovering their own best opportunities. This would seem to be pecul-

<sup>4</sup> The efficacy of competition as a possible check on arbitrary business activities is not even dignified by a denial.

<sup>5</sup> Consult Simons, *Economic Policy for A Free Society* 248 (1948). For a similar view by several university presidents toward research consult *N.Y. Times* p. 15, col. 2 (June 25, 1956).

ially a responsibility of government. It appears that no interference with any legitimate private interest would result.<sup>6</sup>

In a chapter called "Public Acceptance" Mr. Eells has set forth what presumably is a technically appropriate approach to the public relations problem involved in selling the gift scheme to the individuals concerned. Simply stated, the program involves convincing stockholders and managers that corporations are really being quite selfish about the whole thing. But this book is not convincing as an attempt to persuade stockholders and managers that corporate contributions on a large scale will make more money for them. It is probable that most Americans still are convinced that the greatest good is served when every individual business enterprise competitively seeks its own greatest gain. In spite of the author's denials, a strong suspicion arises that notions of corporate social responsibility tamper with this traditional conception and that a new and radically altered form of economy is being proposed.<sup>7</sup> David Riesman has, with characteristic insight, described the school to which Mr. Eells belongs:

Since up-to-date American corporations now have to learn the art of conspicuous spending, they need tutors—just as European princes did or American tycoons. Business schools . . . play a part as such tutors; so do management consultants; so do industrial architects and designers. There are corporate officials who are addicts of one or another of the many fads . . . and go about the country stumping for these devices and their morale-building and profit-building virtues. For these "muscular Christians" of enterprise, trade does not necessarily follow the flag and the Bible; these men act in obedience to their self-image as proper businessmen, no matter how strenuously they insist (as, depending on mood, most Americans will insist) that they act only out of self-interest.<sup>8</sup>

Corporations certainly have a legitimate interest in the preservation of a control-free commercial sector. It can be said, however, that this responsibility is met in the more mundane, every-day attempts of corporations to avoid the long arm of government control. No one questions in principle the legitimacy of natural gas companies' lobbying for the repeal of government price controls, even though some of their methods appear either high handed or completely inept. Dishonesty, of course, raises another issue. Nor would anyone blame private power companies for resisting government efforts to preclude them from apparently profitable opportunities. This, however, is a far cry from the boost private enterprise gets from most social science research.

Furthermore, absent monopoly<sup>9</sup> or possibly other institutional hurdles in the

<sup>6</sup> Simons, *op. cit.* supra note 5, at 325.

<sup>7</sup> Adolph Berle is much more honest about his view of the American industrial concentrate as a mere variant of the collectivism found in other countries. Consult Berle, *The Developing Law of Industrial Concentration*, 19 *U. of Chi. L. Rev.* 639, 660 (1952).

<sup>8</sup> Riesman, *Individualism Reconsidered* 294 (1954).

<sup>9</sup> Usually the issue of corporate responsibility is fought in terms of the amount of monopoly in the economy.

way of a free market system, there is no reason to believe that corporations will be *able* to step too far from their traditional role. The market will supply a corrective whenever the object of corporate charity becomes too attenuated from the profit goal.

The entire scheme of corporate contribution may be satisfactory to the extent that stockholders want their contributions made by their corporate managers, or to the extent that stockholders are indifferent to the expense.<sup>10</sup> But it is a certainty that no company's stock ever appreciated in value because of a charitable contribution made by that company. Capital markets, like any others, cause a distribution of supplies in accordance with the expectation of highest return in a foreseeable and meaningful future.<sup>11</sup> Mr. Eells has said nothing to disprove the conception that the needs of the community are served best when business enterprise, of any size, follows a selfish motivation. What is viewed as meeting social responsibilities, if that phrase is to have any meaning, must to some extent warp what would otherwise be the most socially beneficial distribution of resources. There is no known way of accurately comparing the economic benefits lost to the social benefits gained by corporate support of worthy charities. Absent such a method of comparison it can never be known whether the net result is more beneficial than it is harmful.

The desirability of corporate contributions is more questionable than the purely economic considerations might indicate. There is an effect on individual attitudes as well as on pocketbooks. We might expect this effect to be great in time, since in the last analysis it is the charitable nature or the social conscience of individuals to which appeal is being made in the quest for corporate contributions. Conceivably many individual stockholders may find less reason for their own contributions if the corporation in which they own shares is viewed as contributing for them. To the extent that the stockholder views his corporation as an entity apart from himself (probably the predominant view for stockholders of larger corporations) the effect will be slight. But the rationalization, or more properly the reality, of ownership is always available to any individual shareholder who seeks a reason for a smaller personal contribution.

Of even greater concern might be the effect of large corporate donations on the contributions of the community as a whole. The increased publicity being given to larger corporate donations, coupled with a growing belief that the efforts of the individual citizen largely are without effect, might cause us to

<sup>10</sup> There obviously are tax advantages for the stockholder viewing an aliquot share of the corporation's contributions as his own, since he may assume his dividend was really larger to that extent, though the difference does not enter the taxable income stream. With one man or closely held companies this fact has important implications for the tax planner.

<sup>11</sup> The known effect of non-profit-yielding expenditures on capital costs is blunted considerably by the common financial practice of retaining approximately one-half of income plus depreciation and other reserves. A policy of greater distributions would probably make stockholders far more sensitive about corporate charity.

expect a constantly diminishing private donation. Even though the quantitative aspects are impossible to predict accurately, these factors are present and should be considered in any full analysis of the implications of corporate giving.

The great increase in corporate giving suggests another problem that is independent of a possible decrease in individual donations. Mr. Eells properly is concerned with the dangers involved in the government's moving into any vacuum created by the insufficiency of individual contributions. Many universities have signified their own concern about adopting a research program relying heavily on government funds. Without going into any of the details, it should be sufficient to point out that when a university or private foundation becomes dependent upon the government as its principal source of funds, it has lost that integrity and independence which epitomize the importance of free, private social institutions.<sup>12</sup> The danger lies both in the loss of independence and in the uncertainty of continuing support inherent in the vagaries of politics.

Unfortunately these same dangers are inherent in relying on corporate donations. No more than government can commercial enterprises be expected to tolerate destructive or harmful ideas; excessive dependence on corporate treasuries necessarily must result in a certain degree of conformity. As in the case of government support there is a problem arising from uncertainty in the availability of corporate funds. Schools and larger research institutes must plan their programs over periods of time that do not necessarily correspond with those most convenient for corporate donations to be made. Finally a reckoning must be made with the cyclical effects of the total economy and with the rising and falling positions of various individual firms.

These warnings must be directed not so much towards the corporate donors as their expected donees. This is especially true if a program such as envisioned by Mr. Eells were to be adopted, for he advises a clearing house for all corporate contributions, thus centralizing the control aspect. The dangers evident here are somewhat reminiscent of those inherent in cooperation among competitors in the more clearly economic fields. The ultimate effect, whether or not intended, is a vastly augmented power.<sup>13</sup>

As the very suggestion of corporate gifts raises the fear of corporate control, so the complete success of such a venture raises an increased possibility of the thing most feared—increased government control. The use of funds realistically belonging to a vast number of stockholders (or politically more important, to union welfare funds, private welfare organizations and commercial investment companies) ultimately must strike a more or less opportunistic legislator as a practice worthy of investigation, or even protective controls. Public ac-

<sup>12</sup> Unrestricted funds, of course, present far less danger.

<sup>13</sup> Certain university presidents are as aware of the problems inherent in corporation giving as they are alert to the dangers of government grants. Consult statement of principle by the presidents of Chicago, Columbia, Cornell, Harvard, Princeton, Stanford, and Yale Universities, *N.Y. Times*, loc. cit. supra note 5.

countability, as Mr. Eells terms it, may serve to ameliorate these effects, but it will be the existence of such activity on a substantial scale, not necessarily its results, which will raise the flag for men in government.

The author is quick to point out that the New Jersey Supreme Court in the *A. P. Smith* case, while admitting a corporate social responsibility, rejected the concept of a corporate "duty" to support the private sectors of society. Yet how far apart are these two concepts? Does not the court's language at least leave serious doubts about the unconstitutionality of legislation requiring corporations to donate a certain percentage of their income annually to tax-exempt institutions? And is this not perhaps the very antithesis of what the author proclaims?

Finally, there is the peculiar problem of increased government control of business itself, and more specifically, the large publicly held corporation. Today the prestige of big business is at a high not experienced for several decades. But who knows that public opinion may not change next year, or ten years from now? To the extent that business has moved out of its traditional profit-making function and into quasi-governmental and social welfare areas, fuel will be available to those in government who may wish to control this vast corporate power. A government, as history illustrates frequently, can exhibit a vicious jealousy of its power. Government cannot tolerate losing too many of its prerogatives to "private sectors," nor can it tolerate strong competition in the business of governing. Perhaps one of the greatest dangers in what Mr. Eells advocates is that it will be too successful.

One must perhaps make an addendum to this review, lest he be suspected of an entirely negative attitude. As has been said earlier, and for that matter recognized prior to the *A. P. Smith* case, there is a legitimate area for corporate contributions to non-profit enterprises. Even though these contributions are limited realistically to those having a direct bearing on a company's business, the list is not a short one. It might include, among other things, contributions to any institutions located in the same area as a corporation's plant, basic research in the company's own field, employee welfare and aid to schools which might be furnishing a substantial number of graduates to the company.<sup>14</sup> An excellent example of a constructive plan along these lines is the corporation practice of matching contributions made by an employee to his own school. Many corporations undoubtedly have developed satisfactory solutions to this problem, but viewed along these lines, Mr. Eells's book will be of little practical value.

Perhaps not enough effort is devoted today to encouraging individual concern for the great private, non-profit institutions of our society. To date we have merely the identification of a social need and a grab for the deepest pocket avail-

<sup>14</sup> Religious programs and basic research in the social sciences, however, seem particularly foreign to corporate enterprise.

able. But if the choice is between government or large corporation controls on the one hand and an almost painful amount of individual contributions on the other, prudence dictates the latter alternative. The government would follow a more proper course of action if it encouraged such contributions by increasing the percentage deduction allowed for individual charitable contributions.

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**International Law and Asylum as a Human Right.** By Manuel R. Garcia-Mora. Washington: Public Affairs Press, 1956. Pp. vii, 171. \$4.50.

The author of this important study locates the problem of asylum in the broad field of human rights. After noting the persecutions of recent years, especially by totalitarian governments with an underlying philosophy hostile to ethnic, linguistic, religious or political minorities within their jurisdiction, he writes:

It is for people thus persecuted that asylum appears as the only hope, especially when the United Nations Charter does not give individuals the right to appeal directly to the Security Council, the General Assembly or the International Court of Justice if any of the rights mentioned in the Universal Declaration of Human Rights are violated. In the absence of such a procedure, international law has no other choice but to recognize a person's right to demand asylum in foreign territory when confronted with revolutionary upheavals and tyrannical regimes. As long as the law of nations does not provide for a centralized machinery to which the individual could resort directly for the adequate protection of his rights and values, asylum as a human right is filling a gap in the international legal order [p. 163].

There has been a great deal of juristic and other discussion concerning the best way to realize the commitments of the United Nations to assure general respect for human rights and fundamental freedoms. The first method undertaken by the United Nations was to achieve a clear definition of these rights, and this was partially accomplished in the Universal Declaration of Human Rights, approved by the General Assembly in 1948. This instrument describes itself as "a common standard of achievement of all people and all nations," rather than as a legally binding instrument. The United Nations has attempted to develop the principles of the Declaration into "covenants" of human rights, which would have the latter character, but has encountered great difficulties. Not the least of these difficulties has been the attitude of the United States government which, under the pressure of the Bricker Amendment movement, declared in 1953 that it had no intention of seeking the ratification of such covenants.

Instead, the United States proposed a program of education, which it called an "action program," including annual reports from members on their progress