

Maurer School of Law: Indiana University

Digital Repository @ Maurer Law

Articles by Maurer Faculty

Faculty Scholarship

1961

Book Review. The Corporation in Modern Society. Edited by Edward S. Mason

Thomas Ehrlich

Indiana University School of Law

Follow this and additional works at: <https://www.repository.law.indiana.edu/facpub>



Part of the [Business Law, Public Responsibility, and Ethics Commons](#), and the [Business Organizations Law Commons](#)

Recommended Citation

Ehrlich, Thomas, "Book Review. The Corporation in Modern Society. Edited by Edward S. Mason" (1961).
Articles by Maurer Faculty. 1763.

<https://www.repository.law.indiana.edu/facpub/1763>

This Book Review is brought to you for free and open access by the Faculty Scholarship at Digital Repository @ Maurer Law. It has been accepted for inclusion in Articles by Maurer Faculty by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.



LAW LIBRARY
INDIANA UNIVERSITY
Maurer School of Law
Bloomington

BOOK REVIEWS

THE CORPORATION IN MODERN SOCIETY. Edited with an Introduction by Edward S. Mason.¹ Cambridge: Harvard University Press. 1959. Pp. xv, 335. \$6.75.

This is not another symposium that one would like to have read but not to read. It is not a potpourri of academic afterthought. Rather it is a coherent collection of essays concerning the role of the large corporation in modern society. Professor Mason has attempted to assemble a group of materials which analyze this role in depth. He has been successful in his attempt.

The views of fourteen contributors are presented. Four of them are primarily concerned with the problem of the large corporation's responsibility and accountability. All of these writers dismiss the concept of "shareholder democracy" as anachronistic. With a passing bow to legislative efforts to inject substance into the shareholders' franchise, they view shareholders' reins on corporate control as neither feasible nor particularly desirable. As expressed by Professor Chayes, "of all those standing in relation to the large corporation, the shareholder is least subject to its power. Through the mechanism of the security markets, his relation to the corporation is rendered highly abstract and formal, quite limited in scope, and readily reducible to monetary terms. The market affords him a way of breaking this relation that is simple and effective. He can sell his stock, and remove himself, qua shareholder, at least from the power of the corporation." (p.40) Professor Mason adds that "it is a little difficult to see in the ownership of corporate securities the source of that invigorating moral, social, and political development that Jefferson saw in private property." (p.15)

These four authors differ both as to whom large corporations should be accountable and as to the methods for achieving accountability. Dean Rostow calls for a frank recognition that the primary responsibility of corporate management is to its stockholders. Corporate responsibility, he suggests, means corporate conformity to the rule of long-term profits maximization and a break with the policy of moderation in pricing that has resulted in a "serious distortion in the pattern of resource use." (p.65) Professor Chayes looks to a number of interacting corporate "constituencies," employees and dealers to cite his two examples, to promote corporate responsibility to the public. Professor Brewster sees the establishment of effective outside supervision over management as the prime requirement in the achievement of corporate responsibility. Legal steps to weaken the ties between the corporation and its managerial employees, to decrease corporate control over its dealers, and to lessen the independence, permitted by internal financing, from the judgment of outside investors would, he feels, promote restraints analogous to the

¹ George F. Baker Professor of Economics, Harvard University.

checks and balances in the federal government. Particularly interesting is his suggestion that barriers to executive mobility be lowered "first, by removing the tax encouragement to methods of compensation which tend to personnel captivity; second, by positive prohibition of private arrangements which penalize leaving one corporate jurisdiction for another." (p. 80) Professor Lintner's paper on "The Financing of Corporations" may somewhat offset the force of these views with evidence that large corporations are not increasingly dependent on internal financing. Finally, to Professor Kaysen, the control of large corporations can best be achieved by the external promotion of competition through our antitrust laws. In actuality, however, he looks to a combination of "broader control of business power by agencies external to business" and the "institutionalization within the firm of responsibility for the exercise of power" to achieve the desired result. (p. 103) These four papers present little in the way of concrete proposals, although Professor Kaysen has elsewhere written at length on his views.² But the authors' critical awareness is a stimulating portent of what we can hope will finally be an extensive post-Berle analysis of these problems.

The success of the lawyers in articulating their views is matched by that of the economists, including, of course, Professor Kaysen. Professor Schmookler contends in a paper on "Technological Progress and the Modern American Corporation" that small firms can and do spend proportionally as much on research as large firms. Our patent system, he concludes, is at least in large measure responsible for our research deficiencies, and he forcefully argues that compulsory licensing and government bounties are practical alternatives to the present patent system. Mr. Chamberlain's article on "The Corporation and the Trade Union" also requires comment. He argues that the unions' major contribution has not been in the area of wage negotiations, but rather "in the making of shop rules and their application in the grievance process." (p. 136) He suggests that in this light it may be "possible to restrict more severely the unions' strong-arm tactics, without thereby endangering their ability to secure individual fair treatment for their members in the grievance process." (p. 136) To this reviewer, at least, it is doubtful that unions have been as ineffective in their efforts to raise wages as Mr. Chamberlain indicates or that union "strong-arm" tactics should ever be condoned, whether or not the unions have made a contribution in the field of wage negotiations.

Political and social scientists also have contributed their views on "The Corporation Man," "The Corporation, Its Satellites, and the Local Community," and "The Body Politic of the Corporation." Their conclusions are interesting, although hardly startling. It is, for example, valuable to read Professor Warner's evidence concerning the "social mobility" of business executives, but one need only look around in the corporate world to come to the same conclusions. Three essays dealing with foreign aspects of corporate development round out the volume:

² KAYSEN & TURNER, *ANTITRUST POLICY — AN ECONOMIC AND LEGAL ANALYSIS* (1959).

"The American Corporation in Underdeveloped Areas," "The Private and Public Corporation in Great Britain," and "Industrial Enterprise in Russia." The latter essay is a particularly stimulating study illustrating the problems faced by corporate managers in a planned society; the essay serves to emphasize the fortunate position of American corporate enterprise.

This book does have several weaknesses. One is inherent in any collection of essays — it lacks the unity of thought and style which mark the work of any one of the contributors. Furthermore, only academicians are represented. In a discussion of the most basic problems of the corporate world, this seems unfortunate. Finally, there are several obvious gaps in the volume as a total view of large corporations. Professor Mason mentions one of these in his foreword — there is no discussion of the standards used in the choosing of corporate executives. An equally serious omission is the lack of any empirical analysis of the effect of our tax provisions on the corporate decision-making process. One volume could not, however, cover all phases of "The Corporation in Modern Society." I concur in Professor Berle's statement that this book is "the best body of material on the American corporate system yet offered." (p. xv)

THOMAS EHRLICH*

SETTLING DISPUTES IN SOVIET SOCIETY: THE FORMATIVE YEARS OF LEGAL INSTITUTIONS. By John N. Hazard.¹ New York: Columbia University Press. 1960. Pp. xiv, 534. \$9.50.

Until recently writers on Soviet law tended to treat it largely as one big "current event" or — at best — as a discontinuous series of current events patched together in what one hoped made up a connected story. The primary data were scant, inaccessible, and unreliable. The monographic literature inside and to some extent outside the Soviet Union had in many cases been contributed by men who were, in the older as well as the contemporary sense of the term, interested; it was often hard to hear the voice of reason over the harsh rasp of axes being ground to a dull edge. The current events were sometimes assimilated, or contrasted, to pre-Soviet Russian law, but legal developments of the early period of Soviet power were relatively neglected. They seemed to have been isolated from the recent past by the Great Purges, the War, and the late-Stalinist Terror.

In the past few years the study of the Soviet legal scene in the twenties has come into more favor. Simple lapse of time may lend enchantment, if not perspective. Besides, within the Soviet Union the legal reformers venturing out in the thaw of 1955-57 sought support and legitimate ancestry in evoking "the noble, mythical past when the Revolu-

* Member of the Wisconsin Bar.

¹ Professor of Public Law and Government and member of the staff of the Russian Institute, Columbia University.