

It would seem that Dr. Teller has managed to strike at the heart of the matter. The points he eloquently makes are telling ones, and they lay the groundwork for his proposals for the future. The future Dr. Teller foresees is characterized by increasing scarcity of petroleum and a high degree of electrification. This, of course, can only take place if we fully exploit our nuclear and coal potential. He makes the point that "It is clear that the energy problem demands urgent action. In fact within five years, by 1983, the situation could well turn desperate." The choice, really, is up to us.

James McClure

Fundamental Corporate Rights

IN DEFENSE OF THE CORPORATION. *By Robert Hessen.* (Hoover Institution, Stanford, 1979.)

The target here is the gospel according to Ralph Nader, which goes something like this: The nation is at the mercy of a few hundred giant corporations, run by a self-perpetuating oligarchy of managers who are not accountable to stockholders, workers, consumers, or society at large. These "private governments" employ advertising to sell us things we do not need, with little concern for the safety and health of workers or consumers. The corporate empires must be brought under social control through greater involvement of outside directors, and through federal charters that restrict activities and can be revoked for failure to serve the public interest. It is perfectly reasonable thus to demand that corporations justify their existence by service to the state, since corporate privileges are a gift of government that can be revoked at will.

The Naderite political metaphor ("private governments") is clearly unclear, requiring total confusion about the nature of political power. "A business," explains Hessen, "cannot

force anyone to work for it, to buy its products, or to invest in it; it cannot conscript capital and manpower or tax a person to pay for a service he neither wants nor uses." In a free market, social control over the corporation is powerful and pervasive. Workers quit if working conditions are unacceptable; consumers abstain from buying products that don't meet their needs; stockholders sell the stock of mismanaged firms, thus prompting better managers to seek promotion by exposing problems or prompting outsiders to take over by buying the cheap stock.

Weakening such market discipline, in order to strengthen government control over business, invariably leads to routine neglect of the desires of consumers. For proof, examine any nationalized industry anywhere in the world. Market control over enterprises is not "democratic," but it is no less real. The specialization of separate management and ownership is not ominous, but enormously constructive. It would not be prudent to buy stock in a company run by the majority vote of thousands of amateurs.

Mr. Nader wants to use federal chartering to keep capital hostage in a narrow field — to prohibit GM from making refrigerators, to ban IBM's entry into the field chartered for Xerox, to keep oil companies from developing alternative fuels. The result could only be a huge loss of competition and innovation, insulating established firms from significant competition. That such a scheme could pass for "anti-monopoly" legislation is truly amazing.

These are some practical difficulties with the Naderite creed, but practicality has never been its motive force. Dr. Hessen digs much deeper into the underlying legal history and philosophy. In the process, he provides a fascinating historical perspective, and carefully exposes Mr. Nader's sloppy scholarship — gross contradictions, factual blunders, misquotes and outright fraud.

Hessen's argument is directed against the "concession theory" of corporations, the notion that government concedes to corporations their rights and powers, and can take those rights away. He wants to show that corporations' rights are inherent in them (the "inherence theory") because those rights stem from individual rights of contract and association that are fundamental to our political system and guaranteed by the Constitution.

Hessen faces a sticky problem in challenging the concession theory. On the one hand, he argues that corporate rights in the U.S. *never* were conceded by government, *always* were rooted in the concept of individual rights. On the other hand, he must deal with the fact that the apparently fallacious concession theory “is a tenet of orthodox legal theory,” and has been from the time of Chief Justice Marshall’s famous statement in 1819 that a “corporation is an artificial being, invisible, intangible, and *existing only in contemplation of law*.” In other words, Hessen argues that for two centuries orthodox legal theory has been wrong — an error that must now be corrected because corporations are in danger from the enemies of free enterprise.

The notion that government has the right to strip corporations of their authority over internal organization and decision-making underlies such proposed schemes as those to require corporations to seat “consumer representatives” on their boards of directors, and to require stockholder referenda on each major financial decision of management. In the heat of the argument over whether such requirements would help or hinder economic welfare, the issue of whether such government intervention is legitimate has been obscured.

At the root of the anti-corporate stance of many consumer “advocates” is a firm belief that since the corporation as such is simply a legal form of business organization, corporations are created by the legislators. And since a corporation’s rights are delineated in law, those same rights are simply privileges granted by government — privileges that can be modified and repealed.

It is certainly true that a corporation is a legal form. And so is marriage. Yet no one would claim that marriages are created by the government, or that the rights of the family are simply privileges that can be stripped away. Rather, marriage in its legal form is an outgrowth of the rights of individuals, codified in law. Corporate status is likewise an outgrowth of the rights of individuals — specifically, the rights of property and contract. To “modify and repeal” these rights is to alter radically the nature of the political system in which we live.

The so-called “privileges” of corporations most under attack are in fact the characteristics that give a corporation its unique status: perpetual life (beyond that of its current owners), entity status (viewing a corporation for legal purposes as a single individual), and limited liability (protecting corporate owners from being liable for its debts). Each of these defining charac-

teristics of corporations is traced back to the fundamental rights of contract and property.

Hessen first points out that "corporation" has only relatively recently come to mean a business enterprise. Originally, corporate status was granted by the sovereigns as a special privilege to an important group (such as the medieval Church) or to local governments and trades groups to expedite the collection of taxes and the regulation of legal monopolies. In medieval England, corporate status was indeed a privilege created by government, but under a monarchical system at odds with democratic principles. Unfortunately, that archaic conception of corporations has survived in common law to plague our current understanding.

The modern business corporation is actually a refinement of the business partnership, in which individuals freely contract among themselves to conduct business. This same right of contract underlies each special characteristic of corporations, as can be seen from the fact that all three — perpetual life, entity status, and limited liability — can also be attributes of the general partnership if the partners choose to so contract among themselves and their creditors. Similarly, each characteristic of a corporation can, and often does, simply go by the wayside if the parties involved agree to so contract: for instance, when a creditor insists on a personal pledge or collateral for a loan to a new or risky corporate enterprise.

In brief, the corporate form is simply a kind of shorthand for a certain type of partnership. Declaring a business to be a corporation by chartering under a state government, Hessen observes, serves public notice to collective future creditors and business associates that limited liability, perpetual life and entity status apply. The alternative would be a cumbersome series of individual contracts. The law in this case does not create, but simply expedites a legitimate form of partnership that has been spectacularly successful in promoting the general economic welfare of society.

A close reading of Hessen's well-reasoned and documented analysis is surely essential for today's beleaguered corporate executive.

Alan Reynolds

Debunking New Racial Stereotypes

RACE AND ECONOMICS. By Thomas Sowell (David McKay Co., New York, 1977).

ESSAYS AND DATA ON AMERICAN ETHNIC GROUPS. Edited by Thomas Sowell (The Urban Institute, Washington, D.C., 1978).

Race and Economics is essential reading for anyone involved in public policy and its relation to America's minorities. This book illuminates how legislation in the areas of economic policy, labor, housing, education, and regulation affects minorities *in practice*. *Race and Economics* is a descriptive economic history of how minorities in America have fared economically and socially. The central concern is the current position of the black community in income, status, occupations and, most importantly, in prospects. Information on other ethnic groups establishes the historical context and provides points of comparison in contemporary America.

A startling number of prevalent beliefs about America's "race problem" — beliefs that form the basis of public policy — have little or no factual basis and contradict the previous experience of other ethnic groups. For example, it is said that good race relations are an essential precondition for black economic progress. Not so, says Dr. Sowell, who shows that Jewish incomes improved most dramatically at around the turn of the century, when anti-Semitism was, by all reliable indicators, at its height. Another prevalent belief argues that problems of discrimination can be settled by using the political process to obtain specific "rights" for minorities. Dr. Sowell retorts that creating "rights" is a cheap way for politicians to give the appearance of concern, while actually doing nothing to solve the underlying problem. Furthermore, with a large proportion of the black population now living in urban areas, many people believe that slum clearance and urban renewal programs provide them with major benefits. In actual fact, fewer homes have been built than have been destroyed under these programs, and those homes actually constructed have often been for high income earners.

In *Essays and Data on American Ethnic Groups*, Sowell tackles the controversial question of relative racial IQ levels and