CAUTION - ADVANCE

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ADDRESS

of

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A wag might well exploit the spectacle of government receiving an award from private business. That spectacle is first cousin to the spectacle of engineers taking over the reins from lawyers. It is second cousin to the spectacle of a business executive handling his own case in Washington without benefit of counsel. But now I have seen at first hand all these things happen. Hence I hope I may, instead of attempting the facetious, be pardoned a few reflective moments on their significance.

You and I can easily recall the time when government was synonymous with red-tape, delay, chairwarmers, and inefficiency of officialdom. Nor did we expect anything different. Some were wont to say that government was our great public futility. And many were more or less content to have it so. The notion of a government official was something like the ostrich who coming across six other ostriches with their heads buried in the sand, exclaimed "Where is everybody, anyway?"

Now I think we all can detect a change, subtle and imponderable as it seems at times. A change in attitude *towards* government; a change in attitude *in* government. In fact, our meeting here this evening may be something of a symptom of that change.

The tidal waves of intense nationalism, the explosions of racial and class emotions, the violent economic swings which swept the world enlisted all of us in a common cause of making democratic government work. Of making it an increasingly vital force for order and unity; a servant of a free people; an active working partner (not a sleeping partner) of capitalism and private enterprise. That led to real demand for adequate power in democratic government to deal daily or even hourly with pressing problems. The relentless pressures of modern times demanded that government do a stream-lined job. It meant no sham performance which might create confidence through the illusion of progress. It meant action - not as an end in itself; but action which was constructive and curative. And for those ends it meant men of training and ability who were willing to take chances of being wrong; who were willing to assume a position of leadership along with business in finding hard-headed solutions to practical problems; who were willing to apply new regulations in the spirit of reasonableness so that restrictive rules would prove to be constructive influences.

The vehicle for performance of this daily work of government has been more and more the administrative agency - that thing which lawyers sometimes delight in painting as some sort of three-headed legal monster. Such agencies are the repositories of much of the workaday powers of government. Partly because of the newness of their form, partly because they had thrust upon them in so many instances, pioneering jobs, the administrative agencies are most critically judged. Today a thousand critical eyes appraise the performance of each of these agencies on the basis of their daily routine.

In important segments of business and finance these agencies, such as the S.E.C., now share with private management certain definite responsibilities. I have spoken often of the trusteeship of management to the stockholders, of dominant groups to minority groups in business. And I have spoken often of the fiduciary responsibilities of the elders in business and finance, responsibilities that were inherent in their powerful positions of leadership. That type of trusteeship is as real as the trusteeship of public

office. But it is only fitting, perhaps, that in discussing the business of government, I take a moment to define those standards of trusteeship which must prevail in public office. The trusteeship of the public official is something beyond the simple honesty of spurning such subsidiary emoluments as may go with the office or of avoiding exploitation of the circumstances that may attend the performance of official duties. In the administrative agency, particularly, the standard of trusteeship goes beyond these elementary concepts. It demands a strict devotion to the law both in letter and spirit. It demands a fearless respect for facts, regardless of pressures or consequences. It requires a mastery of technicalities. It demands complete independence of - yet intelligent, official sympathy for - the group being regulated. It demands dispensation of reasonableness and fairness to all alike. It entails a high order of law administration so that the statute being administered becomes a constructive force for progress.

Both the trusteeship in business and the trusteeship in government have high standards of performance. Both have a responsibility not only one to the other but to the public. Jointly they can provide a constructive, dynamic influence in the cause of capitalism and the profit system.

The responsibilities of administrative agencies and of business demand statesmanship on both sides. Thus as respects stock exchanges, the point where self-determination should cease and direct regulation by government should commence must usually be determined not by arbitrary action but by neatly balanced judgment and discretion on both sides. The administrative agency plays a singularly important role in that process. It may be the propelling force for action where institutional paralysis of business has set in. Or it may be quietly and unobtrusively performing a mere residual role with its presence felt but not seen. The latter is ideally the role; the former is too frequently the necessity.

But whichever may be the role of the administrative agency it is constantly operating at the technical level. In fact the administrative agency is the technician of government. The job of administrative agencies like the S.E.C. is for the most part a technical job. Although much of its language and nearly all of its actions are necessarily the language and actions of the law, the agency's thinking is in terms of accounting, engineering, finance and business. This follows, of course, from the place of these administrative agencies in our scheme of things. Their roots lie really in the problems that flow from the great industrial development of the country. They find their origin in public recognition of the fact that a national problem exists in connection with such industries as railroads, stock exchanges, radio, telephone and telegraph, public utilities and aeronautics, to name only a few. These matters do not suggest law books or litigation. They suggest, rather, active businesses, nationwide industries, dynamoes, transmission lines, rights of way, bond issues, mergers, annual reports, independent audits, payrolls, salaries, employees, and a host of others which taken together constitute American business and finance. They are the day-to-day work of administrative agencies.

catch a broker jiggling a stock on an exchange. The facts are clear; the law is clear; our duty is clear; the decision is easy. But frequently Congress has not itself laid down a prohibition or prescribed a precise formula for solution of a problem. Rather it has left its solution in light of prescribed standards to an agency like the S.E.C. Such was the way in which Congress left with us the problem of short sales. The policy back of such delegation by Congress is a sound one both from the viewpoint of government and of business. If Congress supplied in a statutory formula precise answers to many of these problems, it would be placing business in a legislative strait jacket. The statutes would then become legislative prescriptions of black and white, sound and unsound, right and wrong. Many problems of American business cannot be answered in such facile manner. Unsound capital structures of holding companies frequently can be spotted at first glance. But precise statutory definition of sound capital structures would be wholly arbitrary. The precise extent of the geographical expanse of a public utility holding company might be arbitrarily determined by legislative fiat. But its general application would be most apt to fly in the face of engineering facts. A statutory formula for short selling would be possible. But today I doubt if anyone has the omniscience to defend the ultimate validity of any one formula against all vicissitudes of the stock market under all circumstances. And so it goes for security issues of operating utility companies, for dividend policies of utility companies, for stabilization of prices of securities, for material facts to be disclosed in prospectuses, and the like. If Congress undertook to settle all of these problems by legislative fiat, business would have its certainty and definiteness. But business would also be heavily afflicted by a legislative blight.

And so it is that responsible business cannot join in derisive comments or attacks on what some delight in calling "government by discretion". All realize that restraints and controls are necessary. They likewise realize to an increasing extent that the "elbow room" which administrative agencies have in applying these restraints and controls is a boon to business and to the public alike.

Realization of this fact likewise points to the desirability of business and government working cooperatively at the technical levels of these problems. Where Congress has left instructions to an agency like the S.E.C., there is no alternative but to proceed to carry them out. But where Congress has supplied merely the standards for action and has left "elbow room" for the nature and extent of action by the administrative agency, practical wisdom can frequently be acquired through a fusion of the energies of government and business on the technical aspects of the problems. For this reason both government and business can profit immeasurably by the use of the "round table" technique. In that way can facts from the laboratories of business be utilized in the government's workshop.

But there is another phase of the problem which has commonly been overlooked. Under our administrative form of government, the preservation for business of the principle of self-determination is both possible and practicable. As I have said, an agency like the S.E.C. has "elbow room" in dealing with some of the problems which Congress has assigned it. Flexibility and discretion are both

provided in, and circumscribed by, the law. For every grant of power there is a compensating restraint on its use. Where abuse of power may creep in, there is opportunity for review or control from existing superior authority. Congress prescribes both the objectives and the standards. We can change neither. If we attempt to do so, the courts quite properly can rebuke us. But occasionally Congress has given such an agency little or no discretion except as to method. In certain instances that discretion offers the choice between direct action by the government or joint and cooperative action by the government and the particular business being regulated. Some have regarded the very existence of such alternatives as alarming examples of "government by discretion." But those are prone to overlook a very fundamental consideration, namely, that Congress by that method has preserved for business a great deal of the democratic principle of self-determination.

Go back five years. I doubt if any could have then predicted the fundamental changes which have taken place in the New York Stock Exchange. Yet such changes took place in less than a single year. A year ago today the Exchange seemed to be approaching a period of strict prescription by the government. Today it is outstanding as an institution which has firmly taken its destiny into its own hands. And for our part, we are only too glad to be able to assume a residual role and to move into the back seat. Under the Holding Company Act, we have two choices as to how we shall proceed towards geographical integration and corporate simplification. Under the Act, we may propose plans and work out ourselves the blue prints for the reorganization of the holding company systems. On the other hand, we may consider plans voluntarily submitted by those systems. It is no longer news that we propose to follow the latter course, so long as it seems likely to work, so long as there is real progress. If I were a business man I would want to make the original suggestions as to how my system could and should meet the requirements of the Act. I would want to work out my own views for the trading of properties with other systems in conformity with the requirements of geographical integration. If I followed that course, I would get the benefit of having matters of policy decided on the facts of my case and with the benefit of my advocacy. I would thus minimize the risk of precedents based on the facts of somebody else's company and after the inferior advocacy of somebody else's lawyer. I would realize that while I might not in the end get everything I wanted, yet if I participated actively in the development of the program, I would minimize the chance of my hopes or desires being overlooked or inadequately considered. And that, I believe, is precisely what is happening. There has been all along the line a renaissance of good business judgment. There, it seems to me, is the real story behind this encouraging improvement in the relations between government and business.

These facts are worthy of recognition because they point to the level on which business and administrative government can make effective contact. We hear a great deal about the government-business relationship. We hear that it is good or bad, better or worse. One day there is a "split", the next day a "rapprochement". These are symptoms of transition. They do not describe the permanent level of the business-government relationship. As a matter of practical functioning, business and government cannot remain on a good-or-bad relationship, except as respects violations of the law.

I think there has been a growing recognition of the supremacy of the law; a recognition of the fact that once the broad national policies have been embodied in statutory law, the business-government relationship moves out of the realm of controversy and debate. It ceases to be an issue; it moves into the province of the technicians. The problems must be worked out, under the law, but in business terms. They are to be worked out not on the political but on the technical level. That not only can be done; it is being done.

I have already referred to the experience of the S.E.C. with the utility industry under the Holding Company Act. Since the passage of that Act, the S.E.C., in contemplating the objectives of the integration provisions of the statute, has continuously looked towards a broad voluntary program under which the utility industry would, over a period of years and through normal evolutionary channels, reshape itself to meet the standards of the law. But such visions were often obliterated by the cries of "death sentence", "confiscation", and "ruination". And it was not until we had cut our way through a phalanx of protecting legal strategists that we were able to sit down with the operating heads of the companies and work out our joint problems, not as adversaries, but as technicians bent on getting done the job which Congress had prescribed.

Perhaps in all fairness, I should lightly pass over any reference to legal strategists. But with due apologies, I am tempted to make merely one observation about them. It may be nothing but a mere coincidence; yet once the lawyer disappeared as the intermediary between us and business, the job began to roll. Once the business executive and we could sit down across the table and talk, not through an interpreter but directly, things began to happen. Once the phrase "without benefit of counsel" became popular, things began to happen. I say this most hesitatingly because of my respect for my profession. But now that business men have moved their engineers and investment bankers up front, the illusion of motion has disappeared and a sense of real progress is present. The business executive, the engineer, the investment banker has no smaller supply of acumen and ingenuity than the lawyer. But he does seem to lack some of the mental qualms of the legal theorists - yes, even as respects the dangers which are supposed to rest in administrative agencies. To business, the administrative agency offers a practical and realistic approach to those business problems which are of national scope and public concern. The business man is more and more cognizant of the fact that for effective work on at least the policy phases of these problems, the best way of avoiding red-tape is not to bring it with him when he catches the train or plane to Washington.

To sum up, I have tried to give you some insight into the nature of this new governmental creature we call the administrative agency. It is the mechanism of democratic government whereby capitalism can discipline and preserve itself. It is equipped to meet business on business terms. It is in its infancy, but it is here to stay. And its future development will in large part be molded by business. With joint action it becomes an efficient business force; acting alone it becomes a police force. The choice rests in the hands of business.

Yet, in discussing it, I do not want to be guilty of the same over-emphasis that characterizes so many of its critics. I do not want to leave the impression that the development of the administrative agency in any way alters the fundamentals of democratic government. Nor do I want to leave the impression that the administrative agency is the all important factor in effective government. For government goes far beyond agencies and bureaus and commissions. In the broad sweep of things, the verities of democracy remain. The system by which this country has always run itself rests on the fundamental that the ultimate power is vested in the voting population. That principle is the corner-stone of democracy. It is that principle which we must defend. We hear a great deal about threats to democracy - about the dangers of bureaucracy, the need for effective opposition, the safeguards of vigorous minorities. All of these have their validity but they are all subsidiary to one basic fact. That is that the key man in democratic government is the voter. To protect democracy we must protect the voter, and that is a problem which intimately concerns all of us.

It is an old saying that if the people understand a question, you can pretty well depend upon them to decide it the right way. That is still a sound principle. It is particularly evident when the issue of good government is presented. But the democratic process assumes that the individual voter - the farmer, the factory worker, the housewife, the clerk - will be able adequately to comprehend and grasp the larger questions at issue - questions many times as complicated as the simple question of good government, or the problem of catching crooks. Yet the past twenty years have seen the issues grow in complexity and multiplicity, until they threaten to outstrip the capacity of the voter to evaluate them. The voting population tends to get further and further away from an ability to understand the questions which, under the democratic process, they are called upon to answer. This is a problem which the country's media of information have sought to meet. Witness the enormous amount of space in newspapers and periodicals, and the time on the radio, given over to national affairs. Witness the columnists, the commentators, the polls of public opinion. Unquestionably this increased discussion of national problems has been a great service. But there are great portions of the population scarcely reached by the usual carriers of information. These are the segments of the voting population which cause concern. For the voter who has gotten out of touch with the issues of the day is a weak voter. And a weak electorate means a weak democracy.

The danger is not merely that the poorly informed voter will not wield the ballot wisely. It is that he is prey to those who would control the ballot. He is the easy victim of the false issue and the trick slogan. We have all of us seen such efforts - the use of traditional symbols and catch-phrases for the purpose of stating (but frequently of misstating) in over-simplified terms, complex and vital questions. But we are prone to underestimate the undermining effect of such methods. Yet we have only to look abroad to learn their ultimate stopping-place. We tend to forget that every time we fail to clarify an issue for the electorate and use instead the political catchword method, we make the electorate that much easier prey for some future political witch-doctor. Enlightenment is the sure antidote for political witchery. Democracy will be as vigorous as it is informed. It is the responsibility of all of us who want to preserve our democratic system to see that the country genuinely understands the issues before it.

The national problems of the future will be economic and business problems. They will lie in the realm of industry and finance. They will be complex; and they will be as difficult for the layman to comprehend as for the expert to solve. But our own resourcefulness can match them. They need not overcome us nor need they destroy our heritage of freedom. To meet the challenge of the future we need to arm ourselves in two ways.

In the first place, we must continuously perfect our methods of transmitting facts; of analyzing facts; of interpretating facts. I speak of facts, not propaganda -- elementary facts on basic issues. Only in this way can we have an informed electorate, alive to the issues, aware of the country's needs, and sensitive to its dangers. Without such continuous education in terms of facts, democracy cannot continue as a vital force.

In the second place, we must make certain that we continuously perfect a governmental technique which can deal effectively, on a daily or even an hourly basis, with the nation's industrial problems. This means, in part, a professional career service in administrative government. It means, in part, government keeping abreast of the changing problems (indeed taking the lead); not, with puffs and pants, strenuously trying to catch up with a problem that has years or even months of a head start. It also means permanent machinery for meeting industry on its own ground and at the technical level, so that hardheaded solutions of practical problems may be readily had in tune with progressive principles.

In both of these steps a progressive administrative agency by development of its traditions can play some part. Perhaps it can demonstrate in miniature the art or technique of copying with fundamental economic and social forces. If it can, it should help build into the national consciousness a confidence in the ability of democracy to be the master of its own fate.

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