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Administrative control over finance is in its infancy in this country. Aside from control by the Interstate Commerce Commission in the railroad field and apart from significant advances by some states, administrative control over finance had its real commencement on a national scale less than four years ago with the Securities Act of 1933, followed by the Securities Exchange Act of 1934, and the Public Utility Act of 1935. Those acts were born of a desperate situation in which a nation of investors had suffered untold losses as a result of secretive, excessive and fraudulent practices of promoters, bankers, and issuers. There was a grim realization that protection against social disintegration depended on at least a mitigation of such capital waste, since such waste bred insecurity and instability; and the latter, distrust in the efficacy of government.

Prior to 1933 there was little control over the processes of capital assembly. Such few state laws that afforded a measure of protection and safety could not function effectively as against a national problem. The imaginary or jurisdictional lines of the states constituted real and effective barriers to single or collective state action. Though they could control intrastate transactions, they were largely powerless when an operator moved beyond the state lines and used the mails and agencies of interstate commerce to operate intra-state. Furthermore, the states themselves were creating the condition which was overpowering them. In an orgy of competition they were producing laxer and laxer corporation laws, the *fons et origo* of the vehicles for capital waste. These corporation laws ran mostly in one direction -- greater freedom and choice for promoters, bankers and issuers; less protection for investors. They were born of the desire of management and finance for greater power over other people's money, and for avoidance of the principle that corporate powers are powers in trust. As one writer has put it, "The Mt. Sinai of corporation law is now located in Delaware, although the Moses to whom the revelations are made is said to come from New York City."

Under this competitive and uncontrolled condition, a degree of lawlessness was created. Security holders, widely scattered and inert, had no means of effective control over the bureaucracy of management and finance. No administrative agency existed which could give investors any degree of protection. From this condition of lawlessness, the striker or shyster emerged and provided a degree of control. Though his objective was not social justice but blackmail or satisfaction of merely fancied wrongs, he supplied some deterrent to excessive practices. His roving presence struck fear in the hearts of management and finance. They measured in advance the vulnerability of their transactions at his hands. His systematic raids doubtless lowered somewhat even the fast tempo of finance and prevented the exaction of even greater tribute from investors. The annual toll which he levied was probably great; but as unethical as were his practices, the price was probably not excessive in terms of the going rate among financial adventurers.

These basic conditions, of course, remain the same. There is, however, one significant difference today from the conditions which existed during the last boom. The Securities Act of 1933 stands at least as a partial deterrent to extravagant practices. As such it should provide a degree of stability lacking in the old order. The advances which it has made are modest but nevertheless important. During the World War we had a Capital Issues Committee, providing control over the issuance of securities. During the few months of its existence, it disapproved about $450,000,000 of proposed issues on the ground that they were not in accord with the government's effort to conserve capital and resources for the purpose of winning the war. But the Commission is not analogous to such a committee; nor is the Securities Act of 1933 a vehicle for economic planning;

nor do I suggest that it be transformed into such. That Act is restricted in purpose and effect to the prevention of fraud and to the disclosure of the truth. Once the truth is disclosed (and absent fraud), the powers of the Commission cease. Industry then can sell what it pleases. The investor takes the chance on the purchase; promoters, directors, appraisers, auditors must undertake the risk that the representations are in fact true.

Limitations on the powers of the Commission, inherent in such kind of control, are apparent. Thus, it can reasonably be predicted that in certain types of small issues over 85 percent of the registered securities on the average will not be sold - a matter made more predictable perhaps by reason of the full disclosure required by the Act. Since these are promotional and highly speculative issues, it follows that the 15 percent which are sold will represent a total capital waste so far as the investors are concerned in view of the fact that the proceeds from that 15 percent may do no more in some cases than pay the promotional costs. Whether many of these enterprises would have any real opportunity to succeed, even if the entire issue were sold, is doubtful. But I mention this situation merely to illustrate the point that the Commission is not in theory or in practice an agent for economic planning. Whatever may be our doubts as to the wisdom of tapping capital resources for particular enterprises, there is no power or control over the flow of capital into particular industries except and unless misrepresentations or omissions of material facts give us the power and impose on us the duty to prevent certain issues from being offered. There is not even the power to protect the group which purchases the first 15 percent of the offering by requiring that the proceeds of the sales be impounded until it is reasonably certain that enough of the offering will be sold to supply the new company with adequate capital.

Another illustration of the sort is frequently provided in cases where the insiders put up practically no money, most of it being obtained from the public. On the other hand, the public gets only a small part of the profits. Thus, in case of a recent investment trust, millions of dollars were raised through "A" stock and a few thousand shares of "B" stock. The "A" stock was sold for $50 a share; the "B" stock was sold to insiders for $1 a share. The "B" stock had complete control. The few thousand shares of "B" stock were entitled to share with the "A" stock in the surplus. $15 out of every $50 received on the sale of "A" stock went into surplus. 200,000 shares were sold, making the surplus $3,000,000. If the company were immediately liquidated, the "B" stockholders who paid a few thousand dollars would have received one and a half million dollars. You may say that such a set-up does not satisfy the broader objectives of regulation and should not be tolerated. You may also maintain that such a proposition fails to show the proper responsibility on the part of corporate promoters and managers and that such an arrangement is an easy and convenient vehicle for capital waste. But here again the Securities Act does not purport or attempt to remake or refashion corporate laws. There is no power or jurisdiction in the Commission under that Act to require or insist on more adequate protective clauses in charters or indentures. The power is restricted to prevention of the use of misleading or false representations as to the true nature of such protective clauses as are present.

The disclosure required by the Securities Act is not designed merely to protect investors against fraudulent misrepresentations; it is built upon the basic premise that prospective investors ought to be supplied with reliable information to assist them in forming an independent opinion as to the merit

of the securities. But limited as the Act is in its objectives and modest as it is in its claims, power does exist to supply a direct or indirect healthy conditioning influence over the capital markets. This is evidenced not solely by the 126 stop orders which have been issued against prospective issuers; nor by the fact that 211 firms and individuals have been permanently enjoined; nor by the 77 criminal convictions which have been obtained; nor by the fact that the Act has directly prevented over 75 million of new issues, and has indirectly at least prevented the issuance of about 200 million more. It is also seen in the higher standards which have been created for accountants, whereby only those who are independent of the issuer can certify the balance sheets. It is also seen in the important work which lies ahead of perfecting and classifying accounting principles, so that there may be not only a greater uniformity in practice but an adoption of more conservative practices which make it less likely that investors will be the victims of accounting legerdemain. And it is noted in the hesitation of issuers to indulge in excessive practices which must soon be disclosed. Such matters as these spell advances over past practices; they still afford great possibilities for effective administration even within the limited orbit set by the Securities Act.

Within that narrow orbit a dynamic administration is necessary because of the kaleidoscopic nature of the various phenomena of the capital markets and of the inventive genius of finance and its lawyers. I mention the lawyers because of their great capacity for finding convenient excuses for the clients placing their own immediate ends above the public interest and because, in their eagerness to serve their clients' selfish objectives, they have frequently become, to use the words of Mr. Justice Stone, "the obsequious servant of business". This inventive genius shows signs already of developing techniques for telling the truth in devious and abscure ways. Recently increasing attempts have been made to "expertize" wide ranges of facts in the registration statement. This is on the theory that there is less likelihood of liability on the part of underwriters if they can rely on statements of experts. Such attempts if successful would entail a substantial recession from the advance which has been made and would allow underwriters for all practical purposes to circumvent the spirit and the letter of the Act.

Another current illustration is seen in connection with fractional undivided interests in oil or gas rights, included in the Act by the 1934 amendments. These rights, known as oil and gas royalties, are interests in the oil and gas which lie in and under, or which may be extracted from, a specified tract of land. For a number of years there has been considerable traffic in oil royalties in the mid-continent oil fields; and for many years the purchase and sale of, and traffic in, oil royalties was limited almost exclusively to those sections of our country where the oil fields were to be found. Of late years, traffic in oil royalties has increased in volume to an almost unbelievable figure. This tremendous increase can be attributed in a very large measure to that great horde of exceedingly energetic and resourceful individuals who style themselves oil royalty brokers or oil royalty dealers. Vast sums of money change hands in a year's time in the oil royalty business, and it is only natural that many individuals, some with - but most of them without - any practical knowledge or sound appreciation of the true value of oil royalties, should be attracted. Many of the dealers or brokers, however, were soon disillusioned because they were not long in discovering that the buyers of oil royalties in the mid-continent oil fields area were not only thoroughly familiar with oil royalty values, but were also shrewd purchasers, and allowed very little, if any margin as profit or commission for the broker or dealer. To survive,

the brokers and dealers were forced to look far afield for purchasers of oil royalties who were not so well informed of true values, and who were not cognizant of the hazards attendant upon an investment in oil royalties.

Within the past few years, oil royalty brokers and dealers have descended in great numbers upon the metropolitan areas, looking for more fertile fields in which to create a market for oil royalties. The single word "oil" affords to the usual high-pressure salesman all the foundation necessary upon which to construct a glamorous tale of great profit and extreme wealth. The promoters and the brokers and dealers soon learned that the uninformed investors and purchasers constituted an easy market and made possible a long profit; so much so that the greed of the promoters soon turned the oil royalty business into what has been several times described as nothing less than a racket.

For resourcefulness and ingenuity the promoters of oil ventures are probably second to none. It was soon discovered that a vast number of people residing in the metropolitan area, far removed from the oil fields, were not familiar with oil royalties, as such. The term meant little to them, because they had been reared and educated to believe that an investment in any so-called security was not truly an investment unless ownership thereof was evidenced by a certificate of stock, a certificate of beneficial interest, or by some other familiar type of instrument. Not to be outdone, the promoters and the brokers and dealers who were looking for an easy market and a long profit, conceived the idea of depositing oil royalties with a trustee and issuing them certificates of interest or participation, each of which represented an undivided fractional interest in all of the oil royalties so deposited. Thus the "oil royalty trust" was conceived. This type of investment proved more attractive to the investing public in the metropolitan areas than did the purchase of an oil royalty, even though it afforded less security in many instances. To the promoter and to the brokers and dealers, the innovation was even more attractive, because it was soon found that by issuing the certificates of participation in small denominations, the oil royalties could, in fact, be sold for several times the amount for which they could have been marketed if sold simply as oil royalties. Again the easy market, the long profit, and the greed of those promoting such enterprises soon developed what has been referred to many times as the oil royalty trust racket. Almost over night the metropolitan areas were flooded with oil royalty trusts, and many of these questionable ventures assumed high-sounding names.

Again, as the Commission has made the promotion of undesirable oil royalty trusts an unhealthy venture for the unscrupulous promoter he has moved on looking for other ways and means to accomplish the same result. It appears now that the most recent scheme conceived is that involving the sale of oil and gas leases. Perhaps he has seized on this device with the hope that such a lease will not be construed as a security under the Act. Under this plan of operation, the promoter usually acquires, for a negligible sum, an oil and gas lease upon a vast tract of arid land which may have no oil possibilities whatever. Seldom, if ever, does this lease cost the promoter in excess of a few cents per acre, but he, in turn, paints a glamorous picture of the great wealth which may follow the purchase of an interest, under that lease, to a specifically described 1-acre, or 5-acre, or 10-acre tract of land. In a great number of the instances which have come to the attention of the Commission, the investor pays from twenty-five to thirty-five dollars per acre for his lease, and in return he receives an assignment of the underlying

lease as it relates to a specifically described tract of land. Upon conclusion of the transaction, the promoter has profited almost to the full extent of the sale price, and the investor stands in the enviable position of having acquired the privilege of drilling an oil well upon his small tract of land provided he has the inclination and the necessary forty thousand or fifty thousand dollars with which to do so. When you realize that some of the enterprises being so promoted consist of tracts of land containing anywhere from twelve to fifteen thousand acres, you can well appreciate the incentive for such activities on the part of those promotionally inclined.

These illustrations supply examples, in one narrow and restricted field of finance, of the rapidity of the rate of change in financial practices and of the inventive genius of those who live on other people's money. If government is to keep up with such change, it becomes clear not only that dynamic administration is essential but also that new and constantly changing administrative devices and techniques must be forged. Therein lies the virtue of administrative control. It can operate interstitially where the heavier and more laborious court processes cannot reach. It can supply a degree of expertness necessary for nice adjustments between the legitimate and the illegitimate and for precision in reaching the true problem. It can function flexibly and make ready adjustments in light of the rate of change in institutional practices.

Dynamic administration, however, calls for more than faithful performance of today's job. The administrative task today is in large measure preparation for the administrative task tomorrow; preparation for the work that lies ahead is today's foremost accomplishment. I have mentioned above that administrative control over finance is in its infancy. I think that beyond the present horizon lie vast areas where constructive work can and will be done. I believe that in the decade which lies ahead we will see significant advances in the direction of even greater control in this field, whether it be by the states or by the federal government. These developments will not, I think, be left to chance nor be applied merely as antidotes to cyclical trends. I think they will be pressed on us by the insistent demands of a nation more and more enlightened in the art and responsibilities of democratic government. Certain it is that a narrow legalistic conception of an act like the Securities Act of 1933, the Securities Exchange Act of 1934 or the Public Utility Act of 1935 will not suffice for effective administration. That is not to say that powers granted for one purpose should be promiscuously employed to reach objectives beyond the clear intendment of the law-making body. But it does mean, in the first place, full use and development of the powers granted so that their enforcement may embrace not only the letter but the spirit of the particular statute. In the second place, it means constant research and study on the periphery of present grants of power so that constructive advances may be quickly and intelligently made beyond the present horizons of control when necessity dictates. Only by such constructive measures and planning can investors be assured of an active, vigilant and aggressive agency, alert to the necessities of today and sensitive to the requirements of tomorrow. In other words, it would be the part of folly to conclude that all is well because a Commission has been created in Washington. From the view-point of investors, while there is more assurance now that fewer gross frauds will be perpetrated, it would be foolish to assume that the capital markets have become safe by reason of the existence of the Commission. From the point of view of an agency like the Commission, it would be, in my personal judgment, likewise foolish to assume that responsibility ends with doing the restricted task which has been assigned. The mandates for dynamic administration make of transcending importance the preparation for the tasks which lie ahead.

High finance may obtain little comfort from this philosophy. It would welcome assurance that the Commission's task ends with the strict legal powers which the Commission has. It would receive great comfort from the thought that a narrow administrative viewpoint would be taken. But in my personal judgment responsive and responsible administration can and will give no such assurance. If present legal powers are lacking, it is my individual opinion that additional ones must be obtained. This to me is necessary not only because the economic and social conditions change, but also because with the aid of astute lawyers high finance has almost unlimited ability to circumvent any legal system of control which may be designed. This means that there must be an inventive genius on the part of the government to match the inventive genius of high finance and to forge new techniques where the present ones are inadequate. The short history of administrative agencies in this country clearly demonstrates that there neither is nor can be uniformity in administrative techniques necessary and appropriate for handling the intricate problem of finance. And no academic or theoretical conception of powers but the pressure of facts alone can produce the essential motif. Adherence to an abstract conception would make of the administrative process a blunt and clumsy procedure for this work-a-day world. It would sacrifice the experiences of life for a logician's symmetry. What is necessary for a tax commission would fail utterly in control of diseased cattle. What is appropriate for insurance would be inadequate for securities.

I have spoken of the virtues of disclosure of the truth in securities. Important as that is to the long term needs of the capital markets and to the immediate needs of investors, it is readily recognized that it is of limited utility and that in certain situations more drastic and fundamental changes are needed. Thus in case of the Securities Exchange Act of 1934, disclosure was supplemented by regulatory powers over securities transactions and over national securities exchanges. Likewise under the Public Utility Act of 1935, broader powers over capital structures, over the provisions of securities and the like were granted the Commission. A like situation is indicated by the unhealthy condition of corporation statutes, which I have already mentioned. These still constitute the most productive incubator for high finance. Here it is not enough that disclosure be made of the vast powers of management; it is essential that these powers be curtailed in the public interest and for protection of investors. To that end perhaps we will have before long federal incorporation. Or perhaps we will move on a more evolutionary route and make a first and final effort at effective state control by imposing a federal tax on migratory corporations and thus localize the problem and make it susceptible to state control, which it is not today.

Another illustration may be drawn from the reorganization field, where the Commission has been making a study and investigation of protective and reorganization committees. Many committees are required to register under the Securities Act and to disclose in the registration statement the truth as to their organization, their affiliations and their plans. But in these reorganization situations, mere disclosure does not secure that degree of protection of investors which is both essential and feasible. When a default occurs, investors have little freedom of choice but to go along with those who, self-constituted and self-appointed, announce themselves as their

protectors. The wide dispersion of securities is alone a great deterrent to effective mobilization of the security holders in their own interests. Add to that, an inertia of security holders and a lack of acumen and ability on their part to analyze and understand complicated financial problems, and there is created a condition where they are largely helpless to help themselves. Hence, when committees and other groups appoint themselves to protect the security holders, disclosure of the facts regarding these protectors is inadequate for protection of investors. Prospective purchasers of securities have, by and large, a real choice, to buy or not as their judgment dictates. To them disclosure of pertinent facts surrounding the offering is of great value. But in these default situations, the case is different. The investor already holds the securities, his investment has been made, his choice is drastically limited. He must take some action to protect his interest and the only avenue open to him is the particular dominant committee that enters the field. These self-constituted committees or groups who set themselves up as protectors of the investors frequently have palpably conflicting or adverse interests. Furthermore, they take unto themselves broad powers under deposit agreements and proxies which at times are oppressive and unconscionable. Nevertheless, if these committees who register under the Act state the whole truth about themselves and their powers, the Commission is helpless. There is no power to refuse to qualify as committees those who have even obvious and shocking conflicts of interest. There is no power to curtail or to delimit in the public interest and for protection of investors powers which committees may take unto themselves. There is no power to supervise the conduct and activities of committees during their lives. In other words, though the registration statement contains no misstatements or non-disclosures of material facts, committees may continue to operate under oppressive agreements and to cause security holders untold mischief. It will be small comfort to investors to know that those who control their destinies are incompetent or faithless fiduciaries. The condition in the reorganization field is made particularly acute by reason of the fact that not only does the Commission have inadequate control over these committees but such control is lacking in many situations by any other agency. Noteworthy examples of this are reorganizations in state courts, voluntary reorganizations, municipal debt rearrangements and foreign debt readjustments.

This means in substance that so far as committees are concerned the basis for regulation must be broadened so as to require not only the disclosure of relevant facts but also to eliminate material conflicts of interest and unconscionable practices which exist in spite of full disclosure. Significant advances can only be made if there is a re-analysis of the validity of certain of our present techniques for handling these complicated financial situations. An inventive liberalism is the only safeguard against regression or smug complacency.

In connection with the reorganization situation, there is growing recognition of the need not only for more effective control over those who undertake to act as fiduciaries for the security holders but also for administrative assistance in the reorganization procedure. Prior to the present depression reorganization was an art known, in large measure, only to the select banking fraternity and to the select financial bar. The depression has brought a new realization of the importance of reorganization processes. They are not new. They have merely been more generally appreciated and understood by the many rather than the few during the last five years. These processes have been in the hands of financial adventurers and those with special interests to serve too long for the comfort and safety of investors.

When a company collapses the fight for control is on. The management and its banking allies who have been in control of the particular industrial empire naturally will fight tenaciously to retain that control. Control of any one of these industrial empires is a rich prize. It may be realistically and accurately described as the ultimate spoils of reorganization. Those who acquire that control have not only power but rich emoluments in the form of salaries, underwritings, trusteeships, depositaryships, valuable contracts, and the like. These spoils belong to the victor. Many of them, of course, are wholly legitimate. Some of them are not. Thus, a management which, through negligence, recklessness, or unfaithfulness has brought the company into insolvency, is interested in keeping the past a closed book. Disclosure and discovery of these facts might lead not only to loss of prestige but to litigation wherein legal claims for damages or for an accounting will be asserted against the group formerly in power. It will thus be to the self-interest of these groups at times to stifle all investigation, to attribute the failure to a world-wide depression and to cyclical trends and thus to save face. When factors such as these enter, the objectives of reorganizers become incompatible with the objectives and interest of investors. It will be to the interests of investors to oust faithless and incompetent managements and to restore to the treasury of the corporation assets unlawfully subtracted. It will be to the self-interest of those in power to see that that is not done. This is only one illustration; there are many others. Thus, those in power may be dominantly interested in the equity. If they can keep control over the reorganization they may well be able to prevent that equity from being wiped out or materially diluted.

These phenomena are not new. They are long-standing features of the reorganization system. But those interested in strengthening capitalism and protecting property rights are coming to the conclusion that in these reorganization situations the control which management and its banking allies have over these industrial empires should be broken and placed in the hands of representatives of the investors. If that control is not broken at that time, it may never be. For the bureaucracy of management is in many respects worse than possible bureaucracy in government; bureaucracy of management, by and large, is self-perpetuating by reason of control over the proxy machine. The management, except for unusually critical periods, can resist any wave of protest and opposition and remain in power.

Thus the trend is towards providing a larger degree of democratization in these proceedings. So that investors and their representatives will have a chance and an opportunity to assert themselves, to make their views felt, and to participate in the proceedings, the power formerly possessed by the dominant groups must be placed in the courts. Only by such move can the increments of value inhering in that control be appropriated for investors rather than exploited by finance. But this raises intensely practical considerations. These reorganization situations are exceedingly complicated. A degree of expertness is necessary for their proper handling. The management and the bankers had this degree of expertness. It may be too much to expect the courts to develop it, at least over-night. Furthermore, the courts frequently do not have the necessary time to spend on these complicated questions. Accordingly, there is a growing recognition of the need for administrative assistance to the courts in these situations -- administrative assistance which would not usurp power from the courts but would aid the courts in performance of their onerous and burdensome reorganization functions. Such administrative assistance would also make it more certain that a democratic process would work. It would supply direction, force and stability to that process. The need for protection of investors in reorganization makes insistent some such move. On an evolutionary

basis it may be that eventually we will have administrative agencies in charge of the whole reorganization procedure. But at this stage I think it is far more important and less hazardous to follow traditional methods and to keep control in the hands of the court; and at the same time to strengthen the procedure by implementing the courts' powers with administrative assistance. This would not be a wholly new adventure for government. Government is in reorganization at the present time since it supplies the court machinery whereby reorganizers can work out their difficulties. In a realistic sense, the government has long been vitally concerned with the reorganization process. The addition of an administrative technique, though novel at first blush, is merely a natural development in the direction of enabling the government, always an interested party, to do its job well.

I have mentioned the surpassing need for more effective control over certain phases of finance than can be supplied by disclosure. This is not restricted to the reorganization field. Another current example is afforded by the results of the Commission's recent study of trustees under indentures. Trust indentures, as you know, are convenient adjuncts to finance. This device of mortgaging or pledging assets with a trustee for the benefit of security holders developed during the last century. The practice of using such instruments of finance has increased so greatly that a recent report indicated that the total outstanding volume of notes and bonds under which only national banks of this country acted as trustee exceeded eleven billion dollars, and it is said that that total might be increased over three-fold if all trust companies were included. But to date, the powers, duties and responsibilities of the trustees towards the scattered beneficiaries of these trusts have been largely determined by the private contract between the trustee and the issuer expressed in the mortgage or indenture. This contract has been inadequate from the viewpoint of the public interest and the interest of investors. Issuers have reserved more and more powers to themselves; trustees have immunized themselves more and more from any real responsibility. The consequences have been serious. Instead of investors having a vigilant and watchful trustee, they have in effect had nothing but a stake-holder who has not been solicitous of their interests. Furthermore, the situation has been accentuated by reason of the corroding influences of conflicts of interest of the trustee. Frequently, the trustee has been in a competing creditor position as respects his beneficiaries. When that has occurred, history has it that the trustee frequently has feathered its own nest at the expense of its beneficiaries. Furthermore, the trustee has frequently had such close affiliations with or interest in the debtor that it has been stilled into inaction. These and similar conflicts of interest caused a degeneration to set in, so that the use of the word "trustee" was, in many situations at least, a misnomer. Investors who thought or who would be justified in thinking that the prominent trustee whose name was displayed on the prospectus would protect them in case of trouble frequently have been disillusioned. Not only the Commission but also other students of the subject, including forward-looking, progressive and responsible trust officers, have concluded that a new and different approach to this subject must be made and that mere disclosure of the powers, duties and interests of the trustee is insufficient. There is recognition of the fact that these contracts which the trustee and the issuer make are in a broad sense affected with the public interest; that the conventions of the parties alone cannot determine what should be included or omitted; that there should be added to the drafting table, so to speak, a third person representing the public interest and the interest of investors. In other words, there is currently an insistent demand that new administrative tools be supplied to rewrite these significant contracts so that the public interest and the interest of investors may be protected and enhanced.

These three problems I have mentioned - protective committees, administrative assistance to reorganization courts, and trustees under indentures - will be treated specifically in recommendations of the Commission to the Congress next week. These recommendations will entail development of administrative controls along the lines I have indicated: first, power of the Commission to prevent persons from acting in a fiduciary capacity as committee members if they have material conflicts of interest or if they take unto themselves prescribed powers which history shows are oppressive and unfair; second, power on the part of the Commission in some cases and a duty on its part in others to intervene in federal reorganization proceedings and lend its assistance to courts in reporting on plans and in acting on other matters pertaining to the administration of those estates; and third, power of the Commission to condition the contents of trust indentures so that trustees acting thereunder will assume a more active role. These three developments constitute current recognition of the fact that the base of administrative action must be broadened if government is to keep abreast of current financial problems and provide greater assurance that finance will effectively serve the public interest and the interest of investors.

These matters indicate that only a pragmatic approach to government will supply the efficient and effective control necessary to harness financial power for the broad benefit of industry and to prevent it from being exploited for the selfish advantage of finance. They also suggest that no abstract conception of administrative powers will suffice; that the form and nature of these powers are and will be indigenous; that their utilitarian rather than their theoretical characteristics are and will be dominant. No formalism can stand in the way of that advance. With this approach it is not necessary or likely that these administrative functions will enslave us. Rather there is confidence that these agencies will be as much the champion of our liberties as the courts.

True it is that administrative agencies are young and may suffer from growing pains. But they are controlled and controllable. The first significant control is the legislature to whom they report; from whom come their powers; and who can restrict or restrain them through alteration or change in their powers or through curtailment of their budgets. In the eyes of legislatures they are not invoilable. Furthermore, the history of these agencies shows that under a progressive and enlightened executive they acquire vitality; under a reactionary executive, they regress. In final analysis such forces make them generally responsive to the current of political thought. The second significant control is the factor of judicial review, which all will agree is necessary and desirable. The increasing tendency of the judiciary is one of tolerance and reasonableness; a recognition of the fact that while the individual must be protected against abuse and oppressive arbitrary action, the administrative agency must be afforded ample opportunity to move constructively towards the objectives determined by the legislature. Within this framework the administrative agency can grow and develop, not for the purpose of acquiring and retaining powers which will enslave free men but to the end of taking effective action to make free a nation otherwise enslaved by economic forces.

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