

## THE SOCIAL, POLITICAL AND ECONOMIC CONSEQUENCES OF CORPORATE SIZE\*

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Congress has often expressed its concern for fostering the long term values of small business as the cornerstone of a viable political, social and economic system guaranteeing fundamental human freedom, maximizing economic opportunity and well-being, and providing political stability in the world's oldest democracy. Congress has acted to implement this concern principally by providing for subsidies, special tax benefits, special preference for small businesses in selling surplus government property,<sup>1</sup> low cost government loans through the Small Business Administration<sup>2</sup> and special interest legislation like "Fair Trade" sheltering small business from the rigors of competition. Much of this legislation is well meaning but does not reach the goal of providing a climate and industry structure where small business and the value it fosters can survive on its own without preferential legislation, subsidies or insulation from the rigors of competition. In a very real sense, Congress has been fiddling about with the problem of preserving small business for many decades, employing a prop here and an adhesive bandage there—while avoiding the central problem of defining the values Congress wishes to preserve and the way those values may best be achieved. Congress has failed to meet the long term problem of creating a climate which fosters small business free of artificial remedies.

I would like to approach the question of the value and contributions of small business to our society by directing my comments at three broad areas: (1) some philosophical insights and a critique of "modern" economic analysis; (2) the social, political and economic implications of institutional concentration; and (3) the benefits of small business.

### PHILOSOPHICAL POSTULATES AND "MODERN ECONOMIC ANALYSIS"

One needs standards to cope with what William James called the "blooming, buzzing confusion" of reality and to relate to one's fellow beings. Moreover, a society needs communicable generalities in order to have stability and make progress for the betterment of the human condition. Those generalities, however, are working hypotheses—often the product of experience, moral insights, cultural conditioning and long traditions. They constitute a working force field of be-

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<sup>1</sup> Surplus Property Act of 1944, 50 U.S.C. § 1622 *et seq.* (1970).

<sup>2</sup> Small Business Act of 1958, 15 U.S.C. § 631 *et seq.* (1970).

liefs that history, tradition, collective moral judgments, the limited insights of "science" and practical experience indicate "ought" to be observed or followed if a generally perceived end is to be achieved. All this is particularly relevant to the lawmaking function since

Lawyers . . . have special opportunities to learn what many logicians have not yet recognized: that truth on earth is a matter of degree, and that, whatever may be the case in Heaven, a terrestrial major league batting average above .300 is nothing to be sneezed at.<sup>3</sup>

This analysis is relevant to the subject this Committee has under investigation in many ways, since it rejects the assumption that economic analysis and quantification of big or small business can tell you what "ought" to be. The issue is complex, and simple-minded approaches engaging in the absurd assumption that legal policy ought to be based exclusively on the "truths" demonstrated by mathematical examinations of perceived "empirical" facts indulge in a dangerous arrogance and superficial thinking.

The "scientizing" of the "humanities" of law, economics, sociology and psychology is well underway. It is a process by which we are seduced to believe the only quantifiable empirical "facts" can be made the basis for policy and that the process of quantifying is itself free of moral values and untainted by human imperfection. For example, every time the Secretary of the Treasury testifies before Congress about the state of the economy and the "success" of administration policy in dealing with an obviously sick economy, one is faced with a mass of statistics and a closed mind holding desperately to eternal verities of a bygone era. Old assumptions are never reexamined. Testimony laden with selected statistics makes the dogmas of the old-time religion of doctrinaire economic theory appear as self-fulfilling prophecies, and the impact of ill-conceived policies are ignored or minimized. Added to this appearance of certainty is an attitude of rectitude, since the spokesman not only has "truth," but eternal and unchanging "truth" as well. This way of thinking is not peculiar to public servants who seldom have time for self-reflection and who must maintain an aura of decisiveness in facing the reality of momentous decisions with no way to avoid the fact of deciding. When one examines recent research and writing in the field of economics by those who should know better, a doctrinaire thread running throughout suggests that one peculiar model and particular slice of reality, to the exclusion of all else, compels policy makers to reach a fixed predetermined result dictated by closed systems, like those used to formulate mathematical models.

Unfortunately, one must grapple with the uncertainties of reality, shifting value systems and undefined factors of human motivation. It is easy to do otherwise and assume that economic models can give us the truth needed to plot public policy. Some of the people can be fooled a good deal of the time but sooner or later a terrible price must be paid. We had a glaring example of this kind of thinking during the Vietnam war. Policy makers were led to believe success or failure could be measured in terms of the number of "pacified villages," "body

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<sup>3</sup> Cohen, *Field Theory and Judicial Logic*, 59 *YALE L.J.* 238, 239 (1950).

counts” and tons of bombs dropped. Daniel Yankelovich neatly summed up that way of thinking by describing what he called the “McNamara fallacy”:

The first step is to measure whatever can be easily measured. This is okay as far as it goes. The second step is to disregard that which can't be measured or give it an arbitrary quantitative value. This is artificial and misleading. The third step is to presume that what can't be measured easily really isn't very important. This is blindness. The fourth step is to say that what can't be easily measured really doesn't exist. This is suicide.<sup>4</sup>

The risk in these Hearings is that this kind of fallacious thinking can distort the complexity of the issues at stake or that the decision-making process will be paralyzed because of the expert witnesses' conflicting testimony regarding economic verities. Economists will wage war over the relative “efficiencies” of big versus small without ever explaining what they mean by “efficiency.” Economics of scale will be thrown about with abandon without ever explaining what non-quantifiable values have been excluded and Pareto Optimality and superiority will underlie most analysis even though these concepts involve substantial moral assumptions and entail extensive non-quantifiable analysis. Most important, the political and social questions which inhere in any investigation of the relationship of individuals to the institutions about them and vice-versa will be submerged in a sea of doubt and uncertainty. Should the Committee engage in these kinds of assumptions, positive action will be neutralized in the face of “facts” unjustifiedly thought to be scientifically demonstrated.

Having said all that, permit me to suggest that economic analysis does have a proper role to play in committee deliberations. To some extent, sophisticated economic analysis can provide insight into some of the potential costs and benefits of adopting a particular course of conduct. In this sense economic analysis can be a useful starting place, so long as one fully understands the underlying moral and ethical assumptions upon which the parameters of a model are predicated and those effects which are excluded from the model because they are not quantifiable. Where a mechanistic economic analysis obscures the overall moral and ethical choices involved and hides significant assumptions about those values, a serious consideration of these values is deflected as the insights of economic analysis are misused, creating a dangerous platform from which to make policy choices. Properly used, rigorous economic analysis can produce highly useful insights to be weighed along with less quantifiable but very real social and political insights in making overall judgments of what “ought” to be general public policy. That is what this Committee must do in sorting out the policies to be encouraged or discouraged in its examination of the size of institutions managing our economic life. At bottom, you must make a value choice of what “ought” to be the structure of institutions in the economic sphere in light of a sophisticated understanding of the limited insights presented you and in accord with the values we wish to protect, foster and preserve. In order to have the kind of society we wish to have legislators must realize that they are the trustees of our value system. Law

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<sup>4</sup>Quoted in Smith, *The Last Days of Cowboy Capitalism*, THE ATLANTIC MONTHLY, Sept. 1972, at 43, 54.

making is one of the central responsibilities in our society, since "Law is the principal institution through which a society can assert its values."<sup>5</sup>

THE SOCIAL, POLITICAL AND ECONOMIC IMPLICATIONS  
OF INSTITUTIONAL CONCENTRATION

The "big-little" dichotomy is not peculiar to concentration of power in the institutions of economic activity in the private sphere. There has been a geometric growth in governments, unions, corporations and all other institutions for collective action in our society. Universities have grown from small colleges with elm-shaded lanes to concrete, conglomerate learning centers teaching everything from playing right-side linebacker to nuclear technology. The places where we live have grown from towns to cities to sprawling megalopolises which threaten to overwhelm the ability of humanity to cope.

Part of this growth and complexity is attributable to population increases, assumed technological imperatives, the inward growth of our society as frontiers close, and the increasing economic interdependence of our national and world economy. Part of it may also be a reflection of changing values in our culture as we grope toward a more collectivist value system stressing economic security and away from the Lockean traditions of individualism stressing economic and social risk. Almost at the moment that Sir Henry Maine penned his famous line that the trend of Western legal systems was moving from a tradition where legal rights and responsibilities were premised upon "status" to a system where they were premised on the individual consent of "contract,"<sup>6</sup> a trend in the opposite direction appeared. In the economic sphere, we have been moving from "contract" to "status" ever since the advent of the industrial revolution. Today our most important property rights are no longer land or the tools of farming or a trade, but they are the status rights of job security, pension, social security, educational certificate, medical insurance or other intangible values determined by one's status in an economic organization or place in life. A recent survey<sup>7</sup> indicates that many managers in the private business sphere fully expect that by 1985 this society will be far more collectivist oriented and much less individualistically oriented than our traditions assumed. The importance of the survey is not only that business managers acknowledge the trend from contract to status, but that it also signals a fundamental shift of the values which determine our way of perceiving reality, defining goals and choosing public policy. The authors ably summarize the significance of such a shift in values as follows:

Ideology serves as a bridge by which a community translates timeless, universal values such a survival, justice, and self-fulfillment into real-world application. It is the framework of ideas that integrates and synthesizes all aspects of a community's being—political, social, economic, cultural, ecological, and others. Ideology legitimizes a community's institutions—business, government, univer-

<sup>5</sup> A. BICKEL, *THE MORALITY OF CONSENT* 5 (1975).

<sup>6</sup> H. MAINE, *ANCIENT LAW* \*165 (1861).

<sup>7</sup> Martin & Lodge, *Our Society in 1985—Business May Not Like It*, *HARV. BUS. REV.*, Nov.-Dec. 1975, at 143.

sities, or whatever — and thus it underlies the authority and the rights of those who manage the institutions. . . .

When a traditional ideology become incoherent and loses acceptance, the community loses direction. Its institutions are no longer legitimate and the powerful are suddenly drained of authority.<sup>8</sup>

Underlying the Committee's study of "bigness" versus "smallness" in our economic institutions is a set of values currently being buffeted about and the subject of growing contention. One such value is the significance of the individual human being as an independent entity endowed with inalienable and inherent rights to be master of his own destiny. A complementary value is a belief in the goodness of economic Darwinism (survival of the fittest in the economic sphere) and the belief that such a policy is in tune with the psychological drives of humanity (aggression, greed and a lust for power). The mutual conflict thereby promoted is for the long term good of protecting individuality and guaranteeing the evolution of the culture which will ultimately be for the greatest benefit for the greatest number. A substantial shift in this commonly held value system determines the way in which one measures the relative value of big versus small.

My assumptions reject the view that the essence of humanity is purely an animalistic drive founded in aggression, devoted to greed and lusting for power. Likewise, I reject a view of humanity that claims we are flower children, entitled to total self-indulgence and free to be immersed in our own "kharma" without regard to others. We are all of these things, and more, and we should be free to maximize our potential in a way which is consistent with the values of others and to invite the discipline of making mistakes. This complex system of assumptions is ably summed up by E. F. Schumacher's important book, *Small Is Beautiful*.<sup>9</sup> Schumacher's work attempts to factor into the "science" of economics, the social and political consequences of institutional size upon the quality of the individual human experience. His is a perspective which assumes economics to be the pursuit of knowledge on a higher level than mere statistical quantification. Schumacher's belief is that economics should weigh the effect of institutions upon conscience, moral purpose and the meaning of life if it is to be at all related to the hopes and aspirations of individuals in our society. He concludes that institutional size of the type which afflicts modern society is unnecessary and accounts for the growing dehumanization of society, excessive materialism, environmental degradation, mounting social chaos, and the loss of control over the conditions of one's own life.

Schumacher's analysis is based on the assumption that bigness is bad because from bigness comes "impersonality, insensitivity and a lust to concentrate abstract power"<sup>10</sup> that is at odds with maximizing the positive values of humanity. It is a belief that large institutional size tips the balance between order and freedom too far in the direction of order so that individual freedom is gradually destroyed by the sheer size of the institutions of modern society.

That our economic institutions have grown to truly massive size is generally

<sup>8</sup> *Id.* at 149-50.

<sup>9</sup> E. SCHUMACHER, *SMALL IS BEAUTIFUL: ECONOMICS AS IF PEOPLE MATTERED* (1973).

<sup>10</sup> *Id.* at 4.

conceded. The percentage share of manufacturing assets held by our 200 largest corporations has shown a steady and persistent growth to the point where approximately two-thirds of such assets are held by the 200 largest corporations.

*Share of manufacturing assets held by the 200  
Largest corporations, 1925-41; 1947-68<sup>11</sup>*

Year	Share held by 100 Largest <sup>a</sup>		Share held by 200 Largest	
	Total assets	Corporate assets	Total assets	Corporate assets
1925	34.5	36.1		
1927	34.4	36.0		
1929	38.2	39.7	45.8	47.7
1931	42.2	43.9	49.4	51.4
1933	42.5	44.2	49.5	51.4
1935	40.8	42.3	47.7	49.6
1937	42.1	43.7	49.1	50.9
1939	41.9	43.5	48.7	50.5
1941 <sup>b</sup>	38.2	39.6	45.1	46.7
1947	37.5	39.3	45.0	47.2
1948	38.6	40.3	46.3	48.3
1949	39.5	41.1	47.1	49.0
1950	38.4	39.8	46.1	47.7
1951	38.1	39.4	46.1	47.7
1952	39.3	40.6	47.7	49.2
1953	40.3	41.7	48.7	50.3
1954	41.9	43.3	50.4	52.1
1955	43.0	44.3	51.6	53.1
1956	43.9	45.0	52.8	54.1
1957	45.2	46.3	54.3	55.6
1958	46.0	47.1	55.2	56.6
1959	45.4	46.3	54.8	56.0
1960	45.5	46.4	55.2	56.3
1961	45.8	46.6	55.4	56.3
1962	45.5	46.2	55.1	56.0
1963	45.7	46.5	55.5	56.3
1964	45.8	46.5	55.8	56.6
1965	45.9	46.5	55.9	56.7
1966	45.8	46.4	56.1	56.7
1967	47.6	48.1	58.7	59.3
1968	48.8	49.3	60.4	60.9
Percentage Point Increase				
1925-1968	14.3	13.2	—	—
1947-1968	11.3	10.0	15.4	13.7
Percentage Increase in Share				
1925-1968	41.4	36.6	—	—
1947-1968	30.1	25.4	34.2	29.0

<sup>a</sup> Ranked according to asset size in each year.

<sup>b</sup> Data are not available for the years between 1941 and 1947 because some large corporations did not publish balance sheets for reasons of wartime security.

Source: Bureau of Economics, Federal Trade Commission, Appendix C.

<sup>11</sup> STAFF REPORT OF THE FEDERAL TRADE COMM'N, ECONOMIC REPORT ON CORPORATE MERGERS 173 (1969).

Whether measured by assets, sales, or net income, the conclusion is the same: our economy is dominated by a relative handful of large economic institutions with vast power over the lives and fortunes of most of the people in our society.<sup>12</sup> While there is general agreement among observers of modern economic institutions that a relative handful of corporations fully dominates our economy and that of most of the world, great disputes rage over whether such a structure is good, bad, unavoidable or indifferent. In the economic sphere of the debate giant corporations, particularly in concentrated industries, have been praised and condemned on a number of fronts. For example, it is claimed that giant corporations are "efficient" or at least not inefficient, although the concept of "efficiency" is seldom defined to include other than limited areas of quantifiable information. The balance of even this limited evidence or at least the weight of authority, indicates that the size of most of our giant corporations is not dictated by economies of scale essential to the production of products at the lowest possible price. However, there does seem to be a positive relationship between plant size and scale economies.<sup>13</sup> It has also been claimed that modern research, the application of technology and the rational management of huge and complex markets, demand massive economical power.

The "empirical" and "scientific" studies which have been done on the relationship of research to firm size suggest that firms with less than 1,000 employees do little research and development (R & D) and that there is little or no advantage of size for R & D in firms over 5,000 employees.<sup>14</sup> Such studies are crude measures of a supposed benefit of competition, *i.e.*, the drive for innovation, and conversely, the evils of monopoly, *i.e.*, the dead hand of concentrated economic power upon the incentive for innovation.

Glaring instances, of giant size constituting a clear deterrent to innovation have been documented. The best example is perhaps the study of Walter Adams and Joel Dirlam of invention and innovation in the American steel industry.<sup>15</sup> The study documents the invention and adoption of the oxygen steel-making process, a more efficient and profitable process for producing steel at the ingot level than traditional technology. The invention of the process took place in Austria by a relatively tiny American steel producer and went into production in 1952. Adam and Dirlam observed:

It is noteworthy that the three major revolutions in steelmaking — the Bessemer, Siemens-Martin (open-hearth), and basic oxygen processes — were not the products of American inventive genius nor the output of giant corporate research laboratories. The oxygen process was developed in continental Europe and perfected by the employees of a nationalized enterprise, in a war-ravaged country,

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<sup>12</sup> See generally R. BARBER, *THE AMERICAN CORPORATION* (1970); J. BLAIR, *ECONOMIC CONCENTRATION* (1972); P. BLUMBERG, *THE MEGACORPORATION IN AMERICAN SOCIETY* (1975); M. MINTZ & J. COHEN, *AMERICA, INC.* (1971).

<sup>13</sup> See generally *Hearings on Economic Concentration Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 89th Cong., 1st Sess., pt. 4 (1965); *INDUSTRIAL CONCENTRATION: THE NEW LEARNING* (H. Goldschmid, H. Mann & J. Weston eds. 1974).

<sup>14</sup> Sherer, *Economics of Scale and Industrial Concentration*, in *INDUSTRIAL CONCENTRATION: THE NEW LEARNING*, *supra* note 13, at 16.

<sup>15</sup> Adams & Dirlam, *Big Steel, Invention, and Innovation*, 80 Q.J. ECON. 167 (1966).

with a total steel ingot capacity of about 1 million tons — by a *firm* that was less than one-third the size of a single *plant* of the United States Steel Corporation.<sup>16</sup>

Such evidence suggests that large institutional size imposes uniformity, destroys creativity in its employees, creates a mentality devoted to a defense of the status quo, and promotes a taste for the slovenly life of the monopolist rather than the thrift and efficiency of a true competitor. The presence of these intangible factors may confirm what Judge Learned Hand observed in *United States v. Aluminum Co. of America*:<sup>17</sup>

Many people believe that possession of unchallenged economic power deadens initiative, discourages thrift and depresses energy; that immunity from competition is a narcotic, and rivalry is a stimulant, to industrial progress; that the spur of constant stress is necessary to counteract an inevitable disposition to let well enough alone.<sup>18</sup>

One might expect, Learned Hand notwithstanding, that even a giant industry would seize upon a new innovation promising great economies in production, even though it lacked the will or creativity to engage in meaningful basic research. The Adams-Dirlam study, however, indicated that the American steel industry, particularly the largest firms, lagged far behind in adopting the process:

The first large scale commercial use of the oxygen process was in an Austrian steel plant (VOEST) in 1952. The first installation of the new process on the North American Continent took place in a Canadian plant . . . in 1954. The first United States company to obtain a license under the Austrian L-D patents was Kaiser Steel in 1953 — at the time, a company with less than 1 per cent of the United States ingot capacity. The first United States company actually to install the oxygen process was McLouth Steel in 1954 — at the time, also a firm with less than 1 per cent of United States ingot capacity. The first major steel company to do so was Jones and Laughlin in 1957 — to be followed by U.S. Steel and Bethlehem in 1964 and Republic in 1965. In other words, the leaders of the United States steel industry finally decided to innovate this revolutionary process fully fourteen years after an Austrian company of infinitesimal size had done so — successfully.<sup>19</sup>

Whether this dismal record of “big business” was due to the “not invented here” syndrome, the dead hand of the monopolist, bureaucratic hardening of the arteries, excessive economic power enabling industry leaders to continue to exact excessive profits from inefficient plant capacity or just plain intransigence and stupidity is difficult to determine. Suffice it to say, it is a startling case study which indicates a negative correlation between great size and invention-innovation and a positive correlation between smaller size and invention-innovation.

To elaborate on other studies would unduly prolong this otherwise unduly lengthy statement. Suffice it to say, previous hearings before the Subcommittee

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<sup>16</sup> *Id.* at 174.

<sup>17</sup> 148 F.2d 416 (2d Cir. 1945).

<sup>18</sup> *Id.* at 427.

<sup>19</sup> Adams & Dirlam, *supra* note 15, at 175.

on Antitrust and Monopoly<sup>20</sup> fully explore the quantifiable evidence. I would like to explore the issue a bit further by inquiring into the conditions for maximizing imagination, intuition, and new ways of viewing reality as the source of inspiration for the truly inventive mind. My observations are qualitative, not quantitative.

In my judgment, institutional size is a distinct threat and impediment to those conditions which maximize human imagination and creativity. Thomas Kuhn in his book entitled *The Structure of Scientific Revolutions*<sup>21</sup> traces the philosophical and historical patterns of revolutions in scientific thought. He traces those insights, inventions and flights of intellectual effort that are truly revolutionary: Copernicus's insights about the planets which overturned our view of the universe, and Gregor Mendel's insights into genetics which overturned beliefs about the nature of life. The history of science is replete with the story of the lonely struggle of the truly creative genius with a new insight of revolutionary proportions doing battle with established perceptions of reality and accepted theories for explaining phenomena that intrigue the human mind. Large institutions, seemingly of necessity, enforce conformity, circumscribe creativity and defend the status quo. To this extent, large size and the absence of diversity of a society can be a distinct threat to creativity — a view sustained by the study of the history of truly revolutionary scientific discoveries.

Professor John Kenneth Galbraith believes that large sized economic institutions are required in today's society in order to employ high cost modern technology, effectively minimize the risks of substantial undertakings for modern mass marketing, and assume the planning functions of society. He maintains that competition no longer governs substantial areas of economic behavior in our society and that technological and economic necessity require planning in lieu of competition. In 1967 this Committee held a seminar with Professor Galbraith defending his thesis in a dialogue with Professors Adams, Mueller and Turner.<sup>22</sup> A close reading of the record of that seminar indicates to me that Galbraith thinks competition is a dead issue — not because of technological or economic imperatives or even a Galbraithian preference, but because of a failure of the public will and the political process to insist upon competition as a way of life in our economic society. I tend to agree. One need only look at what recent administrations have failed to do by way of enforcing a policy of competition, at bills which Congress has failed to adopt and at measures which it has adopted for the purpose of protecting vested interests from competition, and at the action of all too many courts in failing to give full force and effect to the policy of competition. It is a decline of the will to enforce antitrust policy, not some inherent and predetermined evolutionary process toward a different form of society, which explains the status quo of excessive economic concentration, the inexorable trend toward accumulating

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<sup>20</sup> *Hearing on Whether Planning and Regulation are Replacing Competition in the New Industrial State Before the Subcomm. of the Senate Select Comm. on Small Business*, 90th Cong., 1st Sess. (1967); *Hearings on Economic Concentration Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 89th Cong., 1st Sess., pt. 3 (1965).

<sup>21</sup> T. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (2d ed. enlarged 1970).

<sup>22</sup> *Hearing on Whether Planning and Regulation are Replacing Competition in the New Industrial State Before the Subcomm. of the Senate Select Comm. on Small Business*, 90th Cong., 1st Sess. (1967).

more and more wealth in the hands of larger and larger institutions, the decline of competition as the central value of our economic system, the stubborn persistence of an excessive maldistribution of wealth in our society and the steady loss of economic freedom to the giant institutions of the economy and the state. While Galbraith's thesis may be a growing reality, it is not the product of inexorable forces beyond our control, but the failure of public policy to choose otherwise.

A further impact of giant size dominating the economy is the impact of economic concentration upon pricing, resource allocation and employment in substantial areas of the economy under the influence of oligopolies. We have been witnessing the phenomenon of rising prices occurring in the face of unused capacity accompanied by declines in production and employment. During the past few years, it has become clear that we do not suffer from demand inflation, *i.e.*, too many dollars chasing too few goods. To be sure, part of the problem may be attributable to the OPEC cartel, aided and abetted by the major oil companies<sup>23</sup> in artificially increasing petroleum prices. Some observers view OPEC's action as deflationary rather than inflationary, since the dollars obtained by the cartel's action have been removed from circulation, operating much like a surtax. The total money supply is actually shrinking as most of these dollars are not being spent save for occasional sorties to the gambling spas of the world.<sup>24</sup> Whatever the net effect of OPEC's actions, it is clear that part of the problem has been caused by mismanagement of monetary and fiscal policies. While one administration sought to wage war without paying for it, another manipulated policy for purely political objectives, and yet another groped about in an unreal world molded by the tunnel vision of an arcane economic dogmatism. A further partial explanation for rising prices, excess plant capacity, declining production and rising unemployment is excessive, outmoded or unwise government intervention in the marketplace.

The mismanagement of the economy and failure of public policy to deal effectively with OPEC does not satisfactorily explain the behavior of supposedly competitive markets dominated by oligopolies and strong unions. Since at least 1957, there has been a systematic study of this problem by committees of Congress, the implications of which have been largely ignored. Senator Kefauver devoted six years of Committee work to hearings entitled *The Administered Price Hearings*, filling twenty-six volumes with an overwhelming record examining all facets of the issue. Senator Hart studies essentially the same problem over a six-year period in eleven volumes of hearings entitled *Economic Concentration*. The net conclusions of these Hearings have been ably summarized in a recent book by Professor John Blair, the former Chief Economist of the Antitrust Subcommittee.<sup>25</sup> A more recent book by Gardiner Means<sup>26</sup> extends the analysis of the impact of excessive economic power to a study of its impact in other countries as well as the United States. Gardiner Means has coined the phrase "administered prices" to describe the practice of powerful sellers who set their own prices free of competi-

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<sup>23</sup> See 121 CONG. REC. 16399-16406 (1975) (statements of Senators Bayh and Hart).

<sup>24</sup> See J. GALBRAITH, MONEY 299-300 (1975).

<sup>25</sup> J. BLAIR, ECONOMIC CONCENTRATION: STRUCTURE, BEHAVIOR AND PUBLIC POLICY (1972).

<sup>26</sup> THE ROOTS OF INFLATION (G. Means ed. 1975).

tive pressures and the forces of supply and demand, in order to achieve a pre-established rate of return regardless of classical market forces. The absence of competitive pressures in concentrated industries permits powerful firms to raise prices without collusion by follow-the-leader pricing decisions and maintain high prices by mutual self-interest in the face of falling demand, in order to achieve pre-targeted profit levels. Union demands in those industries are usually met since bargaining is usually industry-wide and employers can pass on even excessive wage demands to consumers. This, in turn, creates the dilemma of forcing the makers of public policy to choose between price stability and full employment, a dilemma that Secretary Simon and the Administration have yet to see. Policy makers must either choose a fiscal policy designed to insure a recession or a monetary policy designed to accommodate chronic inflation. The present "policy" seems to be designed to guarantee both recession and inflation at the same time while refusing to acknowledge the possibility that economic concentration may be a significant underlying cause of the problem. While this theory is still subject to intense and sometimes acrimonious attack by a dwindling number of economists, it is now clear that a significant and undesirable effect of large size and concentrated markets is that they contribute substantially to inflation, unemployment, inefficiency, misallocation of resources and the impotency of monetary and fiscal policies in determining our collective economic well-being. In a very real sense, the failure of public policy to come to grips with these long-standing undesirable effects of big business and big labor results in the delegation of discretionary authority to those who possess this power to determine the level of economic output, the degree of inflation and the extent of unemployment. That kind of authority is the responsibility of the elected representatives of the people, not the privilege of those with unchecked discretionary authority in private sectors of the economy. Our traditional value system has mandated that government either exercise this authority by maintaining competitive markets or substitute public regulation under judicial review where necessity requires. Where this has been done, the force of competition or public regulation has kept prices in line with demand, employment consistent with monetary and fiscal policies, resource allocation consistent with concepts of efficiency and political power in the hands of popularly elected officials. Small and medium-sized firms, defined as economic entities compatible with a competitive market model, insure far more than economic efficiency and the best goods at the lowest possible price. They also insure that the political power in our society to determine long term economic goals and values is vested in the hands of duly elected public officials subject to the constraints of the law, constitutional guarantees and the disciplines of the ballot box. There are no such checks upon the exercise of discretionary authority by giant corporations and unions in our society today and we are paying a high price in inflation, unemployment, social distress and the undermining of the political values of our society.

A further dimension of giant size in our economy is the conglomerate merger movement, *i.e.*, the association of otherwise unrelated companies and industries under one hand. The conglomerate movement appears to me as nothing more than the formation of a central banking system for a diversified collection of other-

wise unrelated business activities. Consequently, the movement results in the unnecessary vesting of excessive economic power in too few hands. The defenders of the movement have claimed it provides something called "synergism," managerial efficiency, and economic stability for investors who are locked into single or narrow product line companies. I have never fully understood the concept of "synergism" and have never seen it explained or rationally related to the concept of conglomerate corruption. As for managerial efficiencies, such claims have seldom been demonstrated as being superior to the general efficiencies stimulated by a competitive market system. The only advantage resulting from a conglomerate acquisition, as I have seen it, is the short term advantage of replacing incompetent management by less incompetent management.<sup>27</sup> The claim that conglomeration enables investors to escape the risks of single or narrow product-line investments suggests that the competitive model is being distorted by subsidizing losses in one product market by profits in another. When one adds to this the wreckage that followed the collapse of highly-leveraged conglomerates with the downturn of speculation in the stock market and the disaster which followed attempts by such regulated companies as Penn Central to get into the conglomerate game, perhaps I may be forgiven an enduring suspicion of the claims in favor of the conglomerate merger movement of the sixties.

One particular price of excessive size is that individual responsibility becomes diffused and the standards for performance established for underlings in the bureaucracy of the big firm become artificial and mechanical. For example, I am convinced that much of the cause for the price fixing conspiracies in the electrical equipment industries uncovered in the late fifties is directly attributable to the corporate structure adopted by the leaders of the industry designed to more efficiently manage otherwise unwieldy corporate giants. Several companies established autonomous divisions wherein managers were instructed to produce an increased rate of profit, year after year in an endless progression. Top management did not care how it was done, but if not done the discipline was fast and sure. Over the years, it became clear that the demands from the top for an annual percentage increase in profit could not be met save by violating the antitrust laws. Thus, the structure and size of the firms involved may have been substantial factors in creating the conditions whereby otherwise law abiding and decent citizens were induced, seduced or coerced into patterns of behavior contrary to the public interest and amounting to a criminal violation of the law. The studies which were done on the subject all seem to point in this direction.<sup>28</sup>

The relationship between corporate size and internal structure and the proclivity for the antisocial or dehumanizing behavior these factors may create is not well perceived or documented. Nevertheless, there are grounds for concern since it appears that what occurred in the electrical industry was not an isolated instance or an aberration. A recent book edited by Robert Heilbroner entitled *In*

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<sup>27</sup> See Loomis, *I.T.T.'s Disaster in Hartford*, *FORTUNE*, May 1975, at 201.

<sup>28</sup> See generally L. FULLER, *THE GENTLEMAN CONSPIRATORS: THE STORY OF THE PRICE FIXERS IN THE ELECTRICAL CONSPIRACY* (1962); J. HERLING, *THE GREAT PRICE CONSPIRACY: THE STORY OF THE ANTI-TRUST VIOLATIONS IN THE ELECTRICAL INDUSTRY* (1962); C. WALTON & F. CLEVELAND, *CORPORATIONS ON TRIAL: THE ELECTRICAL CASES* (1964); Smith, *The Incredible Electrical Conspiracy*, *FORTUNE*, April & May 1961, at 132, 161; Watkins, *Electrical Equipment Antitrust Cases—Their Implications for Government and for Business*, 29 *U. CHI. L. REV.* 97 (1961).

*the Name of Profit*<sup>29</sup> profiles several additional instances of corporate irresponsibility, some of which resulted in death or serious injury to innocent persons. We can all think of instances like the thalidomide tragedy, massive stock frauds, Lockheed's overseas bribery, Gulf Oil's domestic indiscretions, the looting of the Penn Central, outright corruption in the grain trade and on and on. Stories have become so routine that perhaps we have become immune to seeking the reasons for such behavior. Of course, some explain it all in terms of class warfare or an automatic assumption that those in control of big business are simply evil people bent upon exploitation.

I do not believe that large business organizations are run by evil people dedicated to polluting the world, ripping off the consumer or raping the public interest. Nor do I believe small business has a monopoly on people who are good and just. Each organizational size has its share of charlatans and vicious petty people. Each has its share of statesmen devoted to noble and humanitarian ideals and ethical principles. The vast majority of those who work in big and small economic entities are hard-working decent people. Yet I suspect that the impersonality, pressure to conform, fear to dissent, and other suspected effects of massive institutional size do cause more good people to deviate from the norm of behavior than would otherwise happen in relatively smaller and less bureaucratic economic institutions. The implication of at least some psychological studies tends to support the inference that large institutional size can be a substantial factor for causing individuals to act in ways in which they might not otherwise behave and for individual responsibility to be submerged in the amorphous bureaucracy of a huge economic institution.

The classic studies of these issues are Edwin H. Sutherland's *White Collar Crime* and C. Wright Mills' *White Collar*.<sup>30</sup> Both books chronicle the pressures of bureaucracy upon individual behavior. Each book emphasizes how this pressure coerces and develops value systems fitted to the needs of the entity, self-survival and progress through the bureaucracy. Sutherland's study was aimed principally at examining why criminal activity in the business world is not considered as serious as other breaches of criminal law either by society, the courts, the media, or the perpetrator of the crime. Sutherland also pointed out that the corporate form facilitates conduct that is criminal because it fosters "anonymity of persons so that location of responsibility is impeded"<sup>31</sup> and otherwise deviant behavior is more easily rationalized. Mills' work is an impressive chronicle of the impact of economic structure upon the white collar employee, the serf of the large institutions of our society. Both works provide useful models of methods for fur-

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<sup>29</sup> IN THE NAME OF PROFIT (R. Heilbroner ed. 1972). Other documented examples of corporate irresponsibility include B.F. Goodrich's manufacture of a known defective brake for the A7D aircraft, General Motors' installation of inadequate brakes and clutches on a generation of school buses, Colonial Pipeline's (a joint venture of Cities Service, Continental, Gulf, Phillips, Standard of Indiana, Sinclair, Texaco, and Union Oil) bribing of a New Jersey township to gain zoning changes for construction of their pipeline, and Richardson-Merrell, Inc.'s promotion of MER/29 (a drug used in treating heart disease) through the use of false laboratory reports which admitted mention of several dangerous side effects.

<sup>30</sup> C. MILLS, *WHITE COLLAR: THE AMERICAN MIDDLE CLASS* (1953); E. SUTHERLAND, *WHITE COLLAR CRIME* (1961); *cf.*, W. WHYTE, *THE ORGANIZATION MAN* (1956).

<sup>31</sup> E. SUTHERLAND, *supra* note 30.

ther investigation on the impact of institutional size upon the lifestyle and behavior of those who serve the needs of our modern corporate state.

A further effect of the conglomerate merger movement is its impact upon the geographic control of economic institutions when local or regional businesses are acquired by other corporations or conglomerates with headquarters distant from the acquired firm. I have had some personal experience with such events as an antitrust consultant and as a litigant in the El Paso acquisition of Northwest Natural Gas Company,<sup>32</sup> a 17-year battle finally concluded two years ago with the total divestiture of the illegally acquired company. While that case may be *sui generis*, the impact of the acquisition and the divestiture seems to be generally in line with the results of the only systematic study of the social and political effects of corporate acquisitions of which I am aware.<sup>33</sup> Management of the acquired company was generally moved out of the city where the acquired company was located to the headquarters of the acquiring company. Local service and supply firms like legal services, accounting services, financial services, equipment companies and so on, lost substantial accounts, thereby further depleting a local economy. With the removal of a large number of high and medium level personnel, the real estate market felt a substantial impact and everything from churches to local charities to local political activity felt the loss. In the El Paso-Northwest situation, complete divestiture has reestablished a major and significant enterprise in Salt Lake City. Over 300 families of high and middle level management have moved to the city with a noticeable impact on local economy and the social and political life of the community. A before and after analysis of that merger and divestiture would provide this committee with a tangible assessment of the very real and adverse effects of an acquisition of a locally important industry by distant interests. Many of these costs do not show up in mechanical analysis of the competitive effects of such acquisitions, since they are social and political costs not easily quantifiable. But they are very real costs to the communities involved and they are costs which often continue to mount as the mentality of the absentee landlord takes over for the concern of local management and ownership. As an aside, I am happy to report that divestiture in the El Paso case has been a huge success. The sky did not fall in, "free enterprise" (competition) was restored, not destroyed, and the paranoia of editorial writers like those of the Wall Street Journal who characterized the divestiture as "Antitrust Gone Mad"<sup>34</sup> was never realized.

Hearings before the Senate Antitrust and Monopoly Subcommittee<sup>35</sup> documented the ongoing ill-effects of absentee ownership where local ownership and control are not reestablished. Paul Kaufman, an outstanding West Virginia lawyer and Director of the Appalachian Research and Defense Fund, Inc., testified to the effects of absentee ownership in West Virginia.<sup>36</sup> Most of the land, natural

<sup>32</sup> Utah Pub. Serv. Comm'n v. El Paso Nat. Gas Co., 395 U.S. 464 (1969).

<sup>33</sup> J. UDELL, SOCIAL AND ECONOMIC CONSEQUENCES OF THE MERGER MOVEMENT IN WISCONSIN (Wisconsin Economy Studies No. 3, 1969).

<sup>34</sup> *Antitrust Gone Mad*, Wall Street Journal, July 26, 1971, at 6, col. 3.

<sup>35</sup> *Hearings Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, Symposium on the Economic, Social and Political Effects of Economic Concentration, 92d Cong., 2d Sess., pt. 4 (1972).

<sup>36</sup> *Id.* at 145.

resources, and manufacturing capacity of West Virginia are owned by out-of-state interests. Mr. Kaufman attributed West Virginia's great environmental damage, extensive poverty, under-taxed property of out-of-state interests and corruption of the political process to the fact of absentee ownership having no concern for the state and its people other than maximum exploitation of it and them. Whether any or all of this could ever be proven empirically I do not know, but there does seem to be sufficient evidence to at least confirm what one might surmise: absentee ownership can drain a community of its business leadership, result in policies which emphasize profit to the exclusion of all else and render the economic, political and social processes of a local community totally subservient to the profit motive of managers far removed from the scene. In other words, absentee ownership can be the same as any other form of colonialism. I have always suspected that we could solve environmental difficulties caused by industrial pollution by requiring the management and substantial shareholders of such enterprises to live under the belching chimneys, play golf upon the decimated countryside, make their cocktails from the polluted water and see their children grow up in the environment of the plant-site community. Something tells me the problems of places like Wheeling, West Virginia; Gary, Indiana; Magna, Utah; and Farmington, New Mexico would be remedied within the year.

There are other pervasive and, in my judgment, evil effects of giant institutions controlling much of our economic life, that would not be present or at least as significant if our economic institutions were of smaller scale. For example, our political processes have become heavily dependent upon privately raised campaign funds. The *sine qua non* of access to and success in political life is the ability to raise large sums to finance increasingly expensive campaigns. It has been much easier to raise large amounts by soliciting from a few big donors rather than depending upon a large number of small contributors. Senator Fred Harris detailed the impact of such a system in an interesting outline of his previous bid for the presidential nomination.<sup>37</sup> Senator Harris found he could not raise the issues he wished and still enjoy the favor of patrons with big resources to give to his campaign. On the other hand, he could not rely on small donations to support his candidacy, since he lacked the widespread public recognition to generate such donations and the financial resources to obtain such recognition were not within his means. Thus, the honest public servant seeking elective office may be compromised should he rely on large sums from a few, or may not even get started should he attempt to base his financing on many small donations from a large number.

Most of those with the resources and the incentives to make large contributions are either investors in or managers of large corporations. They command the resources of unions or other large unincorporated institutions, or are the beneficiaries of inherited wealth. We can rationalize this state of affairs to some extent since big government has become intimately (perhaps incestuously is a better word) involved in the affairs of big business and big labor. In order not to be hurt by either government action or inaction, those with large economic resources exercise their "civic duty" by large campaign contributions. Perhaps we have become

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<sup>37</sup> *Id.* at 244.

too cynical about it all, but the necessary effect of the exercise of political power by big business has been to deny access to the political process to most of our citizens, corrupt the integrity and responsibility of some who are elected, and distort public policy to favor the interests of those with the resources to give. I have often wondered what Madison and Jefferson would think of all this!

The resources available for corruption of our political processes are truly impressive. Several large corporations have been engaged in utilizing secret and illegal political slush funds ranging into the millions of dollars. The impact of such activity has not only polluted our domestic political processes but has also reached overseas. Recently, Exxon's subsidiary in Italy, Esso Italiana S.P.A., was utilized to siphon off over \$29 million to recipients unknown.<sup>38</sup> When one scans the roster of leading American corporations, the number which have engaged in outright political corruption over the past few years is truly appalling. The expenditure of large funds when coupled with extensive power in financial circles, and augmented by the coordinated political activity of a massive number of employees, has a geometrically greater impact upon political activities than similar activity by smaller corporations. In such circumstances, public issues are not determined in an open forum where the contest is between proponents of relatively equal strength. In short, an open political forum can be undermined by bribery and overwhelmed by a coordinated use of the political muscle of big business. Similar tactics by small business have not been as evident or pervasive. Since most persons operate in highly competitive markets, they do not have excess funds to use with the abandon that has characterized the actions of big business in recent years.

A further political effect of giant size is that it often enables the institutions which possess it to usurp public functions. For example, Bradford Snell documented how General Motors dismantled electric railway transportation systems in several metropolitan areas. This shift away from railway transportation substantially effected the way our cities grew, the quality of life in those cities and the dependence of our society on a less efficient transportation system. In the late 30's and early 40's, General Motors, Standard Oil and Firestone formed and financed front companies to acquire and dismantle several interurban electric railway systems and replaced them with motorized bus systems which used G.M. buses, oil company products and rubber tires. Mr. Snell's study reported that by 1949, G.M. and others had been involved in the replacement of more than 100 electric transit systems in 45 cities, including those in New York, Philadelphia, Baltimore, St. Louis, Oakland, Salt Lake City and Los Angeles.<sup>39</sup> G.M. was convicted of having criminally conspired with Standard of California, Firestone Tire and others to replace electric transportation with gas or diesel-powered buses, and to monopolize the sale of buses and related products to local transportation companies<sup>40</sup> and was fined \$5,000. Mr. Snell's study is more than a case analysis of the

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<sup>38</sup> Carley, *Political Slush Fund Hid Other Spending, Cost Exxon Millions*, Wall Street Journal, Nov. 14, 1975, at 1, col. 6.

<sup>39</sup> *Hearings on the Industrial Reorganization Act Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 93d Cong., 2d Sess., pt. 4A, at 32 (1974).

<sup>40</sup> See *United States v. Nat'l City Lines*, 186 F.2d 562 (7th Cir.), cert. denied, 341 U.S. 916 (1951).

economic and social consequences of undue economic power in highly concentrated markets. It is a striking example of how unchecked economic power lodged in the hands of giant institutions can assume substantial governmental functions. As more and more of the decision-making in this society is removed from the competitive marketplace and the political arena and lodged in the hands of non-elected giant institutions of the economy and government, is it any wonder that some are suggesting we may well be entering a new era of feudalism?

A further and more complex issue I can only refer to in a superficial manner is the impact of giant institutions upon wealth distribution in our society, or as philosophers call it, the problem of distributive justice.<sup>41</sup> For many decades, the top 10% of the population has received 28% of the income, while the bottom 10% received 2% of the income. One study found that 1.6% of the population owned 82.2% of all stock, 100% of tax exempt bonds, 38.2% of all federal bonds, 88.5% of all other bonds, 29.1% of all cash and 22.1% of all debts and mortgages.<sup>42</sup> I believe part of the persistence of a gross maldistribution of wealth is attributable to revolutionary changes in giant corporations. Large corporations, particularly those in non-competitive markets, have become perpetual wealth accumulation machines which no longer fit the legal and economic structure for which they were designed. With the separation of ownership and control,<sup>43</sup> the extensive use of internally generated funds and debt financing, the questionable moral and economic rights of shareholders to dividends and participation in capital gains, the well-documented atrophy of boards of directors as a check on management, and the capacity of giant firms in noncompetitive markets to generate excessive profit, the modern giant corporation has become a principal device for maintaining and accentuating the maldistribution of wealth in this society. Public policy has yet to directly confront the fundamental issues raised by this transformation of the essential characteristics of the corporate form grown far beyond its original birth-right in law, economics and justice. Originally the corporate form defined rights and liabilities on the assumption that shareholders had contributed risk capital to the enterprise and were entitled to entrepreneurial rewards. In most giant institutions today, the vast majority of shareholders have not contributed risk capital to the enterprise but have merely invested in the liquidity of the stock market. A further assumption is that managers are agents of the board of directors and that directors manage the enterprise for the benefit of the shareholders. In most giant enterprises these assumptions are no longer valid since management controls the board of directors often for its own benefit. We still operate on a series of mythical assumptions causing us to overlook the degree to which the modern giant corporation departs from the legal model established for it and the policy justification which once allocated responsibilities and rewards. Those assumptions

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<sup>41</sup> See Flynn & Ruffinengo, *Distributive Justice: Some Institutional Implications of Rawls' A THEORY OF JUSTICE*, 1975 UTAH L. REV. 123. In this article Mr. Ruffinengo and I touch upon the relationship of large corporations to the persistent maldistribution of wealth which has long characterized our society.

<sup>42</sup> R. LAMPMAN, CHANGES IN THE SHARE OF WEALTH HELD BY TOP WEALTH-HOLDERS 1922-1956 (Nat'l Bureau of Economic Research, Inc., Occasional Paper 71, 1960). Data cited in text were for 1953. *Id.* at 6.

<sup>43</sup> See generally A. BERLE & G. MEANS, *THE MODERN CORPORATION AND PRIVATE PROPERTY* (2d ed. 1968).

no longer pertain to the phenomenon that is the modern giant corporation. The economic consequence of the way power is utilized is not subject to any meaningful internal controls. The way corporate bounty is distributed is no longer reasonably related to reward for an investment risk or to compensation for labor done. Those with capital to pick "horses" in the stock market can participate in the wealth generated by the enterprise even though they have contributed nothing to it. Management is free to take huge salaries, stock interests and fringe benefits out of all proportion to their contribution to the enterprise since there is no effective check upon their power by an independent board or shareholders with ownership interest in the enterprise. In such a world, the ability to acquire or maintain wealth is not dependent upon hard work or risk-taking, but upon having capital to invest in the liquidity of the stock market or obtaining a high position in the management of a giant corporation. Since there are relatively few with inherited wealth to gamble in the stock market and a decreasing number of giant corporations controlling an ever larger share of the economy, the persistence of a widely disparate distribution of wealth should not be surprising. In my judgment, there is a very real relationship between giant corporations which have become perpetual wealth accumulation machines and the persistence of an inequitable and unjust distribution of wealth in our society. It is ill-perceived, but very real, and the resolution of this problem is one of the most challenging issues raised by giant institutions dominating the economic scene. There may well be no solution which meets the requirements of a just society other than the substantial reduction of corporate size to a level where the assumptions of the law equal the reality of the legal and economic structure of the modern corporation.

#### THE VALUES, IF ANY, OF SMALL AND MEDIUM-SIZED BUSINESSES

The positive side of the questions before this Committee are less easy to define, quantify and verify than are the implicit negative issues of the real and imagined evils of bigness in our economic, political and social life. At the outset, it must be noted that there is no commonly accepted definition of "small" and "medium" sized business, although I would guess there may be an amorphous area of felt agreement that "this is big" and "that is small." I would define small or medium-sized business in a qualitative way: *viz.*, units of economic activity compatible with a model of competition (workable, pure or otherwise) and the legal assumptions for the corporate form consistent with and subservient to our democratic political institutions. This, I realize, is a vague definition—vague like "due process," "equal protection of the laws," "freedom of speech" or any other standard for measuring the justness of what a society ought to be. But, it is a reaffirmation of the fundamental assumption that the size of societal institutions must be measured on political and social grounds, as well as economic grounds. These are ethical and moral value choices at bottom, premised upon a belief that we can choose our own environment and be masters of the quality of our life. We need not be the victims of a mindless and onrushing technocracy, immutable economic laws known only in Chicago or at the Department of Treasury, inherent evil tendencies to be manipulated by the followers of Freud or inescapable conditioning processes of *Walden II* manned by a yet to be defined group of scien-

tific elite. Somewhere between the total anarchy of complete freedom and totalitarian suppression there is a mean size (perhaps not constant or discoverable) for institutions which maximizes the cultural values of a society and minimizes the eternal conflict of maintaining selfhood (however defined) in the face of a demonstrated necessity for viable organized institutions. That on-going conflict and tension is a fundamental philosophical question. I suspect it is the underlying issue which every society grapples with and which our society has been struggling with for the past few decades to an increasing degree. The failure to establish clear, concise, and commonly-held values about this issue is surely the source of general cultural unrest, loss of direction, social turmoil, and yearning for trustworthy political leadership.

To deny that these are the issues the Committee faces may well guarantee that the choice of what kind of society we "ought" to be will be made by those with power and an unyielding and ignorant commitment to an ideology conceived as an eternal verity. Bronowski, when elaborating on the Principle of Tolerance (the idea that our knowledge is confined and that communication of that knowledge further limits precise understanding) demonstrated the risk of closed-minded certitude when he observed:

The Principle of Uncertainty or, in my phrase, the Principle of Tolerance fixed once for all the realization that all knowledge is limited. It is an irony of history that at the very time when this was being worked out there should rise, under Hitler in Germany and other tyrants elsewhere, a counter-conception: a principle of monstrous certainty. When the future looks back on the 1930's it will think of them as a crucial confrontation of culture as I have been expounding it, the ascent of man, against the throwback to the despots' belief that they have absolute certainty.<sup>44</sup>

Measuring the benefits of small or medium institutional size in our society is deeply dependent upon one's value system. Where one believes it is a "good" to maximize individual freedom, even at the expense of the collective "good," his or her evaluation will differ substantially from those who view the collective good as paramount. Philosophically I waiver between individualism and collectivism, as I suspect most of our society does, seeking a defined set of values which can maximize the traditional Lockean values of our culture while rationally managing the complex structures of an ever more crowded earth dominated by a technology with the capacity to reach out to the universe or completely destroy itself in an instant. At one time these issues could be worked out "in the long run" by an evolutionary pattern of humanity struggling towards a new and hopefully higher level of values. But as Richard Sullivan has pointed out, we no longer have the luxury of a century's time for "delaying the solution of problems, for condoning wickedness, for suffering tyranny, and for fending off danger-dependence on 'the long run' developments which would remove the present source of discomfort":<sup>45</sup>

<sup>44</sup> J. BRONOWSKI, *THE ASCENT OF MAN* 367 (1973).

<sup>45</sup> Sullivan, *The End of the "Long Run"*, 4 *THE CENTENNIAL REV. OF ARTS & SCIENCES* 391, 408 (1960).

Now, at mid-20th century, we are face to face with an awesome fact. We no longer have the least assurance that the passage of time will resolve our difficulties, that either the plans of benign gods or the inexorable processes of nature or the wisdom of man are working for the perfection of the unwise and the imperfect. Anyone viewing the present objectively must conclude that man's ancient consoling faith in "the long run" is only an opiate, suspending its users in a fantastic world. Already some have put aside the pipe and, after the initial shock of abstinence, are beginning to discern the realities of the moment. The dimensions of the real situation are indeed monstrous and terrifying. For it is clear that nothing assures that civilization or even life itself will exist a millenium or a year or a minute hence. No one can live as if some force beyond human control assures a happy future unless he is willing to live in a dream world. All must eliminate any considerations of "the long run" from their calculations. For the first time in history, men must face the implications of living within a framework in which the future is a dubious quantity.<sup>46</sup>

Thus, we must openly sort out those values we wish to preserve, and discard those no longer viable, charting our course with a wisdom based on tolerance and calculated to foster continuous self-reflection.

My value system has strong Lockean overtones in favoring a maximization of individualism both in the sense of freedom of action and responsibility for actions taken. A certain level of organization is necessary to permit such individual opportunities, yet it seems clear to me that there is an outer boundary of social or economic organization where size alone become counter-productive to values necessary for preserving individualism.

In the economic sphere, the values we wish to foster include the freedom of economic opportunity to enter or leave a particular field of endeavor, the freedom and responsibility to obtain a substantial level of economic independence and a substantial level of certainty that the rewards will be realized and protected for exchange for the investment in achieving them. In my experience representing small and medium-sized businesses as plaintiffs in antitrust litigation, I find that most small businessmen seek the right to choose their own field of work free from the arbitrary dictates of others, economic independence, and honest reward for honest effort — no more, no less. The end result seems to be a happy person responsible for his own conduct, humane toward others, with pride in his work and involved in his community. I know of no statistical or other quantifiable attempt to measure such a state of affairs but strongly suspect that Schumacher is right in his claim: "Small is Beautiful." The true economic independence of small business seems to lead to political independence and humane social values which are not subject to quantification but can only be verified by testimonial evidence.

Most people in our society do not have economic, social or political freedom, since most people serve as salaried employees or are locked in as satellites of massive economic or political institutions which they neither control nor have any substantial impact upon. While we often take great pride in the material level of our standard of living, it is apparent to me that we are rapidly becoming a highly feudal society where power rests in the hands of a few. The economic de-

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<sup>46</sup> *Id.*

pendence of the vast majority on giant employers and government has effectively undermined economic and political independence, while the need for order has effectively eliminated social and cultural diversity. The vast majority of our citizens are living in social and political serfdom today since they are totally dependent for their economic freedom upon their paycheck. I call it a form of social and political poverty which embraces our citizens since most of them (myself included) have no source of economic independence, live constantly on the edge of catastrophe since we consume all that we earn, and have thereby become subservient to the monolithic corporate state which doles out the income. A preference for smaller size in our economic institutions and a realization of that goal would surely increase economic opportunity while fostering greater independence, and avoiding many of the other evils inherent in all forms of bigness. In short, the positive value of small or medium-sized business is that it provides social and political benefits which are far more significant than any real or imagined *economic* benefits of small or big business.

Any decision favoring adoption of a policy in favor of smallness will meet with several objections, most of them sounding "scientifically" based. For example, the recent move to vertically restructure the oil industry was met with shallow-sounding claims of present "efficiency" and irrational name-calling of those who raised the issue. Bizarre reactions like that which appeared on the editorial pages of the *Wall Street Journal* questioning the integrity and sobriety of the sponsors of oil divestiture legislation are so far beyond the bounds of rational discussion as to deserve only a citation<sup>47</sup> to illustrate how hypocritical some can be about tough issues of "big" versus "small." Those who decry big government or big unions on social and political grounds, as well as economic ones, fail to give even superficial credence to the possibility that giant corporations trample upon their underlying value system. By the same token, those who attack big business because of its economic, political and social effects, scarcely mention the impact of big unions and big government upon their value system. Instead, the debate descends to name-calling and mud-slinging, precluding a rational resolution of tough issues on the merits. You cannot resolve these questions by simple-minded reflex reactions based on unexamined assumptions, because responsible legislators cannot afford such ignorance in determining long-term public policy.

I raise the oil divestiture issue also to illustrate the process by which I think the questions ought to be examined. To me, the issue of efficiency requires the striking of an economic, political and social balance sheet with a clear understanding of the underlying values by which we measure each. For example, claimed operating efficiencies of a vertically integrated oil company may be more than offset by the inclusion of the excessive costs at the retail level caused by the arbitrary exercise of vertical market power. The economic costs, excluding the social and political costs of turmoil among retailers, is very real but often ignored in measuring efficiency. Theoretically, strong domestic oil companies may need exaggerated profits to explore for additional oil or other fuels to fulfill public functions like providing energy independence or manipulating the allocation of excess capital to energy research — responsibilities our political system should assign to duly

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<sup>47</sup> *Happy Hour at the U.S. Senate*, *Wall Street Journal*, Oct. 21, 1975, at 20, cols. 1 & 2.

elected governments. Oil company size and wealth may be the product of foresight, the emergence of Arab nationalism, efficiency or hard work, but the political and social costs it has exacted and is exacting from this society should not be overlooked.

As I have said, there are no quantified studies of the positive contributions small business has made or is making to our society. It does seem clear that there are presumed values in moderate-sized institutions for our economic, political and social life. These values should be encouraged in the economic sphere, not by a program sheltering small business from competitive reality or responsibility for its own indiscretions, but by a program of reducing the size and power of giant firms that now dominate the landscape so that small business may produce its bounty free of undue interference from all sources of power. The accumulation of uncontrolled power, whether used for good or evil, is incompatible with a value system which prizes individualism, fears the existence of uncontrolled power and is dedicated to the evolution of a just society maximizing the potential of humanity for that which is good.

#### CONCLUSION

I do not know whether the values I perceive of maximizing individualism and controlling the exercise of discretionary power by checks and balances, or the neutral hand of competition, can be preserved in the face of the growth of giant institutions in all parts of our society. Perhaps some modern day Jefferson, Locke, or Adam Smith will come along to tell us how it can be done. Until that is convincingly done, however, I value maximizing individual potential even at some cost, real or imagined, to economic efficiency. I suspect that our culture views the growth of large institutions which are beyond individual control and responsibility as a distinct threat to the human condition and the advancement of humanity. Again, it should be emphasized that this is a position based not on any assumption that big is necessarily manned by the evil or uncaring, or that small is peopled by the true, just and compassionate. It is based on a belief that institutional size can grow to a point where it is clearly incompatible with the social, political and economic values which history and experience have taught us that individualism brings to our lives and to the evolution of our culture.

It is common to claim we live in the midst of a crisis or that revolution is around the corner or that the sky is falling in. No age escapes it, except perhaps those times that are truly living through such a condition. I suspect we are living through a quiet crisis, a crisis of values, where we are wandering about in a sea of confusion and doubt, searching for new definitions of what we are about and where we are going. In many ways, the times are similar to those chronicled by Charles Dickens when describing the onset of the French Revolution in the opening lines of *A Tale of Two Cities*:

It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us . . . .

I do not pretend to have the answers which can bring us out of this wilderness of doubt and confusion, but I commend the task of this Committee as one of the most significant issues of our time.