

ings for their business clients, would, if applied to loyalty adjudications, probably invalidate every adverse one to date; and that the Bar Associations remain silent on this subject. He might also have noted that when the President changed the standard of dismissal in 1951 from proof of *disloyalty* to "reasonable doubt" as to *loyalty*, a distinguished partner of Mr. Horsky's was one of the few lawyers in or out of Washington to raise his voice in protest at this change in the Anglo-Saxon burden of proof.⁹ And now even the loyalty boards are apparently to be abolished, and without a word of protest from the lawyer-citizen, or any suggestions by lawyers as to alternative procedures for assuring a fair hearing. Here again an organized Federal Bar, brought into being by the new Attorney General, might exercise the proper "influence" of the profession as the defender and guardian of our ancient liberties. I cannot improve on Mr. Horsky's summation of the matter:

"We have an obligation, as members of the legal profession, to examine these procedural problems. That one may decide on the unwisdom of complete disclosure of every counter-espionage agent in every loyalty case does not mean that we need go to the other extreme and maintain an almost total anonymity of accusers or adverse witnesses. That specification of charges may necessarily be limited in occasional instances by security considerations does not mean that sweeping, general allegations should be the rule. That it might be unwise to permit an unlimited right in the accused to subpoena witnesses does not mean that the right to subpoena should be wholly denied. Is there not a need for a fundamental reexamination of the concept of guilt by association? These are basic matters, where a whittling away of safeguards is portentous for us all."¹⁰

LLOYD N. CUTLER†

CORPORATION GIVING. By F. Emerson Andrews. New York: Russell Sage Foundation, 1952. Pp. 361. \$4.50.

FOR the most part, this is pretty thin stuff. It is supposed to be a little helper for business executives looking for "efficient procedures and creative patterns for their gifts."¹ There isn't much in it that a young girl fresh out of library school and waiting to get married couldn't locate in a day and a half. But the business executive isn't the only beneficiary of this compilation with comments from the top of Mr. Andrews' head—lawyers, bankers, other business consultants, colleges, welfare agencies, other fund solicitors, stockholders,

9. O'Brian, *New Encroachments on Individual Freedom*, 66 HARV. L. REV. 1 (1952).

10. p. 167.

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1. Publisher's Prospectus, p. 2, distributed with letter dated November 23, 1952. The author is the publisher's Director of Publications.

and taxpayers are invited to bring their chairs right up to the table, too.² Anyone who accepts the invitation had better get a sandwich first.

There are a number of ways to state the problem, but what they all come down to is that many deserving things which cannot possibly be organized to pay their own ways need to be done; a number of these are not, and perhaps should not be, charged directly against tax revenue and performed by governments; corporations that make money are a possible source of support; benefactions from individuals and unincorporated associations do not presently come near furnishing the support these causes can well use, if they ever did; *ergo*, let us add the corporate almoner to the mailing list. Hear the pleader of just one good cause:

"Here, as I indicated in my last Report and as others have demonstrated in detail, the financial resources of our corporations—the greatest of all reservoirs of private wealth in our society—that might be made available to our universities are backed up behind a log jam of legal and administrative obstacles that permits only a faint trickle to escape."

That was President Griswold, reporting to Yale alumni on the last academic year.³

Now there is a mass of very current and not all necessarily choice literature on the subject of these legal and administrative obstacles.⁴ The editor of a corporation law service for students has even felt the issues sufficiently stirring to catch the interest of law students and has this year distributed to student subscribers a problem fact situation and selected bibliography on the subject.⁵ Reported administrative and judicial adjudication deals largely with questions of corporate power to give and the income tax deductibility of benefactions. Legislatures have recently been dealing with both matters. In the former area, they seem to have been mildly rushing to pass legislation enabling corporations to dispense "cakes and ale" with little or no regard for special corporate benefit.⁶ The Congress has been proceeding in the opposite direction in the latter area to hedge the corporate income tax "loophole" of gift deductibility,⁷ later inviting increasing individual giving through increased deductibility from gross income for individual benefactions.⁸ Neither trend

2. *Ibid.*

3. THE REPORT OF THE PRESIDENT OF YALE UNIVERSITY TO THE ALUMNI, 1951-1952, p. 7 (1952).

4. *E.g.*, Bleicken, *Corporate Contributions to Charities: The Modern Rule*, 38 A.B.A.J. 999 (1952); Pollard, *Corporation Support of Higher Education*, 30 HARV. BUS. REV. 111 (1952).

5. JENNINGS, P-H STUDENTS CORP. SERV., REPORT No. 8, p. 1 (1953).

6. Bleicken, *supra* note 4, at 1060.

7. Revenue Act of 1950, §§ 321(a), 331, 64 STAT. 954-5, 957-8 (1950), INT. REV. CODE §§ 162(g)(2), 3813.

8. Pub. L. No. 465, 82d Cong., 2d Sess. § 4(a) (July 8, 1952), INT. REV. CODE § 23(o) (increasing from 15 to 20 percent of adjusted gross income the amount of contributions an individual income taxpayer may deduct).

collects any obvious justification as it rolls along. Granted that taxation of both corporate and stockholder dividend income is presently an abiding feature of federal and state income taxation which has the result of permitting corporate giving to reach the donee with the least tax attrition and often very odd corporate tax advantages;⁹ granted that it is easier to solicit a few gift-minded corporations than many individual stockholders; still the corporation is only an almoner for its shareholders. The stockholder hires the business management of his corporation. Must he, at the same time, hire his giving management? Is giving power to be concentrated as some say economic power has been?¹⁰ Money in business corporation hands is not necessarily fair game for all comers. In fact, much of any money unreasonably accumulated as surplus beyond business needs now quite properly draws a special tax penalty.¹¹ Individual large fortunes may be declining, but what of the possibility that, as redistributed among the population, wealth may constitute an ample—if troublesome to solicit—resource for giving? It is not yet too late to consider these fundamental questions of corporate giving. Maybe tax attrition should be reduced by giving stockholders an option to divert corporate dividends to donees without incurring taxable net income to either corporation or shareholder. Perhaps there are better reconciliations of revenue needs, business management as a specialty, needs of donees, economic concentration, and individual freedom to give.

But Mr. Andrews chooses to pass these questions and to say, not unreasonably, "Corporate giving is here. How shall it best be done?" This is his selection-of-problem phase. Unfortunately, he scarcely illuminates its solution at all. Part I of his book is subtitled, "Corporate Giving." Apparently designed to set up the problem phase for discussion, furnish historical perspective and a digest of present practices, this part concludes that the corporation has emerged in the last decade as a giant giver more than offsetting the decline in really large individual gifts, but that it has been a custom-bound and non-creative giver.¹² This sounds possible and may even be true, but it is an absolutely unproved thesis. The data culled from Bureau of Internal Revenue and other fairly available sources, coupled with the uneven returns to a questionnaire by 326 out of some 600,000 corporations, does not take up the gap between fact and intuition.¹³ Caveat reader. Here are some didactic samples: 5 percent of all "annual" giving is by corporations, based on nothing;¹⁴ giving

9. On the oddities, see LASSER, *HOW TAX LAWS MAKE GIVING TO CHARITY EASY* c. 10 (1948) (not current in some respects under the present statute).

10. BERLE & MEANS, *THE MODERN CORPORATION AND PRIVATE PROPERTY* (1932) is of course the classic here.

11. INT. REV. CODE § 102.

12. Pp. 125-8.

13. Pp. 64, 268-271. While the author recognizes the inadequacy of the survey, he has not the resolution to throw it away and constantly asserts its validity by implication.

14. At page 19 of the present work, we are referred to an earlier work of the same author, *PHILANTHROPIC GIVING* (1950), for the truth of this statement. Running this down leads merely to printed guesses.

is in reverse ratio to geographic income concentration, based on warmed over 1941 data;¹⁵ colleges and universities rank fourth as donees of corporations, based on National Industrial Conference Board data published in 1948;¹⁶ few corporations plan giving, based on the 326-company survey;¹⁷ and worthiness of cause outranks corporate benefit as a motive for giving, based on the same survey.¹⁸

Part II, subtitled "The Beneficiaries," presumably is designed as a tip-off against the unscrupulous and as a restatement of the obvious and previously-printed stories of voluntary welfare agencies, community trusts, and the like. There is not a pennyworth of suggestion as to how a corporation is to give creatively unless one counts the remarks that it is a tough job, a great opportunity, and the corporation ought to organize for it.¹⁹

The final part deals with legal and taxation factors on which a well-known Chicago lawyer has advised.²⁰ At least these 40-some pages contain no intuition presented as gospel, although they tend at one point to scramble the powers and tax cases unduly.²¹ The skimming is of the orthodox questions which have been adjudicated. There is no anticipation here of problems awaiting litigation but not yet reflected in reported cases. For example, the real litigious possibility of conflict of fiduciary responsibility in the case of corporate directors who interlock with another giving foundation (non-profit corporation or trust) formed to level out corporate giving is not even bruited. The interlocking directors certainly serve at least two masters, without mentioning the corporate stockholders, some of whom may be, incidentally, endowment trustees of competing donees.

There are voluminous appendices, including case lists, statutes *in haec verba*, and, certainly of prime utility, a sample foundation charter under the New York Membership Corporation Law which is most inadequate.²²

Mr. Andrews would perhaps have benefited his public by collecting his intuitions in a pamphlet or a magazine article. He simply does not furnish a reliable book's worth to add to what was readily available when he wrote.

LEHAN K. TUNKS†

15. P. 62.

16. P. 69.

17. P. 91.

18. P. 115, with 248 corporations used as a basis.

19. Pages 120-2 excerpt from publications of the National Industrial Conference Board and the American Society of Corporate Secretaries. There are some excerpts from corporation questionnaire responses, but the text states all I can find of the author's contribution.

20. Mr. Ray Garrett.

21. Pp. 231-2. The tax deduction cases, for example, do not present questions of corporate power to give under a state enabling act and certificate of incorporation.

22. Suggestions as to practice under this and analogous statutes can be gleaned from the collection, CHAMBERS, CHARTERS OF PHILANTHROPIES (1948).

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