

## BOOK REVIEWS

**DIVIDENDS AND DEMOCRACY.** By Lewis D. Gilbert. Larchmont, N. Y.: American Research Council, 1956. Pp. xiv, 242. \$3.95.

Lewis D. Gilbert has written his autobiographical "Solid Gold Cadillac." It is the stage version, not the movie one—but with one essential difference. Toughened by corporate battles, won and lost, sophisticated and experienced, Gilbert has never become part of the management of the large corporations which he has challenged, usually so condignly, for almost a quarter of a century.

This collation, a racy and slogany book of "America's No. 1 Stockholder," has a single thesis: only through informed shareholder participation in the affairs of American corporations will the individual stockholder profit and that largely through increased dividends. While the theme is unitary, Mr. Gilbert plays a number of different notes; but the score is frankly personal.

This is remarkable because, except in the closed corporation, the individual stockholder can at the present time rarely participate in person. The analogy to a New England town meeting, if ever pertinent, is now surely obsolete. While at one time a stockholder was required to vote in person,<sup>1</sup> now the proxy machinery has been substituted for the individual stockholder's attendance. But the proxy material is, in turn, usually controlled by the very management to be chosen through its operations. Gilbert has lived through and fought what he considered the most heinous aspects or perversions of this managerial revolution—an age spanned by Charles M. Schwab of Bethlehem Steel and General Douglas MacArthur of Remington Rand.

Interspersed with his autobiographical anecdotes and his quotations, interesting if somewhat less than modest, of newspaper reports usually dealing with his activities in connection with the annual meeting of shareholders, are the reasons for the shift in power. These are, in the main, the slothful inertia of non-management shareholders and the expense of proxy fights, borne disproportionately by the individual stockholder as against

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1. In State *ex rel.* Kilbourn v. Tudor, 5 Day 329 (Conn. 1812), a divided court first held in the United States that a by-law of a business corporation permitting shareholders to vote by proxy was valid. But for long periods of time the majority's ruling was not followed. *E.g.*, Taylor v. Griswold, 14 N.J.L. 222 (Sup. Ct. 1834). See generally DODD, AMERICAN BUSINESS CORPORATIONS UNTIL 1860, at 69, 227, 277 n.25 (1954).

the management, almost consistently successful in saddling the corporation with the increasingly onerous expenditures.<sup>2</sup>

Mr. Gilbert has been fighting not only the corporations, but, when the Securities and Exchange Commission, under the first Eisenhower chairman, Ralph H. Demmler, attempted to relax the proxy rules (from his point of view and the point of view of minority stockholders desiring to make proposals to stockholders), also the SEC.

Acknowledgedly, the Commission has been in the forefront of the protection of the Gilberts, the Fullers, the Henrys, the Coshlands, the Kings, and such other vigilant minority stockholders as Mrs. Wilma Soss. It has done this not only through the registration provisions of the Securities Act of 1933,<sup>3</sup> but more importantly through the proxy regulations<sup>4</sup> promulgated under section 14 of the Securities Exchange Act of 1934.<sup>5</sup> This latter act, however, limits regulation to solicitation of proxies in connection with any security listed on a national exchange.

But even in the case of listed securities the statutory provisions are not automatic. They require the supervision not only of the Commission<sup>6</sup> but also the vigilance of stockholders willing to use the machinery against the entrenched managements. From the point of view of Gilbert, the most important provision was one permitting security holders to have the management send out proposals for a vote at the meeting. Perhaps the seminal decision on the impact of the regulation was one of the very few in which Mr. Gilbert took part, that of the *SEC v. Transamerica Corp.*,<sup>7</sup> in which the court, through Chief Judge Biggs, reversing the lower tribunal,

2. *Hall v. Trans-Lux Daylight Picture Screen Corp.*, 20 Del. Ch. 78, 171 Atl. 226 (1934). For recent extensions, made vivid by the journalistic dramas of titanic proxy fights, see *Steinberg v. Adams*, 90 F. Supp. 604 (S.D.N.Y. 1950); *Rosenfeld v. Fairchild Engine and Airplane Corp.*, 309 N.Y. 168, 128 N.E.2d 291 (1955); *Friedman, Expenses of Corporate Proxy Contests*, 51 COLUM. L. REV. 951 (1951).

3. 48 STAT. 77 (1933), 15 U.S.C. §§ 77(e)-(h) (1952).

4. 17 C.F.R. §§ 240.14a-1 to -10 (Supp. 1956).

5. 48 STAT. 895 (1934), 15 U.S.C. § 78(n) (1952).

6. For a recent survey on the control of proxy contests, see Note, *Securities and Exchange Commission Regulation of Proxy Contests*, 69 HARV. L. REV. 1462 (1956).

7. 163 F.2d 511 (3d Cir. 1947). On January 2, 1946, Gilbert, the owner of seventeen shares out of a total of 9,935,000 shares of the capital stock of Transamerica Corporation, a Delaware corporation, whose stock was listed with the New York Stock Exchange and with two other exchanges, wrote, as one of 151,000 individual stockholders of Transamerica, to its management. He submitted four proposals which he desired to present for action by shareholders at the next annual stockholders meeting, to be held on April 25, 1946. These four were (1) to have independent public auditors, (2) to amend a by-law in a particular manner, (3) to change the place of the annual meeting of the corporation from Wilmington to San Francisco, where most of the stockholders lived, and (4) to require an account or report of the annual meeting to be sent to all stockholders. By the time the litigation reached the court of appeals, the directors themselves had amended the by-laws to change the place of annual meeting from Wilmington to San Francisco. It was proposal (2) which caused the court the greatest difficulty; and, after a dissertation on the law of Delaware, the court held that it would not permit a minor provision of the company's by-laws to "circumvent the intent of Congress in enacting the Securities Exchange Act of 1934. . . . The power conferred upon the Commission by Congress cannot be frustrated by a corporate by-law." *Id.* at 518.

pointed out that the purpose of section 14(a) of the Securities Exchange Act was to enlarge corporate suffrage, holding that it was "the intent of Congress to require fair opportunity for the operation of corporate suffrage. The control of great corporations by a very few persons was the abuse at which Congress struck in enacting Section 14(a)." <sup>8</sup> The court entertained no doubt that the then proxy rule X-14A-7 represented a proper exercise of the authority conferred by Congress on the Commission under section 14(a). It was the effectiveness of this proposal provision which the Commission weakened by its amendment of February 6, 1954, after a hearing in which the author joined representatives of minority stockholders and students of corporate law in opposing any such change.<sup>9</sup>

Through the proxy rules and using the proxy rules as a kind of pilot for the many companies which are still not subject to them, Mr. Gilbert takes a forthright stand on his corporate-improvement planks. These planks, like jutting timbers, are never completely delineated or seen whole, with some of their knotty defects, but they also are never entirely lost in Mr. Gilbert's forest of personal and evangelically polemical words. They are:

1. Cumulative voting.
2. Elimination of the stagger system in the election of directors.
3. Full disclosure of facts relating to the company, to non-management stockholders.
4. Strengthened demands for pre-emptive rights.
5. Proper auditing.
6. Stockholders meeting conveniently located, with a view toward greater stockholder participation, and comfortably conducted.
7. Regional meetings to acquaint shareholders with the company.
8. Post-meeting and annual reports, reflecting the business of the company.
9. Ownership of stock by directors.
10. Elimination of stock options and control of excessive compensation to officers.
11. Extension of the commission proxy rules (further liberalized) to companies not having listed securities.

This book is not a nice thesis on any of the planks, nor does it attempt at all times to be consistent, coherent, or even clear. A volume of anecdote

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8. *Ibid.*

9. Several of Gilbert's chapters are reflected in Bayne, Caplin, Emerson & Latham, *Proxy Regulation and the Rule-Making Process: The 1954 Amendments*, 40 VA. L. REV. 387 (1954).

and example, *Dividends and Democracy* would have been less lively, but perhaps more useful with additional annotation and with a more compact and tightened touch. On the other hand, as in journalistic accounts, such as David Karr's recent *Fight for Control*, more of corporate law is uncovered than law books often dream about. Again, despite the lack of, and in some cases, confusing or simply incorrect citations, and too large a number of irksome infelicities, the book should be useful to corporate lawyers in the same way as even the most entrenched managements have found that Mr. Gilbert's suggestions are not without merit and his attacks not without service. As in all liberalizing proposals, it is, in fact, a measure of Mr. Gilbert's and his colleagues' success that his substantive suggestions have already been adopted to an overwhelming extent and with every succeeding stockholders meeting are being accepted. And Mr. Gilbert's account will serve as a handbook for those who want to learn as well as those who want to avoid.

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**AN INTERNATIONAL ECONOMY: PROBLEMS AND PROSPECTS.** By Gunnar Myrdal. New York: Harper & Brothers, 1956. Pp. xi, 381. \$6.50.

The flow of capital and know-how across sovereign boundaries is a matter which is receiving increasing attention, not only from economists as such, but from all social scientists. The challenge of accelerating the pace of economic progress among underdeveloped countries is in the forefront of international issues. It is increasingly being recognized that if peace is to prevail, there must be an economic environment in which opportunities for improved standards of living are more widely prevalent.

In *An International Economy*, Gunnar Myrdal has provided a framework for an approach to the subject of economic integration within nations and among nations, especially the latter, which should be of invaluable benefit to all those who are concerned with the problem of underdeveloped areas.

Myrdal sets up the goal of equality of opportunity as his basic point of departure. He regards moves toward equalization of opportunity as essential for continued economic progress and, in turn, recognizes that economic progress is a prerequisite to the achievement of this goal. To those who have worked abroad, Myrdal's distress over what he finds in the present day world is entirely understandable. The migration of capital

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and of labor is not playing an adequate role in helping to bring about the kind of economic integration which is so essential for equalizing opportunities. The role of economic aid to date is encouraging in terms of the trend, but wholly inadequate in degree.

In order to provide a constructive and usable frame of reference, Myrdal devotes approximately half of his book to dealing with the concept of economic integration and with a description and analysis of the positive and negative forces which have been at work in the past and are in operation now. He deals with such important subjects as international payments and the mobility of labor and capital. He analyzes integration within nations and develops an understanding of the factors behind national solidarity so that these same factors can be more clearly understood in the international scene.

Approximately half of the book is devoted to the problems of underdeveloped countries. Myrdal delves into the psychological, social and political forces at work along with the economic influences. In this respect his contribution is greater than that of most writers on this subject. His extensive work in the international field has given him a sense of realism which is well blended with his theoretical and conceptual background.

Historically, the pace of change from a fairly primitive economy to an industrialized economy has been rather slow. In the underdeveloped countries today, there is a tremendous impatience with the current rate of progress and an overwhelming drive to close the gap of time and to achieve in a short number of years what required generations in the more advanced countries. The peoples in the underdeveloped countries know more fully than ever before what has been accomplished in other areas. They are not willing to pass through the same stages and the same time intervals as those who are today enjoying high levels of productivity and production and living standards. They are especially impatient because they are becoming aware of what the "welfare state" can do in terms of spreading the benefits of mechanization and industrialization.

Myrdal performs a very useful function in drawing distinctions between the present conditions and those which prevailed when the now industrialized countries were in their initial stages of economic development. He is especially helpful in dealing with the social and political differences, as well as with the changes in economic organization and economic structure. He is properly critical, explicitly and implicitly, of the failure of the more economically advanced countries to develop and implement policies not only with respect to aid, but also with respect to trade insofar as they affect the economic progress of underdeveloped countries.

His is more than a book urging an expansion in economic assistance. Rather it provides the philosophical basis for a well-rounded approach to the whole problem of economic integration which if pursued would seem to offer greater prospects for prosperity everywhere and therefore greater prospects for peace.

*An International Economy* is penetrating as well as illuminating. It is analytical as well as usable for those who formulate and implement policies. It is especially distinguished by the framework it provides for those who are seeking to understand better what needs to be done and what can be done to bring about a fuller degree of economic integration—a fuller measure of equality of opportunity for all countries. It should be required reading for every serious student of economic affairs.

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