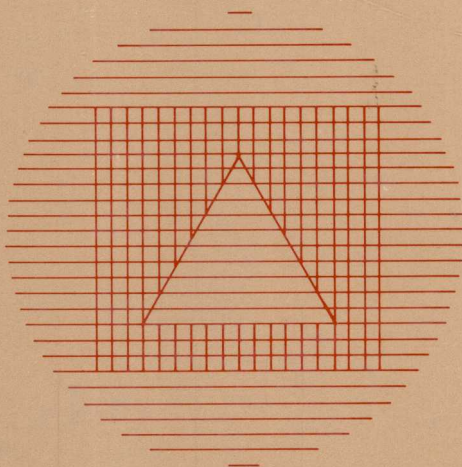


LAW, BUSINESS, AND SOCIETY



Tony McAdams

LAW, BUSINESS, AND SOCIETY



1986
BUSINESS PUBLICATIONS, INC.
Plano, Texas 75075

© BUSINESS PUBLICATIONS, INC., 1986

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the publisher.

ISBN 0-256-03070-7

Library of Congress Catalog Card No. 85-73323

Printed in the United States of America

1 2 3 4 5 6 7 8 9 0 MP 3 2 1 0 9 8 7 6

Preface

Overview

This text is directed to courses at both the upper-division undergraduate and masters levels in the legal environment of business and government and business, as well as business and society. To date, authors of textbooks in these areas have rather uniformly relied on a single discipline (e.g., law, economics, management) as the foundation for their efforts. In this text we take an interdisciplinary approach utilizing elements of law, political economy, international business, ethics, social responsibility, and management. It is a large task and one that necessarily requires certain trade-offs, but the hope is that the product will more accurately embrace the fullness of the business environment.

We want to emphasize at the outset that our primary goal is to produce an interesting reading experience. Naturally, accuracy and reasonable comprehensiveness cannot be sacrificed. However, our feeling is that a law text can be both intellectually and emotionally engaging without sacrificing substantive ends. To meet our objective we have given extensive attention to readings, provocative quotes, and factual details (surveys, data, anecdotes) that add flesh to the bones of legal theory.

The book is divided into five parts as follows:

Part I—Business and Society. We do not begin with the law. Rather, in chapters on Corporate Power and Corporate Critics, Capitalism and Collectivism, and Ethics we hope to establish the influences that determine the character of our legal system.

Part I should meet these goals: (a) enhance student awareness of the many societal influences on business, (b) establish the business context from which government regulation arose, and (c) explore the roles of the free market, government intervention, and individual and corporate ethics in controlling business behavior.

The student must understand not merely the law, but the law in context. What forces have provoked government intervention in business? What alter-

natives to our current “mixed economy” might prove healthy? These considerations help the students respond to one of the critical questions of the day: To what extent, if any, *should* we regulate business?

Part II—Introduction to Law. Chapter 4 (The American Legal System) and Chapter 5 (Constitutional Law and the Bill of Rights) survey the foundations of our legal system. Here we set out the “nuts and bolts” of law, combining cases, readings, and narrative.

Part III—Trade Regulation and Antitrust. Chapter 6 (Government Regulation of Business: An Introduction) is a bit of a departure from the approach of many texts in that significant attention is directed to state and local regulation. Chapters 7–11 survey the heart of government regulation of business (administrative law, business organizations and securities regulation, and antitrust).

Part IV—Employer-Employee Relations. Chapters on Labor Law and Employment Discrimination are intended not only to survey the law in those areas, but also to introduce some of the sensitive and provocative social issues that have led to today’s extensive government intervention in the employment relationship.

Part V—Business and Selected Social Problems. The book closes with four chapters (The Social Responsibility of Business, Consumer Protection, Products Liability, and Environmental Protection) that emphasize the dramatic expansion in the past two decades of the public’s demands upon the business community.

Accreditation

Our text proposal closely conforms to current AACSB curriculum accreditation standards. The relevant standard reads:

. . . a background of the economic and legal environment as it pertains to profit and/or nonprofit organizations along with ethical considerations and social and political influences as they affect such organizations. . . .

An interdisciplinary thrust and emphasis on ethics is evident. At the same time law and economics clearly must remain central ingredients in meeting our goal of establishing the business context from which government regulation arose.

Furthermore, as required by the rapidly changing nature of commerce and as recommended by the AACSB, the text devotes considerable attention to issues arising out of international business. No single chapter addresses the area, but various topics throughout the text (e.g., comparative economic systems, the Foreign Corrupt Practices Act, and consumer protection in international markets) afford the student a sense of the worldwide implications of American government-business regulations.

Philosophy

As noted, our primary goal is to provoke student thought. To that end, heavy emphasis is placed on analysis. Accordingly, retention of rules of law per se is

not of paramount concern. The questions asked are considered more important than the answers. The student is acquainted with existing policy in the various areas not merely for the purposes of understanding and retention, but additionally to provoke inquiry as to the desirability of those policies. Then, where appropriate, an effort is made to explore with the student the appropriate managerial role in shaping and responding to governmental policy.

Our book represents a departure from a “pure” legal environment of business text. Part I of the text is, as explained, a necessary foundation upon which the student can build a logical understanding of the regulatory process. But the business and society themes don’t stop there. In virtually every chapter we look beyond the law itself to other environmental forces. For example, in the antitrust chapter economic philosophy is of great importance. Antitrust is explored as a matter of national social policy; that is, we argue that antitrust has a good deal to do with the direction of American life generally. Law is at the heart of the fair employment practices section, but materials from management, sociology, economics, and the like are used to treat fair employment as an issue of social policy rather than as a series of narrower technical legal disputes. Those kinds of approaches characterize most chapters as we attempt to examine the various problems in the whole and, to some degree, from a managerial viewpoint. Having said all this, it should be understood that the law remains the bulky core of the book.

Key Features/Departures

Extensive use of readings (e.g., from *The Wall Street Journal* and the *Harvard Business Review*) seeks to give the book a stimulating, “real world” quality.

Ethics and social responsibility are at the heart of the text rather than an afterthought to meet accreditation standards.

International issues receive extensive attention.

Law cases are of a length sufficient to clearly express the essence of the decision while challenging the reader’s intellect.

The law is studied in the economic, social, and political context from which it springs.

Attention is given to critics of business values and the American legal system.

Perhaps the key pedagogical tactic in the book is the emphasis on questions rather than on answers.

Instructor’s Manual

A complete package of supplementary materials is included in the instructor’s manual. Those materials include: (a) general advice regarding the goals and

purposes of the chapters, (b) summaries of the law cases, (c) answers for the questions raised in the text, and (d) a test bank.

Acknowledgments

The completion of this book was dependent, in significant part, upon the hard work of others. The authors are pleased to acknowledge the contributions of those good people. Jill Minehart, secretary of the Management Department at the University of Northern Iowa, supervised the clerical production of the book and patiently corrected the authors' blunders. Becky Sanders of the University of Kentucky and the UNI School of Business Word Processing Center personnel typed major segments of the several drafts. Ann Gumz, MBA student, completed the tedious and frustrating task of securing permission to reprint the many articles and lengthy excerpts in the book. Katherine Calhoun, MBA student; Merrilee Freeburg, MBA student; and Luann McAdams, long-suffering spouse, all contributed to the lengthy and tiring proofreading process.

The authors also thank the following professors who reviewed portions of the manuscript and provided valuable guidance: David Chadwick-Brown, San Diego State University; John Collins, Syracuse University; Wayne Evenson, University of Northern Iowa; Nancy Hauserman, University of Iowa; Harold Hotelling, Oakland University; Carey Kirk, University of Northern Iowa; Eric Richards, Indiana University; and Arthur D. Wolfe, Michigan State University.

Suggestions

The authors welcome comments and criticisms from all readers.

Tony McAdams

Contents

Part I Business and Society 1

1. Corporate Power and Corporate Critics 2

Introduction 2 Public Opinion 3 Concentration of Resources 3 The Corporate State 4 *Public Policy. Afterword. Advocacy Advertising. Schools and Churches. Afterword. Who Controls the Corporation?* Summary 18 *Afterword.* Chapter Questions 19 Notes 22

2. Capitalism and Collectivism 24

Part One—Introduction 24

Part Two—Capitalism 25

Foundations 25 *Capitalism in Theory—Ayn Rand. Capitalism in Practice—Hong Kong. Capitalism in Practice—The American Experience.*

Part Three—Collectivism 35

Communism 35 Socialism 36 Collectivist Goals 36 The Command Economy 37 The Law and the Communist State 38 *People's Law in China.* The Middle Ground 42 *Note.*

Part Four—America's Economic Future—Where Are We? 50

Selfish or Selfless? 52 *In Opposition to Bioeconomics.* Freedom 54

Conclusion 55 Chapter Questions 56 Notes 59

3. Ethics 61

Part One—Foundations of Ethical Theory 61

Introduction to Ethics: McDonald's and Protesters 61 Ethical Theory 62

Fletcher's Moral Continuum. Teleology or Deontology—An Overview. Teleology. Deontology.

Part Two—Foundations of Business Ethics 66

Business Values 66 *Steiner and Steiner—The Roots of Business Ethics.*

Maccoby—Managerial Character. Corporate Ethical Conduct **68** Why do Some Managers Cheat? **69**
Part Three—Business Ethics in Practice **70**
 Pressure to Cheat **70** Business Crime—Executive Liability **82** Whistle Blowing **89** Bribery Abroad **91** A Dissent **92** Chapter Questions **94**
 Notes **97**

Part II Introduction to Law 99

4. The American Legal System 100

Part One—Legal Foundations **100**
 Law Defined **100** Objectives of the Law **101** The Case Law: Locating and Analyzing **103** *Briefing the Case*. Classifications of Law **106**
Part Two—Judicial Process **115**
 Standing to Sue **115** Jurisdiction **117** Venue **121** *State Court Systems. Federal Court System*. The Civil Trial Process **123** *Class Actions. Due Process of Law*.
Part Three—Reform? **133**
 Public Opinion **133** Judges and Judicial Activism **133** Lawyers **136** Too Much Law **138** Alternatives **141** Chapter Questions **142** Notes **145**

5. Constitutional Law and the Bill of Rights 146

Introduction **146** The Regulation of Commerce **150** Business and the Bill of Rights **150** *I. Freedom of Religion. II. Freedom of Speech. III. Search and Seizure*. Constitutional Law Policy **166** Chapter Questions **168**
 Notes **170**

Part III Trade Regulation and Antitrust 171

6. Government Regulation of Business: An Introduction 172

Introduction **172** Why Regulation? **173** The History of Government Regulation of Business **174** The Constitutional Foundation of Business Regulation **176** State and Local Regulation of Interstate Commerce **181** *Afterword. The States in “Combat.” Summary of State and Local Regulation*. More Regulation? **191** *Afterword*. Chapter Questions **194** Notes **197**

7. Administrative Agencies and the Regulatory Process 198

Part One—Introduction to Administrative Agencies **198**
 The Agencies **200** The Agencies and the Larger Government **201** *The Role of Congress. The Role of the President. The Role of the Courts*. Justifications for the Administrative Agency **202**

Part Two—Summary of the Administrative Process 204

Information Gathering **204** Informal Agency Action **204** Rule Making **205**
Adjudication **205** Judicial Review **206**

Part Three—An Example: The Food and Drug Administration 212

History of the FDA **213** Approval Process **214** The FDA Reviewed **217**

Part Four—The Federal Regulatory Process Evaluated 220

Criticisms **220** *Excessive Regulation. Insufficient Regulation. Excessive Industry Influence. Excessive Legislative and Executive Influence. Underrepresentation of Public Opinion.* Regulatory Reform **224** Deregulation **227** *Introduction. The Burdens of Regulation. The Benefits of Regulations. Deregulation Decision.* Afterword.

Part Five—The Corporate Response to Government Regulation 240

Chapter Questions **241** Notes **242**

8. Business Organizations and Securities Regulation 244

Form of the Organization **245** Partnerships **245** Corporations **247** Hybrid Organizations **248** Special Situations **249** *Piercing the Corporate Veil.* Reality of Limited Liability **250** Avoidance of Double Taxation **250** Changing the Form of a Business **251** Tax Shelters **251** Buy/Sell Agreements **252** Securities Regulation **253** *Definition of a Security. Definition of a Security—Continued. Exemptions. Exemptions—Continued. Registration Requirements. Remedies for Violations. Regulation of Publicly Held Companies.* Chapter Questions **279** Notes **279**

9. Antitrust Law—Introduction and Monopolies 280

Preface: A New Direction in Antitrust Policy? 280

AT&T Settlement **280** IBM Suit Dismissed **281** Cereals Case Dismissed **282**
Oil Industry Action Dropped **283** Implications **283**

Part One—The Roots of Antitrust Law 284

Antitrust Statutes **285** *Sherman Antitrust Act, 1890. Clayton and Federal Trade Commission Acts, 1914. 1915 to the Present.* Exemptions from Federal Antitrust Law **287** Federal Antitrust Law and Other Regulatory Systems **288** *State Law. Patents, Copyrights, and Trademarks. Law of Other Nations.* Antitrust: Law for All Seasons **289**

Part Two—Monopoly 289

Monopolization Analysis **291** *Product Market. Geographic Market. Market Power. Intent. Monopoly Earned.* Chapter Questions **303** Notes **304**

10. Antitrust Law—Mergers 305

Enforcement **306** Merger Data **307** Mergers in Practice **308** Horizontal Mergers **314** Market Share and Other Considerations **320** Vertical Mergers **322** Conglomerate Mergers **324** Defenses **325** *Cases. ITT Settlement. Joint Venture* **334** *Is Bigness Bad?* **335** Chapter Questions **339** Notes **340**

11. Antitrust Law—Restraints of Trade 342

Part One—Horizontal Restraints 342

Rule of Reason 342 Per Se Violations 342 Horizontal Price-Fixing 343
 Price-Fixing in Practice 349 Horizontal Division of Markets 351
 Refusals to Deal 354 *Unilateral Refusals to Deal*. Conscious Parallelism 357
 Interlocking Directorates 359

Part Two—Vertical Restraints 359

Resale Price Maintenance 360 Vertical Territorial and Customer Restraints 363
 Tying Arrangements 367 *Fortner Enterprises, Inc. and U.S. Steel. Fortner II*.
 Exclusive Dealing and Requirement Contracts 371 *Afterword—Justice*
Department Guidelines.

Part Three—Franchises, Price Discrimination, and International Antitrust 372

Price Discrimination 379 American Antitrust Laws and the International Market 385
 Foreign Antitrust Laws 386 Chapter Questions 387 Notes 388

Part IV Employer-Employee Relations 391

12. Labor Law 392

Introduction 392 Organizing Labor 395 Unionization 397 Labor Legislation
 Today—The Statutory Scheme and Its Goals 400 National Labor Relations
 Board 402 Choosing an Appropriate Bargaining Unit 403 Choosing a
 Bargaining Representative—Elections 403 *Threats of Reprisal or Force*.
Promise of Benefit. Union Persuasion. Collective Bargaining. The Union as
 Exclusive Bargaining Agent 417 Shop Agreements and Right-to-Work
 Laws 418 Strikes 418 *Notification of the Intent to Strike*. Secondary Boycotts,
 Hot Cargo Agreements, and Common Situs Picketing 421 Employees' Rights
 within or against the Union 422 *The Union's Duty of Fair Representation*.
Afterword. The "Bill of Rights" of Labor Organization Members. Politics and
 NLRB Decisions 433 Contemporary Issues in Labor Law 436 *Working*
Conditions. Equal Protection. Public Sector Strikes. Labor-Management
Relations. Chapter Questions 445 Notes 447

13. Employment Discrimination 449

Part One—Introduction 449

Discrimination Defined 449 Employment Discrimination: The Foundation in
 Law 450 *History. Constitutional Provisions. Civil Rights Act of 1866*.
Executive Orders. Civil Rights Act of 1964. Other Federal Statutes.
 Enforcement 453 *Individual Actions. Pattern or Practice Suits. Department of*
Labor.

Part Two—Discrimination on the Basis of Race, Color, or National Origin 454

Progress? 454 Employment Discrimination Analysis 458 *Disparate Treatment*.

Disparate Impact. Statutory Defenses.

Part Three—Sex Discrimination 464

Introduction 464 Pregnancy and Childbirth. Draft Registration. Equal Rights Amendment. Pensions. “Private” Organizations. Equality for Women? 467

Analysis of Sex Discrimination 468 Bona Fide Occupational Qualification.

Sexual Harassment 473 Equal Pay 474 Comparable Worth 475

Part Four—Religious Discrimination 478

Part Five—Affirmative Action 479

Affirmative Action versus Seniority 481 A Wise Policy? 486

Part Six—Additional Discrimination Topics 487

Age Discrimination 487 Discrimination against the Handicapped 492 Sexual

Preference 492 State Law 493 The Results 494 Chapter Questions 494

Notes 498

Part V Business and Selected Social Problems 501

14. The Social Responsibility of Business 502

Introduction 502 What is Social Responsibility? 504 The Social Responsibility Debate. Arguments for Social Responsibility. Arguments against Social Responsibility. Social Responsibility Research 507 Social Responsibility in Practice 508 Was Ford Liable under Civil Law? Was Ford Liable under Criminal Law? Corporations as Criminals? 514 A Social Responsibility for the World? 515 On the Positive Side of Social Responsibility 520 Beyond Social Responsibility 523 Additional Cases for Discussion 526 Chapter Questions 531 Notes 534

15. Consumer Protection 536

Introduction 536 Consumerism: Past and Future 538 Common Law Consumer Protection 539 Fraud and Innocent Misrepresentation. Fraud in Nature. Unconscionable Contracts 545 Other Common Law Protections 547 The Consumer and Government Regulation of Business 547 The Federal Trade Commission—Rule Making. The Federal Trade Commission—Adjudication. The Federal Trade Commission—Deceptive Practices. The Consumer Product Safety Commission. Consumer Finance Law 554 Credit Regulations. Debtor Protection 566 Bankruptcy. Electronic Fund Transfers 575 Chapter Questions 576 Notes 578

16. Products Liability 580

Introduction 580 Negligence 580 Classes of Negligence Claims. Res Ipsa Loquitur. Defenses against Negligence. Warranties 593 Express Warranties. Implied Warranties. Disclaimers. The Limits of Warranty Law 600 Magnuson-Moss Warranty Act. Strict Liability 602 Coverage. Defenses against Strict

Liability. The Limits of Strict Liability 609 *Corporation Protection?* 613
Chapter Questions 621 Notes 624

17. Environmental Protection 625

Introduction 625 A Global Problem 626 The Failure of the Invisible Hand? 628 The Common Law 628 State and Local Regulation 632 The Federal Presence 633 *National Environmental Policy Act. Environmental Protection Agency. Air Pollution* 634 *Government Policy. Water Pollution* 643 *Federal Policy. Penalties. Land Pollution* 648 *Solid Waste Disposal Act. Toxic Substances Control Act. Resource Conservation and Recovery Act. Comprehensive Environmental Response, Compensation, and Liability Act of 1980. The Free Market* 653 Effectiveness of the Environmental Protection System 655 The Business Response 656 Questions 659 Notes 661

Appendix A The Constitution of the United States of America 1

Appendix B The Securities Act of 1933 (excerpts) 13

Appendix C The Securities Exchange Act of 1934 (excerpts) 15

Appendix D The National Labor Relations Act (excerpts) 17

Appendix E The Civil Rights Act of 1964, Title VII (excerpts) 22

Appendix F Acknowledgments 25

Glossary 27

Table of Cases 33

Index 39

Business and Society

- CHAPTER 1 Corporate Power and Corporate Critics
- CHAPTER 2 Capitalism and Collectivism
- CHAPTER 3 Ethics

Corporate Power and Corporate Critics

Introduction

The bulk of this text is devoted to the study of law and, more specifically, to the study of government regulation of business. However, Chapters 1 through 3 will offer only passing mention of that regulation. Before turning to the law per se it is essential to remind the reader of the context—the environment—in which the law developed. Therefore, a major purpose of this chapter is to raise some critical issues regarding the business community's relationship to the larger society. Should we “free” business from government intervention to achieve greater productivity and profit? Should business play a larger role in politics, education, and other public sector activities? Should business assume greater responsibilities in correcting societal ills? Or perhaps capitalist business values should be retarded in favor of a more cooperative, communitarian approach to life. The reader is expected to use this chapter to make some tentative assessment of the very large question: What is the proper role of business in society? Only after acquiring some preliminary grasp of that issue may one logically and fruitfully turn to various “control devices” such as law as a means of enforcing that proper role.

The second major goal of this chapter is that of alerting the reader to some of the primary criticisms raised against the corporate community. The successful businessperson and the good citizen must understand and intelligently evaluate the objections of those who criticize the role of the corporation in contemporary life. Of course, government regulation is, in part, a response to those criticisms. (A detailed investigation of the forces generating government intervention is offered in Chapter 6.)

The materials in this chapter necessarily cast some elements of business practice in an unfavorable light, but even the most ardent defender of American business should welcome the opportunity to understand and evaluate the critics' viewpoints. Having done so the student will presumably be better prepared to understand and assess—allow me to say it again—the proper role of business in society and the use of the law in regulating that role.

Public Opinion

At the outset, it must be recognized that, for some years, business has been operating in a somewhat hostile environment. That is not to say that the American people in large percentages have rejected traditional business values. Americans approve of the notion of commerce and the remarkable benefits it has afforded us, but contemporary business behavior has clearly angered many Americans.

A 1983 Gallup Poll asked this question: "How much confidence do you, yourself, have in these American institutions? Would you say a great deal, quite a lot, some, very little, or none?"¹ The response to big business: a great deal, quite a lot—28 percent; some—39 percent; very little, none—28 percent; no opinion—5 percent. That 28 percent of the adult population feels very little or no confidence in what is perhaps the key American institution is surely cause for concern, but Congress (25), labor unions (30), and television (33), fared similarly in the little or no confidence category. Fifty-one percent of the sample expressed a great deal or quite a lot of confidence in banks. Only the military (52) and church/organized religion (62) received firmer endorsements. The reasons for generally limited faith in business are, of course, many. For our purposes one line of inquiry is especially meaningful. One study of 1,000 adults in Houston, Texas, found that approximately two thirds of the sample believed large corporations have too much power and that most major industries are controlled by one or two corporations. Of special interest is the finding that those misgivings regarding corporate power are held by a significantly larger number of women than of men. (The reader might fruitfully employ a moment to reflect upon why women apparently are more concerned about corporate power than are men.) Almost 75 percent of the sample felt large corporations are necessary for growth, and less than 35 percent favored "busting up" corporate giants.² A nationwide survey for *U.S. News & World Report* found that 72 percent of those surveyed believed that monopoly is growing in America.³

Concentration of Resources

The survey data suggest and common sense demands that a good deal of the public skepticism regarding big business revolves around that very "bigness." Of course, it is hardly news that some American corporations are of Goliath proportions, but a reminder of the specifics may be useful. For example, the 1985 *Fortune* Industrial 500 shows Exxon at the top of the sales pyramid with 1984 revenues of more than \$90 billion.⁴ General Motors ranked second with more than \$83 billion in sales. GM's assets in 1984 exceeded \$52 billion, and with nearly 750,000 employees, GM was America's leading industrial employer. That employment total is roughly equal to the population of the cities of Baltimore or Indianapolis. These figures assume more meaning when compared with the gross national products of the nations of the world. Based upon World Bank and *Fortune* data, Exxon's 1982 sales of \$97.2 billion ranked it 19th among the world's economic units. GM ranked 28th on that list, with sales of \$60 billion. Thus Exxon placed behind Switzerland (GNP \$108.5 billion) and just ahead of Indonesia (GNP \$89.0 billion). GM's \$60 billion in sales exceeded the gross national products of such nations as Argentina (\$58.9 billion) and Norway (\$58.7 billion).⁵

Size is, of course, suggestive of power, but much more frightening to business critics is the concentration of resources that characterizes the business structure. Professor Samuel Reid summarized the data in the manufacturing and mining sector:

Less than 1 percent of American manufacturers control 88 percent of the industrial assets and receive over 90 percent of the net profits of industrial firms in the American economy. About 100 firms receive a greater share of net profits than the remaining 370,000 corporations, proprietorships, and partnerships engaged in manufacturing. The sales of *Fortune's* 500 Largest Industrials are almost 10 times greater than the "second" 500 largest firms (those ranked 501–1,000). The assets of this second group are also less than one tenth of the 500 largest industrials. Combined, the 1,000 largest industrials, a fraction of a percent of American business firms, employ about 80 percent of the workers in manufacturing and mining.⁶

And the following table from the 1984 *Statistical Abstract* offers a view of industrial concentration over recent decades.

Largest Manufacturing Corporations—Percent Share of Assets Held (1955 to 1982)

Corporation Rank Group	1960	1965	1970	1975	1976	1977	1978	1979	1980	1981	1982
100 largest	46.4	46.5	48.5	45.0	45.4	45.9	45.5	46.1	46.7	46.8	47.7
200 largest	56.3	56.7	60.4	57.5	58.0	58.5	58.3	59.0	59.7	60.0	60.8

Prior to 1970, excludes newspapers. Data prior to 1974 not strictly comparable with later years.

Source: Through 1981, U.S. Federal Trade Commission; thereafter, U.S. Bureau of the Census, unpublished data. As reprinted in the *Statistical Abstract of the U.S., 1984*.

The Corporate State

While it is simply beyond credible dispute that a small number of firms control a disproportionate quantity of commercial resources, very vigorous debate rages regarding the actual concentration levels and trends in recent years. Of course, the controversy regarding corporate power would be meaningless but for the view that corporate power has resulted in harm to the public. Although scholarly opinion as to the issue varies, it is worth noting that a number of studies show a positive relationship between concentration and corporate profits.⁷ Consequently, critics contend that consumers are paying the bill for "excess" profits. (Of course, others argue that higher profits merely reflect superior performance.) But the list of complaints ranges well beyond pure economics. From pollution, discrimination, white-collar crime, invasion of privacy, undue political influence, to misleading advertising, and on across the spectrum of social problems, the critics lay much of the blame on the corporate community.

Many of those issues are addressed in subsequent chapters of this book. But to make the position of the corporate critics clearer, we must now look more closely at a few of the major complaints. The critics contend that the power of the business community has become so encompassing that virtually all dimensions of American life have absorbed elements of the business ethic. Values commonly associated with businesspersons (com-