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FOREWORD

Slightly less than two centuries ago, Adam Smith set out to prove that joint stock companies could not possibly operate successfully because their directors were the managers of other people's money and therefore lacked that "anxious vigilance" for their own property which, he thought, was the mainspring of entrepreneurial incentive. Such corporations had, he observed, "very seldom succeeded without an exclusive privilege, and frequently not succeeded with one."¹ Within a hundred years of this gloomy prophecy, corporations had become the chief instruments of capitalist economic development; and they have retained this position thereafter despite—or, as some would argue, because of—an increasing trend towards the separation of ownership and management. Especially this latter development has made clear that the main reason for the success of the corporate device is not a skillful channelling of the profit motive, but rather the providing of optimum organizational forms for economic activities. The size of the corporation can be fitted to the business at hand, so as to avoid both the "curse of bigness" and dwarfish frustrations; all activities can be devoted to one overall purpose; there is optimum flexibility in the recruiting of suitable leaders; business practices can be kept simple and efficient; and—last but certainly not least—compactness, size, and economic performance provide optimum attractions for large-scale financing.

When in the present century, the industrial nations of the world embarked on service and welfare programs which necessitated substantial activities of government in business, it was widely maintained that the chief characteristics of government organization—monolithic size, rigid personnel policies, cumbersome accounting methods, politically determined and fluctuating objectives—would preclude success in this area. What happened instead was that as soon as government entered into business, business principles entered into government. The basic organizational form of private capitalism, the corporation, provided the model for one of the chief instruments for the economic activities of the service state: the public authority. Even socialist states had to use modified versions of the capitalist business corporation as the basic unit for economic activities. This process of the reception of the corporate device into the realm of public law repeated itself when flexible tools

¹ 2 ADAM SMITH, *WEALTH OF NATIONS* 228-29 (Everyman's ed. 1938).

were needed for the interstate, international, and finally, the "supranational" provision of services, and when the underdeveloped countries sought the technical instruments for the implementation of economic development plans.

The following symposium is intended to describe, both generally and through a detailed analysis of significant examples, experience with public authorities in the United States and abroad.² It is not, however, intended to be merely an itemized success story of the public authority. Principles of government organization and structure which are designed to provide for the uniform and regular exercise of public power for public purposes and under constant public control are discarded only at some cost. The functional approach inherent in the public authority concept can unsettle basic and vital government structures or create grave jurisdictional controversies within the existing framework of government, drastically demonstrated by the *Tobin* case.³ An organism nurtured in the modern industrial service state will not necessarily thrive in underdeveloped countries. Nevertheless, the overall picture which emerges is one of impressive achievement. It is hoped that the analysis of public authorities offered in this symposium will be a modest contribution to the efforts of those who strive to make the performance record of public authorities still more successful.

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²Due to circumstances beyond the Editor's control, the symposium does not include a discussion of public corporations in Great Britain. However, their history and development is thoroughly and conveniently documented. See especially WILLIAM A. ROBSON (ED.), *PUBLIC ENTERPRISE, DEVELOPMENTS IN SOCIAL OWNERSHIP AND CONTROL IN GREAT BRITAIN* (1937); Robson, *The Public Corporation in Britain Today*, 63 HARV. L. REV. 1321 (1950); and WILLIAM A. ROBSON, *NATIONALIZED INDUSTRY AND PUBLIC OWNERSHIP* (1960).

³*United States v. Tobin*, 195 F. Supp. 588 (D.D.C. 1961), currently pending before the Court of Appeals for the District of Columbia. See Celler, *Congress, Compacts, and Interstate Authorities*, *infra*, at 682-702.