

SECURITIES AND
EXCHANGE COMMISSION
LIBRARY.

Speeches 1936-1937

FOR RELEASE UPON DELIVERY.

ADDRESS

of

JAMES M. LANDIS

Chairman, Securities and Exchange Commission

at the

NATIONAL ALUMNI ASSOCIATION MEETING
OF PRINCETON UNIVERSITY

at

NASSAU HALL

Princeton, New Jersey

February 22, 1936 - 11:30 A.M.

42060

In this familiar setting, where memories of the past cannot fail but come crowding in, time tends not so much to turn itself backwards but rather to halt for the moment to enable one to survey something of the road that we have travelled. So few opportunities apart from those that university life itself affords, exist for thought rather than action. To go back and seek meaning and purpose in the things that are done under the ever-pressing need for action, is, of course, the function of the universities. But we in the outside world do it only when some sharp disappointment, some unlooked-for failure, casts into question the whole direction of past effort. Otherwise Emerson's maxim that every man is as lazy as he dare be, holds true.

Some years ago saw such a happening in our national life. The normal course of American life, rudely dislocated by the War, seemed to my generation as it came to manhood to have re-knit itself. Political striving appeared to have become merely the eternal struggle between the ins and the outs, offering little challenge because it seemed to hold no issues. But as we view it now, we recognize the falseness of its calm. Even then, however, the shock of 1929 seemed but a passing phase, a momentary listing that our heavy keel would soon correct. But it continued, so that slowly thought as to our national well-being became the order of the day.

It is, perhaps, worth remembering the new vocabulary of the early thirties. Those to whom economics had always been not merely a dismal but a dreary science, eagerly searched for the meaning of such concepts as "deflation", "trade balances", "downward spirals" and the like. And contrasting with the downward curve of business activity and employment, an upward curve in the demand for knowledge of the economics of our civilization was clearly discernible. We dared no longer be lazy in our thinking.

It is natural under circumstances such as these, when the normal forces fail to rally, to turn toward government for aid, and to make as our major demand the correction of what seemed an abnormal and too frightening condition. Nor under such circumstances are we inclined to insist that government exercise its traditional restraints. But with that call for recovery comes also sober determination to restrain and to prevent a repetition of what has taken place. Both challenges to government are intense, and both must be met.

The philosophically minded will have no difficulty in drawing a parallel between the Socratic doctrine of "know thyself" and the maxim that must guide a democratic government. Wherever authority is self-imposed the need for knowledge is obvious. If it be our ideal that as a nation we can by democratic means control our destinies, then to know ourselves as a nation would seem the first law of government.

In practical operation on the major issues of the past, government generally seemed responsive to the larger popular demands. Railroad regulation, anti-trust regulation, supervision of trade practices, and the like, were the result of a wide national insistence that measures of this type be enacted. As the public mind grew to recognize new types of fraud or to condemn practices seen to be unfair, it demanded their elimination. Government thus replied with its thou-shalt-nots. Yet analysis of most of this type of governmental action in terms of the democratic ideal will show that only a simple expression of national will was needed to bring into being the scheme of administrative control. That expression called for the elimination of a specific and definable cause of conduct or practice. After the recording of that expression through the ballot the first step was to evolve a legislative formula which would define the type of practice sought to be condemned. Then an administrative scheme had to be created to translate into action the statutory formula, faulty or inadequate though it might have been in the first instance. Successive amendments in the light of this experience followed. Thus, unreasonable railroad rates were forbidden, rebates made illegal, certain combinations of business activity banned, utility rates limited upon the basis of a fair return, and innumerable other activities brought within the expanding social conceptions of right and wrong. The details of legislation and administration were difficult, but the general pattern and the method of seeking to control human conduct followed familiar and traditional lines.

For the problems of 1933, however, these familiar methods of governmental action were only partly adequate. True, a backward glance over the past few years developed certain new standards of right and wrong, and the public asked to have these transferred from the field of ethics into law. Something was disclosed as to the inadequacy of the states to cope with the violation of recognized rules of conduct with the result that a coordinate authority over these violations was given to the federal government. Insofar as legislation moved along these lines, no fundamentally new techniques were needed and only the familiar problems were presented to legislator and administrator. Typical of these, for example, is such legislation as the expansion of federal control over interstate crime, interstate bus regulations, holding company regulation, and the expansion of control over radio and the telephone.

The greater and newer problems of 1933, however, concerned not so much the policing of conduct, but involved an effort to correct certain tendencies in the development of our institutions -- tendencies which were so perverse in their implications as to threaten the health of the whole body economic. Instead of seeking merely to control specific and definable types of conduct, the effort of government was partly to affect rational ways of life. To some degree these problems could be handled in the traditional method of prohibiting undesirable practices by statute and evolving administrative mechanisms to make these prohibitions effective. But the greater task lay in evolving ways and means to effect the springs of action, the underlying ways of life, in the hope thereby of evolving a better harmony between the operations of these institutions and the goal of restoring a sound economy. And that task has evoked a new challenge to our faith in the democratic ideal.

Probably nowhere is the difference between these two types of governmental technique more clearly shown than in the recent legislation concerning private finance. National control over the issuance of new securities might have been effected in several ways. The federal government might have been charged with the duty of enforcing certain basic standards with reference to all new securities, such, for example, as limiting the cost of distribution, insistence upon appropriate amortization provisions, requirements for adequate and indestructible voting power, independent and supervised valuation of property for which stock is issued, or control over the contents of trust indentures, to mention only a few of the possibilities. Or even broader supervision of the investment merit of the security might have been conferred upon the federal government or power to gauge from a broad national standpoint the desirability of giving to a particular industry a share of the national capital available for investment. In that way, government might have been charged with the responsibility not only of assuming to guarantee such issues as it permitted to be sold to the public, but of assuming to dictate what channels would be open to private investment.

The method adopted in the Securities Act of 1933, however, was utterly different. It, of course, proscribed fraud, but it did not seek to thrust any responsibility upon government to earmark the good, the bad and the indifferent. Instead it placed upon government the duty to secure a measure of disclosure in the hope that an informed public would have both the ability and independence to guide the direction of its national savings. It did not strike at the inalienable right of the private investor to make a fool of himself. He was still free to choose, if he wanted them, speculative mining shares, participations in race tracks, and other speculative enterprises. The hope is, that in the light of knowledge, investment can most profitably be still a matter of private choice.

As an effort to preserve and make effective an economic institution by a practical application of the Socratic maxim "know thyself," the principle of legislation built along these lines deserves study. If ultimately it fails, too much that we hold vital in our national tradition fails. Some excuse for our past failure effectively to siphon our national savings into productive enterprise could be predicated upon an ignorance due to inability to get at the facts. But to fail in the light of knowledge may postpone until too remote a time the achievement of that independence of investment that we now seek.

For the success of such a scheme as this, mere sporadic exhibitions of national consciousness and desire are here wholly insufficient. Instead this consciousness must function continuously, cautiously and with discernment in order not to destroy the very institution that has been placed in its hands.

It was equally inevitable that one of the tasks of the new administration would revolve about the regulation of stock exchanges as an institution of our financial life. Two great problems were here involved. The first was the elimination of unfair methods of dealing. The second and greater problem was that of curbing excessive speculation.

The technique of dealing with the first problem, that of eliminating manipulative practices, followed traditional lines. Formulae to carry into effect the newer conceptions of good and bad were devised and mechanism to restrain and punish violations provided. True, new subsidiary techniques

had and still have to be brought into existence to delimit the allowable areas of conduct and to make infractions of the rules easy of detection. But from the standpoint of pure theory, the line of attack on this problem followed customary procedures.

It is in the second problem - that of curbing excessive speculation - that departures from the traditional lines of governmental action were called for. Obviously, the very concept of such a curb is one that is bound up with time and place and is measurable only in those terms. And obviously mere superficial analysis of the problem will illustrate that differentiation between types of conduct is not the solution, for here again a way of life is being affected and the measures of control must deal with deep springs of human action.

The means granted by the Exchange Act to cope with the recurrence of that danger are worth illustrating. In the first place, it is obvious that the outlawing of manipulative practices has its reaction on undue speculation because, frequently, the purpose of these practices is to induce the very type of speculation that feeds the manipulator at the expense of the public. A second device consists in a grant of power to government to make something in the nature of a flank attack upon speculation through its control over the quantity and nature of credit that may be used to purchase or carry securities. This control over speculative credit extends not only to the regulation of margins or permissible loan values on securities, but also to the restriction of the sources from which credit for these purposes may flow. Such a device, of course, as a check upon excessive speculation will operate effectively only where that speculation springs from the ability freely to employ such funds.

Other partial means exist which are available to effect certain aspects of this problem. Such, for example, is the power to restrict or indeed to prohibit floor trading and specialist trading for his own account. These, however, can only affect such excessive speculation as may arise from these causes.

That undue speculation has sources for its origin more widespread and more persuasive than these is undoubted. It may and frequently does spring from cupidity subtly disguised under the cloak of investment. To strip that disguise and to bring home to those who participate in it the real character of this type of buying and selling as mere crass speculation that has no regard to values is yet another task. To accomplish it, bases for a theory of investment values as contrasted with a theory of speculation must be continuously set forth. To that end the legislation granted a third and most important means for struggling with this problem of excessive speculation. This is the machinery and duty of making available to the public illuminating and somewhat continuing information to which it may refer in an effort to reach a judgment on values as to the securities that are traded upon exchanges. I speak designedly of this as a method for dealing with excessive speculation, for, obviously, it is the very availability of such information that distinguishes an investment market from one in which prices have no relation to profits, one that reflects only the hope of passing on to another at a higher price what may originally have been dearly bought.

This third method, which rests avowedly upon the democratic ideal, has all the strength and weakness of that ideal. Like that ideal it bases itself upon a hope - the hope that through the dissemination of knowledge some ability to buy and sell with reference to values will tend to keep a nation from wanting to drink the heady wine of excessive speculation. But its weakness is that very faith. Men whose experience, unlike mine, has been that of yearly and intimate contact with the downtown board room regard it as little more than visionary. Their cynicism in the purchase of securities is so deeply rooted that this effort to try to induce people to buy and sell on the basis of balance sheet rather than ticker tape seems worse than futile.

Some tinge of that cynicism tends necessarily to touch those who are close to the scene. The often still prevalent conduct of customers' men to encourage activity by irresponsible talk, sometimes merely for the sake of activity, has to be met by the effort to educate their customers away from such insinuations to speculate. One sees with concern the efforts of traders to out-guess events, like Court decisions and the increasing tendency subtly generated to induce people to pour their savings into the market with the same heedlessness as before. Still too prevalent, as our monthly reports show, is the tendency of officers and directors to toy with the stock of their corporations at the expense of their true responsibility of functioning as executives.

These things are the ways of life that we condemned in the early thirties. But to harry them out of existence by legislative fiat is impossible. Our only mechanism is to induce change by inculcating the wish for change and by affording the means of knowledge to effectuate that change.

It may be that we shall fail, and the prophesy of my cynical friend of the board room that we will continue to be a nation of gamblers may come true. But what we can do is to afford the public mind the opportunity to reject that way of life, and upon the basis of such a rejection to remodel our financial institutions to make them responsive to the demands for investment rather than mere speculation.

The weakness of such a means of governmental control must be obvious to any one in university life. No teacher worthy of his salt has not been filled with pessimism over his own inability to portray a problem and the unwillingness of a class to indulge in the intellectual effort necessary to grasp it. The same pessimism is intrinsic to the government. But both carry on - the first in the blind faith that the increase of knowledge may somehow make for happiness - the second in its blind democratic faith that through knowledge realization of the Benthamite ideal will become more possible of achievement. True, both have their draughts of pessimism, but to neither can pessimism be more than a passing phase. Were we to admit it as more than such, the very essence of both institutions would be at an end.

The significance of a commonplace truth, such as this, increases proportionately as the efforts of government move away from police regulation to the task of fashioning our institutional life so that it will effectuate rather than destroy our simple demands for well-being. In such a field, not only does the challenge lie to devise instrumentalities of government, but in making them the means to understand and thereby to control the directions of national life. In meeting that challenge universities and government are, of course one - one not only in the direction of their effort but in their hypothesis of a faith - faith in the capability to know and through knowing to achieve. It is, of course, a faith that calls for expression in terms not of dubito ergo sum but in terms of cognito ergo ero.

---oOo---