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Henry Winthrop Ballantine

George S. Hills

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First met Professor Ballantine in his study at Berkeley in the year 1927. My visit lasted about an hour and then I had the interesting experience of attending his class on corporation law. From that day to within a few weeks of his death we corresponded on subjects of mutual interest in the related fields of corporation law and corporate accounting. I rarely saw him in person but I collaborated in many phases of his work and served him as copy reader, contributor and co-author, and from time to time as critic. My knowledge of Professor Ballantine may be said to have been gained almost wholly through professional and academic pursuits. I relate this background so that the reader will obtain a proper focus of the impressions which I wish to express.

Professor Ballantine was admitted to the California Bar and became a lecturer at law in 1904 at Berkeley. He started writing for legal publications in 1908 and during his lifetime contributed 57 law review articles on a variety of subjects, 28 book reviews and 15 books on corporation law, contracts and law school problems. He also revised and abridged Blackstone's Commentaries and edited a handbook of common-law pleading. In some of his work he was assisted by associates and friends, and to them he always gave liberal recognition; but the burden of format and text was always assumed by him as his own prime responsibility.

As might be expected, his early writings were on subjects quite different from the law of corporations which finally attracted his entire attention. Two titles of 1913 testify to his inquisitive mind: "Is the Doctrine of Consideration Senseless and Illogical?" and "Our Grotesque Inheritance Laws." His first publication in 1908 was an article on adapting the casebook to the needs of professional training. Then followed through the years articles on evidence, criminal law, inheritance, adverse possession, partnership, and several on martial and military law. It has been observed that the basic concepts of modern corporation management have a similarity with military procedure and it may not be idle to reflect that his study of military law may have influenced him in his final selection of corporation law as his principal endeavor.

Ballantine’s interest in corporation law took root in the early twenties.

* Member of the New York Bar.
From 1923 onward he published many articles covering a wide range of corporate subjects which can be grouped under three general headings. First, an exposé of the ills then prevalent in corporate activities, including an article on the use and abuse of non par shares and one entitled “Ripley’s Indictment of Corporate Skullduggery.” Second, an approach to legislative revision of prevailing antiquated general corporation laws. And third, a series of technical writings on the structure and function of the corporate body. His progressive shift in emphasis from reformation to legislation and then to structural design can be noted in the chronology of his various articles.

This evolutionary shift is understandable in the climate of the times. Corporations had become the favorite vehicles of private enterprise and had developed a tendency to abuse others from behind the corporate veil. This was reflected in the litigation on corporate matters, which dealt chiefly with such issues as watered stock, promoters’ profits, ultra vires acts, directors’ liability, and various tactical remedies. Little thought was given to the prosaic subject of corporate structure or to its influence on corporate conduct until Ballantine began to relate the two.

The Sixteenth Amendment, adopted in 1913, had marked the beginning of a new era in business management and corporate accounting. Congress was empowered for the first time to lay and collect taxes on incomes from whatever sources derived. The first income tax law reflected simple thinking in that it determined income solely on the basis of receipts and disbursements. Then it became apparent that the complexities of business could not be adequately reflected on a cash basis, and the law was amended to permit use of an accrual method. The new era in corporate accounting grew rapidly under the burden of the excess profits taxes imposed during the first world war and developed into a distinct branch of the law in the years to follow.

Professor Ballantine recognized in these times the birth of two new but essential concepts of corporation law—financial accountability conforming to a true appreciation of the distinction between capital and income, and social responsibility illuminated by certain corporate abuses which had been charged with partial responsibility for the stock market crash of 1929. He threw the entire weight of his experience and massive energy into the task of creating a modern corporate structure attuned to a recognition that business and finance could not enjoy the confidence of public stockholders and of the state unless the vehicle of its activities was structurally sound in principle and adequately counterbalanced to guard against intra-corporate abuse. He devoted all of his attention to the law of corporations and supplemented his law review studies by publishing three authoritative textbooks in his chosen field.

Ballantine on Corporations first appeared in 1927 and was followed in 1930 by Ballantine’s Manual of Corporate Law and Practice. A revised edition of Corporations was published in 1946. These works were essentially of the same cast, the latter two being improvements of previous work to record changes in legal concepts and to cover additional subjects requiring
the attention of students and practitioners. As single volumes on a subject of such breadth, they will always be acknowledged as standard authority. While not intended to supersede elaborate encyclopedias, they were designed to assist lawyers who sought light in the solution of difficult and doubtful problems, not merely by finding cases in point, but also by utilizing fundamental principles and reasons. Shortly before his death, Professor Ballantine wrote me that he and Professors Lattin and Jennings were making good progress on the second edition of their casebook on corporations.

He acquired and developed an interest in legislation and became draftsman of the Committee of the State Bar of California on revision of corporation laws. This tedious and exacting duty was accepted with grace and performed with distinction. As a companion task he undertook to annotate the statute, identify its roots, and explain to the profession those considerations which had been taken into account during drafting sessions. *Ballantine on California Corporation Laws* was first published in 1932 and became the standard work in that state. As supplemented in 1933 and 1936, and revised in 1938 and 1949 with Graham L. Sterling, Jr., it still maintains its prestige among treatises on state corporation laws.

Professor Ballantine's concept of statutory enactments was alive and refreshing. In his preface to the 1949 edition he remarked that "it is important not to be provincial, but to understand a statute in the background of the problems dealt with in modern corporation laws . . . . The lawyer must be prepared to adjust himself to the fact that the California statutes have not been borrowed or copied slavishly from pre-existing acts of some other states but have been worked out by the draftsmen and by the Corporation Committee of the State Bar who have had the courage to take what is believed to be an advanced and leading position on a number of questions which have given much trouble in other corporation acts."

His concept of the corporation as displayed in his textbooks was quite different from that of earlier and contemporary writers. To the general rules of corporate conduct, which are an essential part of any treatise on corporations, he added chapters on structure and on corporate accounting. The 1930 *Manual of Corporation Law and Practice* included a discussion of financial statements and their interpretation, contributed by Professor Henry Rand Hatfield, a recognized authority on accounting who in later years became the dean of his profession. That was a novel subject for a book on corporation law, and one with which few lawyers were familiar. Although it was then recognized that the provinces of the financial lawyer and of the accountant were being drawn closer together and that a familiarity with financial statements was essential in the management, financing and recapitalization of business, no serious attempt had been made to indoctrinate the student of law into the art of the other profession.

The teaching of accounting as a required subject in law schools is the hope of every lawyer who has an extensive business practice. He always finds a need for accounting familiarity among both his associates and his adversaries. A knowledge of accounting is as fundamental as a knowledge of the corporate structure itself, and far more useful in daily routine than
a ready familiarity with the offensive and defensive tactics which deal with
the righting of corporate wrongs. Several law schools now include account-
ing courses in their curriculum. That is a healthy indication of the accept-
ance by teachers of law of the corporate practitioner’s experience that
students must also learn something about the housekeeping of the corporate
home.

What I call structure was to Professor Ballantine the “corporate mech-
anism, a vital instrumentality in modern business.” He again recognized
that it was incumbent upon the legal draftsman to acquire a working knowl-
edge and appreciation of those fundamental tenets of accounting which are
necessary within corporation law, and to give them legislative expression
in the law itself. One matter of structure—the proper treatment of treasury
stock—led to a conflict with the accounting profession and then to legis-
lative remedies.

Corporation law from its inception had recognized the distinction be-
tween capital and income, in statutes prohibiting the impairment of capital
by the payment of dividends or the purchase of shares. Yet there existed a
convention or custom of accountants to carry treasury shares on the bal-
ance sheet as an asset or as a deduction from stated capital. Both practices
had the legal effect of vitiating the reduction of surplus incident to a pur-
chase of shares. Professor Ballantine recognized this illegality which he
characterized as “the curious fiction of treasury shares” and by the clarity
of his views and the force of his arguments he brought about a change in
this accounting practice. Now the “curious fiction” has been replaced by a
semblance of accounting reality which also has the merit of meeting legal
requirements. Several state corporation laws expressly prohibit the prac-
tices to which he objected.

Although his interest in structure exceeded that of most teachers and
writers, I do not want to give the impression that he was interested in bare
structure alone. His structural improvements were designed to facilitate
the orderly conduct of business, with regard for the many diverse and con-
flicting interests which make a collective enterprise. He often turned his
attention to the fiduciary principles which developed during the passage
of the control of business enterprises from the family to the public. And he
endeavored to bring reality to the whole of corporation law by making it
understandable and workable, equitable and lasting.

To Professor Ballantine corporation law presented “some of the most
vital and intricate problems of the mechanism of modern business enter-
prise.” There is, he said, “perhaps no field in which it has been more dif-
ficult to cut through the trite dogmas, formulas, metaphors and legal fic-
tions to the fundamental realities and policies of the law, as in the outmoded
document of ultra vires.”

To the end that such evidence of darkness be replaced by the clarity of
light, Professor Ballantine devoted forty-seven years of professional atten-
tion. He will long be remembered by his students and his friends, and in
no lesser degree by those who knew him only from the distance and were
unable to share the warmth of his presence.