Henry W. Ballantine

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On the occasion of his official retirement as John H. Boalt Professor of Law, Henry W. Ballantine will merely end one phase of his long, varied and constructive career in the Law. It is reasonably safe to predict that he will fruitfully extend his dedicated services to the Law as long as he lives.

His writings, especially in his major chosen field, constitute a real contribution to our American jurisprudence. His reputation as a legal author, as demonstrated by the increasingly frequent reference to his works in federal and state appellate court opinions, law reviews, and other legal periodicals, is too well established nationally to need more than passing mention.

Professor Ballantine also rightfully occupies a high place on the roster of eminent American law teachers of our generation. It was never my privilege to be one of his law students, but I gratefully acknowledge—as I am sure countless others of my contemporaries in like situation do also—that since shortly after I entered practice, he has been one of my helpful preceptors.

This short article will not attempt to deal with Professor Ballantine's career as an outstanding law teacher, scholar, and author of national repute, but will confine itself principally to a brief discussion of his role as the architect and chief builder of our modern California corporation laws.

The Law, it has been frequently charged by some of its many critics, is a sterile and non-creative profession. It is true that its works are not as spectacular as those of the architect, the engineer, or the bridge builder, because it deals in abstractions. But despite the fact that it erects no physical edifices, the Law has its constructive side, even below the high level of legal philosophy. Trusts, negotiable instruments, trust indentures, and the corporation—to mention only a

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few—are the creations of lawyers. They are as vitally essential to our modern way of life as the streamliner, the automobile, or the airplane. Most of the great creations of the law, like the medieval cathedrals, were slowly evolved by a host of anonymous workers over a period of generations. The contribution made by any one individual is rarely identifiable. But it is different in the case of Professor Ballantine. His constructive contribution to the rebuilding of our modern California corporation laws is quite readily identifiable.

Our corporation laws, as they existed prior to 1929, badly needed to be restated. Although California had then become an important commercial state, and was rapidly assuming an increasingly greater place in our national economy, its corporation laws were archaic, hopelessly inadequate, and full of burdensome restrictions and obscure ambiguities—many of which were embedded in our constitution, which reflected an obvious hostility to corporations in general. A former leader of the San Francisco Bar caustically characterized them as “a crude tool of an agrarian society, designed chiefly to foster irrigation and mining corporations, and to penalize all other kinds.” As a consequence, a great number of our California enterprises sought their corporate homes in exile under the more favorable laws of certain of our sister states. Largely because of this historic accident, many of our large industrial businesses are still foreign corporations.

Today, two short decades later, we only dimly remember how grossly defective our corporation laws were prior to 1929. Many of our corporate enterprises have returned home from exile. Today there is no real advantage in incorporating a business elsewhere if its actual commercial domiciles is in California.

Professor Ballantine first addressed himself to the task of completely revising our corporation laws around 1927, when he was appointed draftsman of the Committee of the State Bar of California on Revision of the Corporation Laws. This Committee worked during 1928 and 1929, but was not able to complete its labors in time for the 1929 session of the legislature, and did not officially propose any amendments to that session. Nevertheless, Professor Ballantine and certain members of the Committee, on their own initiative, with commendable cooperation from the office of the Secretary of State, were able to obtain the passage of Chapters 711 and 712, California Statutes, 1929, which made extensive changes in the various Civil Code sections both with respect to domestic and foreign corporations. This action, together with the publication, in the Summer of 1929, of Pro-
fessor Ballantine's booklet on *California Corporation Amendments* (1929), were of great help in paving the way for the larger results that were achieved in 1931.

Although the work could not have been done without the sponsorship of the State Bar and without the aid of the most active members of the Committee—the Southern section of which was particularly helpful—nevertheless, it is generally recognized that Professor Ballantine is chiefly responsible for the general revision.

I first became personally acquainted with Professor Ballantine approximately twenty years ago when I served for a time on the Committee, until forced to retire by reason of ill health. Amongst the group comprising the Committee were men of sharply divergent viewpoints. Because of the wide field of business law covered and the numerous conflicting interests involved, the overhauling of our corporation laws, including the constitutional amendments of 1930, and the drafting of the General Corporation Law of 1931 and its subsequent refinements, could have easily become a matter of bitter controversy and stubborn collision, had it not been for the presiding, persuasive and quiet, diplomatic authority of Professor Ballantine. His integrity, his great tolerance and innate modesty, his hard-headed common sense and wide practical experience, were just as essential to his task as the painstaking care and thoroughness with which he applied his accumulated lifelong learning and scholarship. No mere academician would have been equal to the task.

In rebuilding the California corporation laws, Professor Ballantine, in his own modest way, was as thorough and sweeping, and cleanly surgical, as Baron Hausmann was in his work of modernizing and beautifying Paris under Napoleon III, when, almost miraculously, he caused old blighted areas, tortuous alleys and streets to disappear, "leaving not a rack behind," and giving way to broad, illuminated, and easily travelled avenues and boulevards.

The principal changes effected, under the guidance of Professor Ballantine, by the 1930 constitutional amendments and the adoption of the General Corporation Law of 1931, are too well known to California lawyers to need any detailed recital here. Some of the main ones are merely noted. The unique California constitutional and statutory stockholders proportionate liability was abolished. For the first time, stockholders obtained full insulation of liability, which is the primary reason for choosing the corporate form of doing business. The harsh vicarious constitutional liability of directors for embezzlements of
officers was also repealed. The cumbersome provisions requiring approval of the holders of two-thirds of the outstanding stock for increase of stock and bonded indebtedness, and even requiring stockholder approval for the creation of bonded indebtedness, were abolished. Perpetual corporate existence was provided, and so-called "mixed corporate structures," and limitation of the voting rights of preferred shares, were permitted. The confused concept of "Capital Stock" with its various meanings was clarified and transformed into the terminology of Legal Capital. The provisions and procedure for reduction of legal capital and distribution of reduction surplus constitute another major contribution. Limitations on dividends and on repurchases of shares were carefully provided. The pure mechanics of our corporation laws were vastly improved, both by abolishing useless requirements, and by simplifying all procedure, including original incorporation, the adoption and amendment of by-laws, and the amendment of articles of incorporation. At the same time great care was used to protect preferred shareholders against unfair treatment or oppression. The requirements that incorporators be California residents, and that directors be shareholders, were abolished. Statutory mergers and consolidations were provided for and a right of appraisal was given to dissenting shareholders. Our general corporation law was improved in many other ways. Also for the first time we were given a modern, intelligible, and workable General Non-profit Corporation Law.

All refinements of our corporation laws since 1931 have been, to a large extent, under the guidance of Professor Ballantine. He also acted as advisor in the drafting of the Corporations Code (1947), which marks an important point in the history of the evolution of our California corporation laws, and, in large measure, brings them to a definitive stage, even though a few minor gaps remain to be closed. As a result, California today has a Corporations Code that compares favorably in all respects with the corporation laws of any of our sister states, and is rightfully regarded by many commentators as an outstanding model.

Beneath Professor Ballantine's quiet demeanor and serenity, there abounds a great amount of directional energy, as evidenced by his various activities, and the volume of his writings. No matter the degree of provocation, I have never seen him harassed or angry. He could well say of himself what Montaigne—who was also a lawyer of parts—said in his Autobiography: "I am virgin of quarrels too. Soon
I shall have passed a long life without having given or received an offense of any moment, and without ever myself called a worse name than my own—a rare grace of heaven!"

Professor Ballantine would be the first to disclaim that he had created any new school of legal philosophy or that he had exerted any perceptible influence on theoretical jurisprudence. He clearly is not a disciple of the so-called "modern" cult that glorifies uncertainty in the law and seemingly reverts to the theory of Solon, who was "obscure and ambiguous in the wordings of his laws, on purpose to increase the honor of his courts" and thereby make the judges in a manner masters of the laws. Professor Ballantine always strives for clarity, conciseness, and certainty. His work is down-to-earth, practical and realistic. Significantly, for a professor, he has manifested a great interest in the problems of corporate practice and procedure. His writings are all closely related to life, and he apparently believes that laws should be fitted to the state of things and not things made to suit the laws.

Although full tribute should be gratefully accorded to the pure theorists of the Law, it must also be recognized that technicians are as necessary in the Law as those who seek the large generalization. "They also serve" who fashion efficient tools for the everyday tasks of practising lawyers. Professor Ballantine's various works in the field of corporation law and corporate practice have been of great assistance to them. His *California Corporation Laws* is highly authoritative since it is, in effect, a gloss on his own work as draftsman of our corporation law, and is indispensable for any one who deals with problems involving our corporation laws. It is safe to assert that this volume alone has saved California lawyers thousands of tedious hours of drudgery.

Our modern California corporation laws demonstrate Professor Ballantine's skilled craftsmanship. Although there was some early criticism, chiefly on the ground that they were permeated with too much accountancy, it is now generally conceded that the text is clear, concise, and readily intelligible. There has been surprisingly little litigation or even controversy over his revision, despite the sweeping changes he wrought. This is a striking illustration of the extreme importance of excellent craftsmanship in the drafting of major legislation. In sharp contrast, our Corporate Securities Act, which as originally enacted was a monstrosity of draftsmanship, and which has a far smaller ambit than that of our general corporation laws, has
spawned endless litigation and still keeps the Bar and our courts somewhat befogged.

The Bar of California and its people generally owe a great lasting debt of gratitude to Professor Ballantine for his skillful revision and modernization of our corporation laws. He has given us a workable instrument, highly adaptable to our infinite modern business needs, which at the same time strikes a sound balance between flexibility and liberty of management on the one hand, and a safeguard and protection against corporate abuses and oppression on the other.

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