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ROBERT SPROULE STEVENS: HIS INFLUENCE ON CORPORATION LAW

Harry G. Henn†

Robert Sproule Stevens joined the Cornell Law Faculty in September 1919, without any apparent predilection toward corporation law. At the Harvard Law School, Class of 1913, he had taken the usual one-year, three-hour-per-week corporation law course under Professor Edward H. ["Bull"] Warren, "an ardent upholder of the classical theory that a corporation is a fictitious entity."¹

During his first years as a lecturer-in-law, Mr. Stevens taught three courses, totaling nine hours each week, all obviously new for a novice teacher. Before him, such Cornell "names" as there were—and there were many distinguished ones²—were not in corporations. With him, began a tradition that the Cornell corporation law teachers not only taught, hopefully well, but also engaged in substantial research, writing, and statutory revision.³

Through the years, Professor Stevens rose to the top of American corporation law teachers, sharing the position with Professor Henry Winthrop Ballantine, of the University of California, Berkeley, until the latter's death in 1951. Professors Stevens' and Ballantine's careers were remarkably parallel. Both attended Harvard College, with Stevens continuing at the Harvard Law School and Ballantine attending Marietta

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¹ Stevens, Book Review, 4 J. Legal Ed. 501-02 (1952) (review of Dodd & Baker, *Cases on Corporations* (2d ed. 1951)). Professor Edwin Merrick Dodd was a college and law school classmate of Dean Stevens. See Stevens, Book Review, 40 Cornell L.Q. 631 (1955) (review of Dodd, *American Business Corporations Until 1860, With Special Reference to Massachusetts* (1954)). Traits of "originality, laborious analysis, fearless reasoning and precise expression" were attributed to Warren, Stevens, Book Review, 14 Cornell L.Q. 511-12 (1929) (review of Warren, *Corporate Advantages Without Incorporation* (1929) which disapproved the affording of corporate advantages without incorporation).

² See Woodruff, "History of the Cornell Law School," 4 Cornell L.Q. 91 (1919); Henn, "The Cornell Law School—Its History and Traditions," 37 N.Y.S.B.J. 139 (1965).

³ Professor George Thomas Washington (1938-1942) wrote the definitive work on executive compensation, now in its third edition, *Compensating the Corporate Executive* (with V. Henry Rothschild 2nd, 1962) (2 vols.); *Indemnifying the Corporate Executive* (with Joseph Warren Bishop, Jr., 1963). His successor, Professor Arthur Larson (1945-1953), was coeditor with Dean Stevens of *Cases on Corporations* (1947) and wrote the leading text, *The Law of Workmen's Compensation* (1952) (2 vols.).

[Addendum by Editors: Professor Harry G. Henn (1953-) has served as drafting consultant of the New York Business Corporation Law and as consultant for the American Bar Foundation in the compilation of *Model Business Corporation Act Annotated* (1960) (Supp. 1964) (3 vols.), wrote the hornbook, *Corporations and Other Business Enterprises* (1961), and coedited with Dean Stevens the third edition of the latter's casebook. Professor Robert S. Pasley (1954-) has served as consultant in connection with the proposed New York Non-Profit Corporation Act. Associate Professor David L. Ratner (1964-) is participating in the revision of White, *New York Corporations* (12th ed. Clark 1947, vol. 7 Slutsky 1953).]

College of Law. Early in their legal careers, each began teaching. Each wrote a classic one-volume student text on corporation law which went through two editions.⁴ Each coedited a leading corporations casebook which continued into three editions.⁵ Both were prolific contributors to legal periodicals. Both were leading draftsmen of their respective state corporate statutes, Ballantine of the California General Corporation Law⁶ and Stevens of the New York Business Corporation Law.⁷ Each capped his academic career by becoming Dean of his Faculty of Law.

In 1921, the law review contributions by Professor Stevens began. In one of his earliest articles, Professor Stevens combined his two major interests, corporation law and equity, in an article on business trusts.⁸

The article was a profound investigation of the business trust, then growing in popularity as a form of business enterprise to avoid some of the restrictions and regulations applicable to corporations. The article demonstrated that limited liability with respect to claims of third parties could be achieved (1) for the beneficiaries, in tort or contract, by an express provision negating the trustees' implied right of indemnification against them (assertable against them either directly by the trustees or derivatively through the trustees by a third party), and (2) for the trustees, in contract, by contractual stipulations between the trustees and third party and, in tort, by insurance. Professor Stevens thus underscored the idea that limited liability, although accomplished by statute for the corporation, was also attainable in the absence of a statute. This seed of the idea that differences between incorporated and unincorporated business enterprises should not depend on the notion that a corporation is a law-created fictitious person was to flower in his later writings.⁹

⁴ Ballantine, *Corporations* (1927), reviewed in Stevens, *Book Review*, 13 *Cornell L.Q.* 494 (1928); Stevens, *Private Corporations* (1936), reviewed in Ballantine, *Book Review*, 26 *Calif. L. Rev.* 166 (1937). See text accompanying notes 34-42, 44 *infra*.

⁵ Ballantine & Lattin, *Cases on Corporations* (1939), reviewed in Stevens, *Book Review*, 7 *U. Chi. L. Rev.* 193 (1939); Stevens & Larson, *Cases on Corporations* (1947). See text accompanying notes 43, 45-48, 60-61 *infra*.

⁶ *Cal. Sess. Laws* 1931, ch. 862; *Cal. Sess. Laws* 1947, chs. 1038, 1232.

⁷ See note 49 *infra*, and text accompanying notes 50-59 *infra*.

⁸ Stevens, "Limited Liability in Business Trusts," 7 *Cornell L.Q.* 116 (1922).

⁹ In urging limited liability for business trusts, *supra* note 8, a corporate characteristic—limited liability—was being urged for an unincorporated group. The corollary was for noncorporate characteristics—freedom from corporate "statutory norms"—to be allowed in corporations, especially close corporations. See note 50 *infra*.

See Stevens, *Book Review*, 16 *Cornell L.Q.* 439-40 (1931) (review of Hallis, *Corporate Personality: A Study in Jurisprudence* (1930)):

To Dr. Hallis, law is the product of actual forces and ideal considerations. It is a special interpretation of social life, and must be fashioned in accordance with the inherent character of that life. Law cannot recognize personality where there is not life; it can recognize as persons only responsible beings. The corporate person cannot be something apart from its living members; it is not the result of the creative act of the state, for it has its foundation in social fact and its origin in the initiative of its living members.

See also Stevens, *Book Review*, 35 *N.Y.U.L. Rev.* 1223, 1228 (1960) (review of Hornstein,

The ultra vires doctrine early captured Professor Stevens' imagination, which culminated in two law review articles¹⁰ and statutory provisions clarifying the doctrine.¹¹

Recognizing that the problem was one resulting from implied legislative intention, Professor Stevens concluded that legislation was necessary for its solution, preferably through The National Conference of Commissioners on Uniform State Laws. He distinguished illegality, capacity, and authority, stating: "The incorporated group, like the individual human being, or an unincorporated group, has the capacity to do an unauthorized or even an illegal act."¹² The legislation which he proposed, introducing it into the ninth draft of the Uniform Business Corporation Act, eliminated the doctrine that business corporations had limited capacity¹³ and the doctrine that persons are charged with constructive notice of the purposes and powers set forth in articles of incorporation filed in a public office.¹⁴ The result was to make enforceable ultra vires contracts whether wholly executory or partially executed, in the absence of illegality.

Most states have since enacted ultra vires statutes patterned after the Uniform Act and the statutes modeled after it.¹⁵ While the statutory formulations vary, most of them achieve the result urged by Professor Stevens. Hence a problem which had long plagued corporation law ceased to exist for all practical purposes.¹⁶

Professor Stevens' emerging views on corporate personality helped to shape his approach to the ultra vires problem, which in turn aided in redefining those views. Already he had begun debunking the fictitious

Corporation Law and Practice (1959) ("The Concept of Corporateness"); text accompanying notes 17-18, 20, 36-37 *infra*.

¹⁰ Stevens, "A Proposal as to the Codification and Restatement of the Ultra Vires Doctrine," 36 *Yale L.J.* 297 (1927); Stevens, "Ultra Vires Transactions Under the New Ohio General Corporation Act," 4 *U. Cinc. L. Rev.* 419 (1930).

¹¹ *Unif. Bus. Corp. Act* §§ 10-11. See text accompanying note 25 *infra*.

¹² Stevens, "A Proposal as to the Codification and Restatement of the Ultra Vires Doctrine," 36 *Yale L.J.* 297, 299 (1927).

¹³ *Unif. Bus. Corp. Act* § 11, reprinted in text accompanying note 25 *infra*.

¹⁴ *Unif. Bus. Corp. Act* § 10, reprinted in text accompanying note 25 *infra*.

¹⁵ The Ohio General Corporation Law was being revised by the Committee on Corporation Law of the Ohio State Bar Association, under the chairmanship of Edwin J. Marshall, LL.B. 1894, Cornell University, during the same years when the Uniform Act was being drafted. Both statutes had statutory ultra vires provisions. Stevens and Marshall were in constant communication regarding their respective assignments. See also ABA-ALI Model Bus. Corp. Act § 6, adopted in some twenty states and the District of Columbia. Comparable statutes have been enacted in some fifteen states and Puerto Rico. 1 *Model Business Corporation Act Annotated* § 6 (Supp. 1964).

¹⁶ As evidenced by decreased emphasis on the ultra vires doctrine in texts and casebooks. Compare Brice, *The Doctrine of Ultra Vires: An Investigation of the Principles Which Limit the Capacities, Powers, and Liabilities of Corporations, and More Especially of Joint Stock Companies* (1875); *id.* (2d ed. 1877); *id.* (3d ed. 1895) (893 pp.); Street, *The Doctrine of Ultra Vires: Being an Investigation of the Principles Which Limit the Powers and Liabilities of Corporations, Quasi-Corporate Bodies and Non-Sovereign Legislatures* (1930) (591 pp.).

entity-concession theories that a corporation is an artificial legal person created by the sovereign. He urged a "realistic" approach:

Corporate personality should signify a peculiar legal, not physical, capacity of certain human beings, who have associated themselves in the corporate form. The personality of the incorporated group is no more fictitious or law-created than is the legal personality of the adult man. "Corporate personality" does not indicate a being without physical existence, but a convenient conception predicated upon a group of human beings, who have associated under the corporation laws, and different in legal significance from the personality predicated by law upon the single human being. The solution of ultra vires problems is then seen to depend not upon the physical incapacity of an incorporeal spectre, but upon a balancing of considerations as to the propriety and justness of attributing to the associates, as a unit, legal consequences based upon their actual mental states and physical conduct in ultra vires transactions, or upon the conduct of agents who have assumed to act for the unit ultra vires.¹⁷

Recurring throughout his later teaching and writings is this consistent emphasis on the "realistic" approach.¹⁸

The statutory treatment of shares, a subject then relevant in connection with the drafting of the Uniform Business Corporation Act, was analyzed in another law review article.¹⁹ The suggestions were a substantial improvement over the financial provisions then existing in most corporate statutes, and much of the language of these suggestions is reiterated in modern statutes. The requirement that a description and valuation of the consideration received in payment of shares be filed in a public office, however, was not widely adopted. In discussing shareholders' limited liability, Professor Stevens criticized the traditional concept that corporate obligations were incurred not by the shareholders but by a legal unit distinct from them, contending: "The same conclusion may be reached by regarding corporate obligations as the obligations of the incorporated associates who have been given, not an exemption from, but a limitation of liability."²⁰

In the early 1930's, federal incorporation of corporations engaged in interstate commerce was urged in several quarters.²¹ As an alternative

¹⁷ Stevens, "Ultra Vires Transactions under the New Ohio General Corporation Act," 4 U. Cinc. L. Rev. 419, 432-33 (1930).

¹⁸ See note 9 supra.

¹⁹ Stevens, "Stock Issues under the Uniform Business Corporation Act," 13 Cornell L.Q. 399 (1928).

²⁰ *Ibid.*

²¹ In 1934, Professor Stevens was appointed a special assistant attorney general to prepare for the United States Department of Justice a study and report on the feasibility of a federal incorporation statute. The concept of "interstate commerce" had not then the broadened interpretation that it was to receive in the immediately ensuing years. Stevens' article, *infra* note 22, followed the preparation of that report. Federal incorporation was not a novel idea. It had been proposed at the Constitutional Convention of 1787. See Huffcut, "Constitutional Aspects of the Federal Control of Corporations," 34

and more satisfactory method of encouraging uniform corporation statutes, Professor Stevens suggested the interesting possibility of an interstate compact implemented by supplementary federal legislation appropriate to make the interstate compact effective.²² The implementing federal legislation, he wrote, might be either (1) a non-compulsory federal incorporation statute and a second federal statute empowering the states to exclude from the privilege of doing interstate business any state corporation not formed under a state statute embodying uniform principles drafted and approved by a proposed Interstate Commission, or, preferably, (2) a federal statute licensing corporations to conduct interstate commerce if formed under a state statute embodying such uniform principles. Such state statutes, unlike a federal incorporation statute, would apply to corporations doing solely intrastate business as well as to those engaged in interstate commerce.

This movement for federal incorporation or licensing undoubtedly stimulated programs for revision of state corporate statutes which met minimum standards, at least so far as domestic corporations were concerned.²³

Professor Stevens' growing reputation was recognized in 1926 by his appointment as one of the New York Commissioners on Uniform State Laws and his selection as draftsman of the Uniform Business Corporation Act, which, since 1909, had gone through numerous drafts. The tenth draft was finally approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1928.²⁴

The Uniform Act, compared to existing corporate statutes in 1928, was a model of orderly arrangement and clear language. Fifteen definitions formed section 1. Many of the act's provisions concerning management, to promote flexibility and freedom from intracorporate "statutory norms," were expressly made subject to any contrary provision in the

Am. L. Rev. 186, 201 (1902). A Federal Corporation Act was actually drafted by an American Bar Association committee over a three-year period ending in 1943.

²² Stevens, "Uniform Corporation Laws Through Interstate Compacts and Federal Legislation," 34 Mich. L. Rev. 1063 (1936). Interstate compacts are authorized by U.S. Const. art. I, § 10, cl. 3.

²³ The Model Business Corporation Act, one of its draftsmen has recognized, "may not appeal to a state that is soliciting corporate business." Preface to 1950 Revision of Model Business Corporation Act. Cf. ABA-ALI Model Bus. Corp. Act § 99 (1953):

A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this State, and nothing in this Act contained shall be construed to authorize this State to regulate the organization or the internal affairs of such corporation.

²⁴ Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings 334 (1928); 9 Unif. Laws Ann. [hereinafter cited as U.L.A.] 115 (1957).

articles of incorporation or by-laws. Most unique was its statutory solution of the ultra vires doctrine:

Section 10. Effect of Filing or Recording Papers Required to be Filed.—

The filing or recording of the articles of incorporation, or amendments thereto, or of any other papers pursuant to the provisions of this Act is required for the purpose of affording all persons the opportunity of acquiring knowledge of the contents thereof, but no person dealing with the corporation shall be charged with constructive notice of the contents of any such articles or papers by reason of such filing or recording.

Section 11. Corporate Capacity and Corporate Authority; the Same Distinguished.—I. A corporation which has been formed under this Act, or a corporation which existed at the time this Act took effect and of a class which might be formed under this Act, shall have the capacity to act possessed by natural persons, but such a corporation shall have authority to perform only such acts as are necessary or proper to accomplish its purpose and which are not repugnant to law.²⁵

Statutory treatment was also afforded the de facto doctrine,²⁶ preincorporation subscriptions,²⁷ and voting trusts.²⁸

The Uniform Act also introduced more precise terminology: "registered office" for "principal place of business;" "allotment" of shares as distinguished from "issue" of share certificates. The former, but not the latter, has been widely followed.

A provision for mandatory cumulative voting for directors was included on the theory that some thirteen state constitutions then required it and a uniform act should be constitutionally acceptable to such states.

Indicative of the Uniform Act's attempt to elevate corporate standards were three provisions.

Where non-voting shares were outstanding, the holders of the voting shares were to:

[S]tand in a fiduciary relation to the entire body of shareholders and shall be responsible to the corporation, for the benefit of all shareholders, for any violation of the obligations of such relationship.²⁹

The relation of the directors and officers to the corporation was defined by the Uniform Act:

*Section 33. Relation of Directors and Officers to Corporation.—*Officers and directors shall be deemed to stand in a fiduciary relation to the corporation, and shall discharge the duties of their respective positions in good faith, and with that diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions.³⁰

²⁵ 9 U.L.A. §§ 10-11, at 140-50 (1957).

²⁶ 9 U.L.A. § 9, at 137-40 (1957).

²⁷ 9 U.L.A. §§ 5-6, at 130-34 (1957).

²⁸ 9 U.L.A. § 29, at 178-81 (1957) (only five states then had voting trust statutory provisions).

²⁹ 9 U.L.A. § 28 (II), at 175-76 (1957).

³⁰ 9 U.L.A. § 33, at 186-87 (1957).

Finally, the Uniform Act provided for the filing of annual reports by the corporation in a public office where they would be available for proper inspection.³¹

The Uniform Business Corporation Act was enacted in Idaho, Kentucky, Louisiana, and Washington. It was renamed the "Model Business Corporation Act" in 1943.³² By 1958 it had served its purposes and was completely withdrawn by the Conference.

Although not itself widely adopted, the Uniform Act served as a model for revision in Illinois, Michigan, Minnesota, Ohio, and Pennsylvania. In turn, the Illinois Business Corporation Act served as a model for the Model Business Corporation Act which was drafted by the American Bar Association Committee on Corporate Laws and has been adopted or served as a model for revision in some twenty-three American jurisdictions.³³

In 1936, Professor Stevens authored the first Hornbook on corporation law, formally entitled "Handbook on the Law of Private Corporations," but popularly known as "Stevens on Corporations."³⁴ It was the second modern law school text on the subject and was compared favorably with Ballantine's text.³⁵

The pervasive theme was that:

"Corporate personality" may be regarded as a type of dual legal personality. As such, it serves to separate the rights and obligations connected with one's individual and personal affairs, from his collective rights and obligations as a member of an incorporated group. Under this reasoning, a corporation need not be looked upon as a single person, artificial and non-physical, but may, with more reality, be regarded as the group of as-

³¹ 9 U.L.A. § 36, at 190-91 (1957).

³² Not to be confused with ABA-ALI Model Bus. Corp. Act. See note 33 infra.

³³ First published in 1948, ABA-ALI Model Bus. Corp. Act was revised in 1950, 1953, 1955, 1957, 1959, 1962, and 1964. See Model Business Corporation Act Annotated (Supp. 1964) (3 vols.), reviewed in Stevens, Book Review, 46 Cornell L.Q. 498 (1961).

³⁴ Stevens, *Private Corporations* (1936) (\$5.00).

³⁵ See Ballantine, Book Review, 26 Calif. L. Rev. 166, 169 (1937) ("general excellence, originality . . . comprehensive text to which much patient legal scholarship has been devoted"); Breckenridge, Book Review, 4 U. Chi. L. Rev. 516, 517 (1937) ("a sober, lucid presentation of fairly orthodox doctrines and . . . intelligent criticism where there is fault and intelligent choice where there is conflict"); Frey, Book Review, 22 Cornell L.Q. 620, 621 (1937) ("covers a surprisingly extensive range of intricate problems with a minimum of superficiality . . . reveals not only a depth and independence of thought, but also a capacity for suggestiveness which is the touchstone of a great teacher"); Johnson, Book Review, 25 Geo. L.J. 495, 497 (1937) ("The book will be useful to students, teachers, lawyers and judges alike, and represents a scholarly and valuable contribution to the literature of the law"); Kroeger, Book Review, 22 Wash. U.L.Q. 145, 147 (1936) ("We would commend it as one of the best works available for the purposes not only of a student but also of a lawyer who would refresh himself on chapters of the law and its development"); Lake, Book Review, 9 Miss. L.J. 254, 256 (1936) ("This book is a valuable contribution to corporation law. . . . The reader is impressed with the author's literary style, the force of his reasoning, and the tremendous study which has preceded the writing of the book"); Mansfield, Book Review, 11 Temple L.Q. 122, 124 (1936) ("an excellent treatise . . . one which every practitioner should have").

sociates, who, by incorporating, have acquired their corporate personalities.³⁶

To many problems throughout the text this approach was applied to promote sounder thinking in resolving these problems:

The chief obstacle to the practical development of the law of associations, both incorporated and unincorporated, has been the persistence of this conception of a corporation as a fictitious nonphysical person and the persistence of the dependent corollary proposition that the members of associations cannot have group personality unless, with sovereign assent, the association has become a corporate entity.³⁷

Besides abandoning the entity-concession theories, Professor Stevens provided fresh and interesting treatment of the ultra vires doctrine,³⁸ the de facto doctrine,³⁹ promoters,⁴⁰ charitable contributions,⁴¹ and fiduciary duties of controlling shareholders to minority shareholders.⁴² He urged higher standards to protect shareholders and greater accommodation of the special problems of the close corporation.

Not only did Professor Stevens discuss the law as it was or appeared to be. He added his comments indicating what it ought to be.

In 1937, Professor Stevens became Dean of the Cornell Law School serving, except for a leave-of-absence during World War II, until 1954.

Dean Stevens, in 1939, started working on a corporations casebook, a project which received impetus by the appointment to the Cornell Law School Faculty in 1938 of Professor George Thomas Washington.

Not until 1947, after the interruption of World War II leaves-of-absence, was the casebook⁴³ ready for publication, after having been substantially updated and revised by Dean Stevens and Professor Arthur Larson, who in 1945 succeeded Professor Washington, who was appointed to the United States Court of Appeals for the District of Columbia.

The casebook, like the Hornbook, began with treatment of corporate personality. Corporations and other forms of business enterprises were succinctly compared. The ultra vires doctrine was deemphasized. Of special significance was the treatment of derivative actions, problems of control, and protection of minority shareholders in the making of funda-

³⁶ Stevens, *supra* note 34, at vii.

³⁷ *Id.* at 47.

³⁸ *Id.* at 254-310.

³⁹ *Id.* at 121-60.

⁴⁰ *Id.* at 161-95.

⁴¹ *Id.* at 221: "I think when so much wealth is concentrated in the hands of incorporated associations, it is clearly in the public interest to permit such associations to make contributions to charity." This view anticipated by seventeen years the decision in *A. P. Smith Mfg. Co. v. Barlow*, 13 N.J. 145, 98 A.2d 1178, appeal dismissed, 346 U. S. 861 (1953).

⁴² Stevens, *supra* note 34, at 486-500.

⁴³ Stevens & Larson, *Cases on Corporations* (1947) (\$8.00), reviewed in MacChesney, *Book Review*, 2 J. Legal Ed. 125 (1949).

mental changes. Promoting coverage were many textual notes of which the one on tax aspects of hybrid securities became a classic.

Dean Stevens' approach to corporation law, already well known through his Hornbook, became even better known through widespread adoption of the casebook in American law schools.

The year 1949 witnessed the publication, fourteen years after the first edition, of the second edition of "Stevens on Corporations."⁴⁴

To a large degree, the analysis, exposition, and criticism of basic problems of the first edition, having stood the test of the intervening years, remained intact, but the text and notes were amended to incorporate significant new statutory and case law.

For the frontal attack on the entity theory in the first chapter of the first edition was substituted a new chapter entitled "Corporations Viewed in the Light of History and of Contemporary Policy," which stressed federal government intervention under the Securities Act of 1933, Securities Exchange Act of 1934, and section 77B of the Bankruptcy Act, and set forth reasons for differences in policy toward large publicly-held and small close corporations.

A new chapter, expanding the treatment of the authority and responsibility of those exercising corporate control, was added, and the chapter on shareholders' direct and derivative actions was completely revised.

After he had retired, Dean Emeritus Stevens revised the casebook, eight years after its original publication, the second edition being published in 1955.⁴⁵ Professor Larson, who was then serving as Undersecretary of Labor, did not participate in the revision. The approach of the first edition was essentially retained, but the work was updated throughout, fifty-eight older cases being dropped and twenty-eight recent cases substituted. Substantial changes were made in the treatment of close corporations and the fiduciary duties owed to minority shareholders. An annotated appendix on drafting a certificate of incorporation was added. It was hailed as "first-rate,"⁴⁶ "a highly effective teaching device and carefully and thoroughly put together,"⁴⁷ and "a casebook second to none in the field."⁴⁸

As a capstone to his career, during his "retirement years," Dean Stevens, in 1956, became the Chief Consultant to the New York Joint Legislative Committee to Study Revision of Corporation Laws. Besides

⁴⁴ Stevens, *Private Corporations* (2d ed. 1949) (\$7.00), reviewed in Berle, *Book Review*, 35 *Cornell L.Q.* 249 (1949); Loewenberg, *Book Review*, 63 *Harv. L. Rev.* 1287 (1950); Prashker, *Book Review*, 3 *J. Legal Ed.* 147 (1950).

⁴⁵ Stevens & Larson, *Cases on Corporations* (2d ed. 1955) (\$12.50).

⁴⁶ Berle, *Book Review*, 41 *Cornell L.Q.* 336 (1956).

⁴⁷ Silverman, *Book Review*, 2 *N.Y.L.F.* 245, 247 (1956).

⁴⁸ Barnhart, *Book Review*, 9 *J. Legal Ed.* 117, 120 (1956).

being Chief Consultant, he actively served as research and drafting consultant for many of the sections of the New York Business Corporation Law.⁴⁹

The New York Business Corporation Law, from the point of view of logical arrangement, was a vast improvement over the New York Stock Corporation Law and General Corporation Law. In this respect, it is probably as good as, if not better than, any American corporate statute.

The goals were to retain the best of existing New York law, statutory and decisional—involving both codification and overruling of several leading New York Court of Appeals decisions; to eliminate numerous anachronisms; and to draw on sound examples in other jurisdictions, notably the Model Business Corporation Act of the American Bar Association and the North Carolina Business Corporation Act of 1955.

Dean Stevens' contributions to the new statute were manifold. Probably his principal contribution was to accommodate the legitimate needs of the close corporation within a single statute applicable to all business corporations.⁵⁰ Sixteen sections—all but four new to New York corporate statutes—attempt to meet the special problems of small corporations which constitute the vast majority of New York business corporations.

Among such provisions are those permitting a single incorporator;⁵¹ providing that where all the shares of a corporation are owned beneficially and of record by less than three shareholders, the number of directors may be less than three but not less than the number of shareholders;⁵² providing that the certificate of incorporation may provide that all officers or specified officers shall be elected by the shareholders instead of by the board of directors;⁵³ providing for action by shareholders, subscribers, or incorporators by unanimous writ-

⁴⁹ N.Y. Sess. Laws 1961, ch. 855; N.Y. Sess. Laws 1962, chs. 417, 819, 834, 837; N.Y. Sess. Laws 1963, chs. 277-79, 317, 684, 689, 692, 738, 746-49; N.Y. Sess. Laws 1964, chs. 71, 681, 725, 734-37. See Stevens, "New York Business Corporation Law of 1961," 47 *Cornell L.Q.* 141 (1962).

⁵⁰ Stevens, "Close Corporations and the New York Business Corporation Law of 1961," 11 *Buffalo L. Rev.* 481 (1962):

[A]s a result of centuries of judicial opinions, starting in England, corporation statutes have been interpreted as establishing norms that must be applied without variation to all corporations irrespective of the size of the shareholding body. It is submitted that all of this judge-made law has sprung from the unrealistic conception that there are two kinds of legal persons: the natural and the artificial corporate person. It has been inferred that the artificial corporate person has no capacity to act except as prescribed by statute, that is, (a) that it has no capacity to act beyond the powers conferred upon it by law or the purposes stated in its certificate of incorporation; (b) that management of the corporate business is vested exclusively in the board of directors, and that the proportionate vote of shareholders and directors required by statute for valid corporate action is not subject to variation by shareholder agreement.

⁵¹ N.Y. Bus. Corp. Law § 401.

⁵² N.Y. Bus. Corp. Law § 702.

⁵³ N.Y. Bus. Corp. Law § 715.

ten consent without a meeting;⁵⁴ providing that a written agreement between two or more shareholders may provide that in exercising any voting rights, the shares held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them;⁵⁵ providing for an irrevocable proxy to a person designated by or under such an agreement or his nominee;⁵⁶ providing that a provision in the certificate of incorporation otherwise prohibited by law as improperly restrictive of the discretion or powers of the board of directors in its management of corporate affairs shall nevertheless be valid if authorized by all the incorporators or shareholders so long as the shares of the corporation are not listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association;⁵⁷ providing that an agreement for the purchase by a corporation of its own shares shall be enforceable by the shareholder and the corporation to the extent such purchase is permitted at the time of purchase, and that the possibility that the corporation may not be able to purchase its shares for lack of legally available funds shall not be a ground for denying to either party specific performance of the agreement, if at the time for performance the corporation can purchase all or part of such shares out of legally available funds;⁵⁸ and providing that the certificate of incorporation may contain a provision that any shareholder, or the holders of any specified number or proportion of all or any class or series of shares, may require the dissolution of the corporation at will or upon the occurrence of a specified event.⁵⁹

The third edition of the casebook⁶⁰ is now being published. Professor Berle, in his review of the second edition, stated: "The third edition of this case book, when it falls due, may well be rather different from the second, such being the fate of case books."⁶¹

While the second edition primarily involved updating of the first edition, the third edition is a complete revision of the earlier editions. Statutory provisions, primarily from the Model Business Corporation Act and several germane uniform acts, are reprinted in context. Non-corporate forms of business enterprise, as well as the professional corporation, are separately treated and compared with the business corporation.

⁵⁴ N.Y. Bus. Corp. Law § 615.

⁵⁵ N.Y. Bus. Corp. Law § 620(a).

⁵⁶ N.Y. Bus. Corp. Law § 609(f)(5).

⁵⁷ N.Y. Bus. Corp. Law § 620(b)-(g).

⁵⁸ N.Y. Bus. Corp. Law § 514.

⁵⁹ N.Y. Bus. Corp. Law § 1002.

⁶⁰ Stevens & Henn, *Statutes, Cases, and Materials on Corporations and Other Business Enterprises* (3d. ed. 1965) (\$15.00).

⁶¹ Berle, *Book Review*, 41 *Cornell L.Q.* 336, 338 (1956).

Extensive textual notes cover the major principles of agency and partnership law. Accounting principles are set forth to explain the funds legally available for dividends. Throughout, as corporate transactions are treated, their major tax aspects are covered. So also are federal and state securities regulation, corporate liquidation, bankruptcy, and reorganization. There is a special signature of specimens of selected securities, reproduced in color. The reprinted cases, with minor exceptions, were decided after World War II.

Dean Stevens' contributions to corporation law defy adequate enumeration. Many of the novel ideas which he espoused a generation ago are accepted today as if they had always prevailed.

Nor can his effect on corporation law be accurately computed. Some of the more obvious effects have been mentioned. Through his students, who were to serve as practitioners, judges, legislators, other public officials, and law teachers; through his successors as corporation law teachers at the Cornell Law School; through his writings—articles, Hornbook, casebook; and through his labors for statutory revision—the Uniform Business Corporation Act and the New York Business Corporation Law—his ideas have spread throughout American corporation law. Because of his lifelong interest in equity, and his own high code of ethics, he has played an elevating influence in expanding the fiduciary duties of corporate management and controlling shareholders.⁶²

Whether one regards the corporation as an entity ("it") or more realistically as the shareholders in their corporate personalities ("they"), corporations are today far better institutions as the result of Robert Sproule Stevens.

⁶² See, e.g., Pasley, "Robert Sproule Stevens: His Contribution to Equity Jurisprudence," *infra* page 663.