

ALEXANDER HAMILTON FREY: HIS  
CONTRIBUTIONS TO THE LAW OF  
CORPORATIONS AND BUSINESS  
ASSOCIATIONS

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*The art of teaching is the  
art of assisting discovery.*

—Mark Van Doren

Alexander H. Frey stands tall in the distinguished company of scholars who have made the years since 1930 golden years for legal scholarship in the field of corporations and business associations. The giants in the early part of this period included Henry Winthrop Ballantine of the University of California, E. Merrick Dodd of Harvard, Robert S. Stevens of Cornell, and Norman D. Lattin of Ohio State, to name just a few. Somewhat later came William L. Cary of Northwestern and Columbia, Elvin R. Latty of Duke, Richard W. Jennings of the University of California, Louis Loss of Harvard, and Harry G. Henn of Cornell.

Possessed of incisive analytical powers, Professor Frey devoted his vast talents to pioneering scholarship and early assumed the role of innovator, constantly searching for new approaches to law study, striving for new insights, digging ever deeper to discover new meanings in legal materials. By the beginning of World War II, Alexander Frey, then in his very early forties, had become a nationally recognized authority in corporations and business associations. He had published a ground-breaking book of cases and materials on private corporations and partnership; he had served as special adviser for a project to restate the law of business associations; and he had written brilliant articles on important problems in the field of corporate law.

Early in his career Alec Frey indicated dissatisfaction with business associations casebooks then in current use.<sup>1</sup> "The grave danger in the study of the law of corporations exclusively through the medium of cases," he said, "is that the student fails to glimpse the corporate scene pragmatically."<sup>2</sup> Existing teaching materials, he added, failed

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<sup>1</sup> Frey, Book Review, 74 U. PA. L. REV. 636 (1926).

<sup>2</sup> *Id.* at 637.

to raise important questions that had to be raised if students were to get a pragmatic view of corporate law and practice. Among the questions he listed were the following:<sup>3</sup> Is there any legal distinction between great and small corporations?<sup>4</sup> Which group of persons actually constitute "the corporation," the shareholders or the directors? What are the fundamental legal distinctions between shareholders and corporate creditors? Is a legal duty really imposed upon a private corporation if the only sanction is the possibility that the state will terminate the corporation's existence? Questions such as these are of course still relevant in the study of corporation law; modern teaching materials, perhaps because of Professor Frey's suggestions, do raise and discuss them.

Alec Frey also thought that the arrangement of the cases in the traditional casebooks misled and confused the student. The orthodox casebook began with a study of the "nature" or "characteristics" of a corporation, that is, with "a consideration of the corporate entity view, of a corporation as distinguished from other forms of business association, and of a corporation as a 'citizen,' 'person,' 'resident,' etc."<sup>5</sup> This approach, Professor Frey asserted, resulted "either in the student disregarding the purpose motivating each court in applying such labels as 'legal entity' or 'corporation' to a specific fact situation, or else in compelling the student to his ultimate confusion to attempt a correlation of a conglomeration of cases merely because the opinions employ similar concepts (for diverse purposes) despite the fact that functionally the cases may have nothing in common."<sup>6</sup>

In 1935 Alec Frey published his own set of teaching materials,<sup>7</sup> a teaching tool loaded with pioneering features. The collection combined materials which had traditionally been presented in separate courses on partnership and private corporations. The expanded use of the corporation as a business device had so greatly superseded the partnership, Professor Frey believed, that a separate course on partnership would accord undue emphasis to that subject. Furthermore, he was convinced that corporations and partnerships contained a common factor—*group* activity—which could be more successfully presented in a single course. In the preface to the new materials he commented:

Many of the legal problems of business associations are *sui generis*; hence a methodical and painstaking collection

<sup>3</sup> *Id.* at 637-38.

<sup>4</sup> I have struggled with this question in my time. See O'NEAL, *CLOSE CORPORATIONS: LAW AND PRACTICE* (1958).

<sup>5</sup> Frey, Book Review, 37 *YALE L.J.* 684 (1928).

<sup>6</sup> *Id.* at 684-85.

<sup>7</sup> A. FREY, *CASES AND STATUTES ON BUSINESS ASSOCIATIONS* (1935).

and evaluation of new data leading to new principles is constantly required. Only by parallel consideration of comparable transactions by different types of business groups can an awareness be generated of the influences molding the development of this branch of the law.<sup>8</sup>

Another unique feature of the book was the grouping of cases and materials by types of business transactions rather than by legal doctrines. As Professor Frey pointed out, the materials in leading corporations' casebooks focused for the most part either on legal concepts such as "de facto," "authority," or "estoppel," or on relationships such as "director," "shareholder," or "creditor." "Such groupings," he commented, "not only fail to stress the importance of the primary facts of the legal controversies, but also render it extremely difficult to develop the economic and social background of the problems, since the successive cases, in such classifications, are factually isolated and have only a verbal or conceptual connecting link."<sup>9</sup>

Before Professor Frey's new materials appeared, the principal casebooks on corporations concentrated on cases, neglecting statutory material and thus failing to expose students to the problems of analyzing, construing, and applying complicated corporation statutes. Professor Frey attacked this problem by distributing throughout his book appropriate provisions of the Delaware and California acts and by urging each student to equip himself with a copy of the general incorporation act of the state in which he expected to practice.

Professor Frey was one of the earliest writers to concern himself with the accounting aspects of corporate law and practice. This concern gave rise to another innovation in his casebook. He included a substantial chapter on "Computation and Distribution of 'Profit'" and introduced that chapter with excellent explanatory material, thus giving far greater emphasis to accounting than earlier texts.

Professor Frey's innovative teaching tool has stood the test of time. Now in a 1966 edition,<sup>10</sup> it is currently one of the most popular and widely used of the corporation casebooks. Despite the addition of co-editors and a disclaimer of "resemblance" between the new edition and its predecessors, it retains the essential features that made it a revolutionary book in 1935.

Before World War II Alec Frey had also made major contributions to legal scholarship through his law journal writing. In the

<sup>8</sup> A. FREY, *Preface* to CASES AND STATUTES ON BUSINESS ASSOCIATIONS at iii (1935).

<sup>9</sup> *Id.* at iii-iv.

<sup>10</sup> A. FREY, C. MORRIS, J. CHOPER, CASES AND MATERIALS ON CORPORATIONS (1966).

spring of 1929, Professor Frey published two important articles.<sup>11</sup> The first was a classic analysis of the shareholder's pre-emptive right.<sup>12</sup> At the time this article was written the orthodox statement of the doctrine of pre-emptive rights was that "every shareholder has a right to subscribe proportionately to any increase in the capital stock of his corporation."<sup>13</sup>

Professor Frey demonstrated that although the orthodox rule might have been adequate in the early days of corporate finance, when it was usual to have only one class of shares, it could not feasibly be applied to modern corporations with complex share structures. He pointed out the staggering number of possible combinations of characteristics different classes of shares might have. A class of shares might be voting, non-voting, voting subject to any number of conditions, cumulative or non-cumulative, preferred as to dividends, preferred on dissolution, participating or non-participating, convertible or non-convertible, redeemable or non-redeemable, no-par or par in various amounts, and so on. Professor Frey concluded that in the light of modern complex share structures the orthodox rule was either "unjustifiably arbitrary or impossible of rational application."<sup>14</sup> He proposed the following pre-emptive right rule based exclusively on protection of a shareholder's proportionate interest in voting control: "Unless otherwise provided by statute or in the articles of association, every holder of voting shares has a right that the corporation shall not create any voting shares, or other securities convertible into such shares, without first offering to him that proportion thereof which the number of votes possessed by him at a time reasonably fixed by the board of directors bears to the total number of votes then possessed by all voting shareholders."<sup>15</sup>

Although Professor Frey limited the rule of pre-emption to voting shares, he supported the following companion rule: "No shares shall be created at a price which would adversely affect the interests of an existing shareholder as to net earnings or net assets, unless he is afforded an opportunity to subscribe at the price offered for a sufficient

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<sup>11</sup> Frey, *Shareholders' Pre-emptive Rights*, 38 YALE L.J. 563 (1929); Frey, *Post-Incorporation Subscriptions and Other Contracts to Create Shares at a Future Time*, 77 U. PA. L. REV. 750 (1929).

<sup>12</sup> Frey, *Shareholders' Pre-emptive Rights*, 38 YALE L.J. 563 (1929). The materials for this article were collected largely in connection with Professor Frey's work on the American Law Institute's Restatement of Business Associations, Tentative Draft No. 1. The substance of the article was presented as a paper at the Section on Business Associations of the Association of American Law Schools, December, 1927.

<sup>13</sup> *Id.* at 568.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 572-73.

number of new shares to enable him to maintain unimpaired his existing interests.”<sup>16</sup> This latter rule, Professor Frey pointed out, is infinitely more difficult to apply than the rule of preemption and must be meticulously distinguished from it.<sup>17</sup>

The second major article Professor Frey published in the spring of 1929 dealt with contracts by an existing corporation to create shares at a future time.<sup>18</sup> Before this article the subject of “share subscriptions” had received little or no analysis either by courts or by text writers.

The initial task Professor Frey set for himself in this article was to determine when that totality of legal relations comprising “shareholdership” resulted from a particular transaction; in other words, what acts of the corporation and of the other contracting party would be interpreted as consent to the *present* creation of shares and what acts as contemplating the *future* creation of shares. He laid down guides for making this determination. He then made a comprehensive examination of the controversies arising out of transactions for the future creation of shares. He succeeded, among other things, in pointing out that many controversies result from a deplorable lack of precision in planning and drafting share subscription contracts and that major difficulties can be avoided by stating categorically when and under what circumstances the other contracting party is to become a shareholder and by stipulating expressly the legal relations the parties intend to create.

In 1931 Professor Frey published one of his best pieces, an article on pre-incorporation subscriptions.<sup>19</sup> This article focused on (1) suits by the corporation against a pre-incorporation subscriber to compel him to pay the subscription price and (2) actions by the pre-incorporation subscriber against the corporation to compel it to accord him one or more of the rights incident to the shares subscribed.

The article illustrates two traits that characterize much of Professor Frey’s scholarship—an attention to differences between what courts and other officials say they are doing and what they actually do, and a probing for the real reasons underlying decisions of courts and other officials. Professor Frey pointed out, for example, that when a corporation sued on a pre-incorporation subscription most courts talked as if the corporation’s “acceptance” of the subscription were pre-

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<sup>16</sup> *Id.* at 583.

<sup>17</sup> *Id.*

<sup>18</sup> Frey, *Post-Incorporation Subscriptions and Other Contracts to Create Shares at a Future Time*, 77 U. PA. L. REV. 750 (1929).

<sup>19</sup> Frey, *Modern Development in the Law of Pre-Incorporation Subscriptions*, 79 U. PA. L. REV. 1005 (1931).

requisite to its right to the subscription price, but at the same time these courts said either that the corporation's bringing suit was a sufficient "acceptance" or that "acceptance" was to be inferred from other acts of the corporation after its formation. These courts, Professor Frey concluded, "while talking the language of offer and acceptance, have in fact been developing a rule of the law of corporations, namely, that immediately upon its formation the corporation has a right to the subscription price."<sup>20</sup> Similarly, in challenging assertions by some text writers that a de facto corporation has no right to the subscription price against a pre-incorporation subscriber, Professor Frey carefully analyzed the decisions and concluded that no case

on its facts and decision, actually holds that a "de facto" corporation cannot enforce a pre-incorporation subscription. In every case examined, if sufficient acts had occurred to result in the incidents of a corporation as heretofore defined, the right of the corporation to the subscription price was upheld unless the subscriber had some other defense than that the corporation was subject to *quo warranto* proceedings to terminate its existence.<sup>21</sup>

The article contains several examples of Professor Frey's tendency to probe for the real reasons (as distinguished from the articulated reasons) underlying courts' decisions. In giving the real reasons, as he saw them, for the rule that a subscriber may effectively withdraw his subscription until incorporation, Professor Frey commented as follows:

Perhaps an explanation of the readiness of courts to uphold withdrawal of pre-incorporation subscription, at least until after the corporation is incorporated is to be found in the judicial consciousness or belief that promoters of new enterprises are frequently glib and persuasive individuals, and investors gullible and credulous persons; hence the courts are ready to give the subscriber a chance to amend an ill-considered decision, provided he manifests his change of intention before the process of forming the enterprise has gone too far, and the point of incorporation of the corporation has been adopted as a more or less arbitrary "dead line."<sup>22</sup>

In explaining the rule that a corporation has a right to the subscription price immediately upon its formation, Professor Frey noted "(1) that capital is the most desperate need of a newly formed corporation, and technicalities of 'acceptance,' etc., must not be permitted to hinder its acquisition, and (2) that when a new enterprise has

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<sup>20</sup> *Id.* at 1008-09.

<sup>21</sup> *Id.* at 1014-15.

<sup>22</sup> *Id.* at 1012-13.

progressed to the point of formation of the corporation, so many persons might be adversely affected in such various ways by the failure of a subscriber to make his agreed contribution to the common fund that the most feasible procedure is to accord the corporation a right to the subscription price."<sup>23</sup>

An important thesis of Frey's article was that the economic structure of the corporate device, rather than legal rules prevailing in other areas of law such as contracts and agency, should be looked to for guidance in the solution of novel corporation problems. He viewed the rules he expounded in the article as a summary not of a portion of the law of contracts or of agency but as a fragment of the law of corporations, "frankly self-sufficient and requiring no dogmatic support from other topics of legal study."<sup>24</sup> He commented, for instance, that pre-incorporation subscriptions are "in fact *sui generis* transactions developing a law unto themselves out of the needs and customs of the business community."<sup>25</sup>

Another important article by Professor Frey, still as fresh and useful as it was when published in 1941, deals with problems involved in the declaration and distribution of corporate dividends.<sup>26</sup> Professor Frey pointed out that insofar as a conflict of interest exists between management and shareholders the law has developed to favor management in two important respects: (1) management is permitted flexibility in applying accounting practices so that it can affect the size of the surplus or net earnings available for dividends and (2) even after it has been established that there are net earnings available for dividends, management is given almost unlimited discretion on whether the funds shall be distributed to the shareholders or retained in the enterprise.<sup>27</sup>

Professor Frey feared that in many gigantic modern corporations the complete discretion given to self-perpetuating managers as to dividend declarations might enable them to build economic empires for themselves by forcing shareholders continually to increase their investment "in return for, at most, additional pieces of paper euphemistically called 'stock' dividends."<sup>28</sup> Nevertheless, Professor Frey criticized the statutes which then existed in a few states curtailing the discretion of corporate managers to distribute or withhold profits and entitling shareholders to receive the net earnings of the corporation annually after the

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<sup>23</sup> *Id.* at 1019-20.

<sup>24</sup> *Id.* at 1018.

<sup>25</sup> *Id.*

<sup>26</sup> Frey, *The Distribution of Corporate Dividends*, 89 U. PA. L. REV. 735 (1941).

<sup>27</sup> *Id.* at 736.

<sup>28</sup> *Id.* at 737.

directors have set aside reasonable amounts to be retained as accumulated surplus. He felt such legislation might prevent development of adequate reserves to cushion periods of adversity and might preclude self-financing of sound expansion projects. The solution he proposed was "to authorize the courts (or preferably an administrative body), upon petition of an interested shareholder, to order the annual distribution of net earnings unless management could sustain the burden of justifying the retention in the enterprise of all or part thereof."<sup>29</sup>

This article also discussed the characteristics of various types of shares. Professor Frey concluded that when disputes over dividend distributions arise among shareholders of different classes, "the only rational basis for resolving such disputes is by reference to the conditions present and prospective that induced the offer and the acceptance of those shares which are junior in time to the other shares involved in the dispute."<sup>30</sup> He went on to comment: "The financial circumstances accompanying the issue ought to shed important light on this question of what the parties would have intended if they had anticipated the problem."<sup>31</sup>

A major contribution of the article is Professor Frey's statement of the principle of dividend credit. He argued that whenever a corporation fails to distribute profits in the fiscal period in which they are earned, equitable treatment of all classes of shareholders in subsequent dividends can be assured only if management is required to abide by the following rule:

[I]n the absence of an unequivocal provision of the applicable statutes, articles, by-laws or resolutions, the respective rights of the various classes of shareholders to the proposed dividend should be determined by reference to what their respective rights would have been to an amount equal to the fund about to be distributed, if all the profits of the corporation had been declared as dividends at the end of each fiscal period in which such profits were acquired.<sup>32</sup>

Although the cases applying the dividend credit doctrine have been confined almost exclusively to the rights of non-cumulative preferred shareholders, Professor Frey concluded that logically the doctrine applies as well to the rights of participating preferred and even common shares to partake in the distribution of profits after fixed dividend preferences have been paid. He pointed out that if the principle

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 740-41.

<sup>31</sup> *Id.* at 741.

<sup>32</sup> *Id.* at 750.



of dividend credit is not adhered to, the directors may divert earnings from participating preferred shares to common shares, or vice versa. Furthermore, on dissolution of a corporation having an accumulated surplus, grave injustices can result to one class or another if principles of dividend credit are ignored.<sup>33</sup> Professor Frey's explanation of the scarcity of decisions was that shareholders and their advisors have not sufficiently realized that the discretion of directors as to when profits are to be distributed need not include discretion as to who shall receive the profits when distributed.

After answering practical arguments based on the possible difficulty of calculating and keeping track of the amount of undistributed profits to which each class of shares is entitled, Professor Frey noted the following advantages to the shareholder of adoption of the dividend credit principle: (1) widespread acceptance of this principle would result in a more liberal dividend policy on the part of many corporations, as the possibility of favoring one class of shareholders at the expense of another would no longer provide an incentive for delay in distributing corporate profits; and (2) the dividend credit principle would probably induce a gradual simplification of share structures.<sup>34</sup>

After World War II Alec Frey continued to write. In 1946 he prepared a booklet on significant developments in the law of private corporations during the war years.<sup>35</sup> Its purpose was to provide returning lawyer-veterans with information on case law and statutory developments during the time that they were in the service. Professor Frey concluded that the dominant problem in the realm of private corporations during the war period was the relationship between corporate managers and the shareholders. He pointed out that a gradual evolution had occurred in the nature of this relationship, especially in large corporations where direct "control" by the shareholders was not possible. He compiled a long list of management abuses and called for adequate machinery to permit quick and inexpensive enforcement of the managers' responsibilities to shareholders. He also recommended an authoritative analysis and statement of the functions and of the moral or ethical standards of the managers of modern corporations, recognizing the urgent need for a set of guiding principles for corporate managers.

In 1952, Professor Frey, in perhaps his most hard-hitting article, delivered a devastating attack on the "de facto" doctrine.<sup>36</sup> The tradi-

<sup>33</sup> *Id.* at 761-62.

<sup>34</sup> *Id.* at 762-63.

<sup>35</sup> A. FREY, SIGNIFICANT DEVELOPMENTS IN THE LAW DURING THE WAR YEARS: PRIVATE CORPORATIONS (1946).

<sup>36</sup> Frey, *Legal Analysis and the "De Facto" Doctrine*, 100 U. PA. L. REV. 1153 (1952).

tional approach to defectively organized corporations—couched in terms of “de jure” and “de facto” corporations—assumes that merely by considering the character or extent of defects in incorporation, it is possible to predict *all* of the legal attributes which courts will ascribe to the association. Professor Frey pointed out—and this is something which still needs to be brought home to some judges and legal writers—that when a business association purports to be incorporated but has failed to comply literally and completely with the incorporation procedures set forth in the general incorporation statute, it is not helpful in solving the real issues raised to ask whether the associates constitute a de facto corporation. Instead, questions of the following types have to be answered: “Is the liability of the members of the association for its obligations limited? Can an action be maintained on behalf of the association in the association name? Can an action be brought against the association without naming and serving the members individually as parties defendant? Are the interests of a member of the association transferable without the consent of the other members? The answers to some of these questions may be in the affirmative and others . . . in the negative, depending upon the nature of the defect in the attempt to incorporate and other relevant circumstances.”<sup>37</sup>

Professor Frey believed that it was impossible to predict with assurance the presence or absence of even a single attribute of incorporation, such as a limited liability of the associates, merely by dwelling upon the content of a particular defect in the attempt to incorporate. To test this hypothesis he gathered and analyzed all the reported cases in which a creditor of a business association sought a judgment against one or more of the associates (“shareholders”) personally because of the promoters’ failure to comply with some provision in the prescribed incorporation procedure. The purpose in collecting these cases—and this again emphasizes a characteristic of Professor Frey’s scholarship that has been noted elsewhere in this writing—was first to discover *what* the courts have actually been deciding (what facts have led to what legal consequences), and second to ascertain *why* the courts have decided the cases the way they have.

Professor Frey concluded that the de facto doctrine “is just so much jargon and ought to be abandoned.”<sup>38</sup> The presence or absence of dealing on a corporate basis, that is, whether the plaintiff-creditor dealt with the association thinking it was a corporation, is often a factor of major importance in the courts’ decisions, yet emphasis in the “de facto” doctrine is entirely upon the character of the defect in

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<sup>37</sup> *Id.* at 1155.

<sup>38</sup> *Id.* at 1178.

incorporation (that is, the talk is about such matters as "colorable" compliance with the statute) and not at all upon the nature of the parties' dealings. He pointed out, for example, that if prior to the transaction with the plaintiff the articles of incorporation have not been recorded at all, either with the secretary of state or locally in a designated county office, but the dealings with plaintiff were on a corporate basis, an action by plaintiff to hold the associates personally liable has little more than an even chance of success. On the other hand, under the *de facto* doctrine failure to record the articles at all, one might reasonably assume, "would be regarded by practically all judges as not constituting a 'colorable' attempt to incorporate and therefore as not extending to defendants the immunity granted by the *de facto* doctrine."<sup>39</sup>

For those to whom the thought of abandoning the *de facto* doctrine was repugnant, Professor Frey culled from the decisions two propositions for the limited purpose of determining the presence or absence of limited liability: (1) an association which has recorded the articles of incorporation with the secretary of state is a *de facto* corporation, and the shareholders have limited liability if the dealings were on a corporate basis; and (2) an association which has made no attempt to incorporate is not a *de facto* corporation, and the associates are personally liable irrespective of whether the dealings were on a corporate basis.<sup>40</sup> He hastened to add, however, that even in this formulation, nothing is gained or clarified by including the statement that the association "is a *de facto* corporation" or that it "is not a *de facto* corporation." Omit these clauses and the propositions are just as meaningful. In other words, he concluded that the statement that the association is or is not a *de facto* corporation is literally nothing more than a somewhat obscure way of stating that the associates do or do not enjoy limited liability.

Professor Frey also decided that the "de facto" statement can be positively misleading. His reasoning was as follows:

A case which states that, if the articles are recorded locally but not with the secretary of state, the associates are personally liable, is not likely to be cited for the proposition that such an association cannot acquire real property in the association name because this is so obviously a different issue. But if the first case states that the association in question is not a "de facto" corporation and "therefore" the associates are personally liable, those who do not concentrate on the purpose for which the association was judicially referred to as not

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<sup>39</sup> *Id.* at 1176.

<sup>40</sup> *Id.* at 1178.

a "de facto" corporation may be tempted subsequently to cite the case for the proposition that such a defectively incorporated association is not a "de facto" corporation and "therefore" it cannot acquire real property in its association name.<sup>41</sup>

When Professor Frey came to inquire into the "why" of the courts' decisions, he concluded that the courts, relying verbally on the de facto doctrine, have rarely given either the real reasons or good reasons for their decisions. He found hope, however, in modern corporation statutes, which removed some of the pitfalls in the incorporation process, since these statutes were rapidly minimizing the number of defective incorporations and, one hopes, relegating the de facto doctrine to "an historic relic of legal conceptualism at its worst."<sup>42</sup>

Another major law journal article by Professor Frey dealt with federal regulations affecting the over-the-counter purchase and sale of *existing* securities.<sup>43</sup> This article first pointed out the need for federal regulation because of the inadequacy of the common-law remedies and of state blue-sky laws. It then discussed federal regulation of misrepresentation, manipulation, and non-disclosure in over-the-counter transactions. Included were concise but useful discussions of such devices as wash sales, matched orders, manipulative pool operations, puts, calls, spreads, straddles, short sales, and stop-loss orders. The article next covered federal regulation of malpractice by brokers, dealers, and broker-dealers in over-the-counter transactions. Finally, it discussed self-regulation of the over-the-counter securities market, especially the National Association of Securities Dealers.

In this article, Professor Frey recommended that federal registration, reporting and proxy regulations be extended to securities traded over the counter.<sup>44</sup> This suggestion was followed in large part by Congress a few years later in the Securities Act amendments of 1964.<sup>45</sup> Another suggestion by Professor Frey—that the SEC statutes be amended "so as to broaden the civil liability provisions and expressly to include civil liability as a remedy in all appropriate situations"<sup>46</sup>—has not resulted in legislation, but the suggested result has been accomplished to a considerable extent by judicial implication of civil liability.

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<sup>41</sup> *Id.* at 1178-79.

<sup>42</sup> *Id.* at 1180.

<sup>43</sup> Frey, *Federal Regulation of the Over-the-Counter Securities Market*, 106 U. PA. L. REV. 1 (1957).

<sup>44</sup> *Id.* at 48-49.

<sup>45</sup> 15 U.S.C. § 78n(a) (1964) (proxies); 15 U.S.C. § 78o (1964) (registration); 15 U.S.C. § 78m (1964) (reports).

<sup>46</sup> Frey, *supra* note 43, at 50.

It is difficult in the course of a short essay to impart a sense of the magnitude and impact of Alexander Frey's scholarship. He has contributed as many new ideas to the law of corporations and business associations as any man of his generation. His casebook is one of the most popular in the field. His articles, even the earliest, are still fresh and useful. His views are extensively cited in current teaching materials and texts, and much of his thinking has found its way into current statutes. I salute Professor Frey for his singularly distinguished contributions to the law of corporations and business associations.