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16. i. 34.

Dear Bill:

Now that your article has come, in the December Yale Journal, I ought to be writing you about that, in the light of your letter. But I am sorry to say I have not yet read it. I have been away over the holidays, and my room is mountain-high with stuff to read, and the new Term has begun. I must delay, therefore, the reading of a paper as long and as technical as yours for the first clear, longish stretch of time. But I must not delay any longer acknowledgement of your letter.

It was a damned generous letter. But also revealing a surprisingly foolish streak in you. That you should ever worry lest I worry about any professional writing of yours being against me, “an effrontery to you”. For heaven’s sake, Bill, are we dealing with ideas or throwing spit balls at each other? Suppose you did disagree with me, even on a major public or legal matter. What the hell? The friends I care about I expect to be disinterested, surely. But agreement with what I think – that’s an irrelevance. And you ought to know that. You must have heard me quote one of my favorite quotations, Carlyle’s description of himself and his great friend John Sterling, after they separated at about three o’clock in the morning: “And so we parted, agreeing in all things except opinion.” In a world of doubt and contingency and good guessing, which is the world of social affairs, he must indeed be an ass who measures other people by the yardstick of his own views. I don’t like you to feel that I’m that kind of an ass.

As to the Securities Act, I should suppose that from your letter we would agree on essentials. As you will have gathered from my piece in Fortune, I do not think that the Act is a

world-shaker, that it is anything but elementary or as a leading commercial barrister here described it, "an ordinary police measure". I do, however, think that if effectively administered it may well have consequences of even more importance than the immediate requirements and remedies will directly achieve. By their by-products ye shall know them. And even in its limited scope, as you may again have noted in what I wrote in Fortune, I don't think the Act was literarily inspired, and I shall read with considerable interest the specific amendments which your article proposes. But perfectionism in legislation, may I suggest to you, is hardly the goal of realists. The French proverb, "Let not the better be the enemy of the good," has marked application in the history of legislation. There isn't an Act in your field of competence that your skill and astuteness couldn't improve by redrafting. But there are limits, as I need not tell you, to the adoption of precisionist wisdom in legislation. The fact of the matter is - and you know it as well as I do - that most of the complaints against the Act derive from hostility to its purposes. In other words, the leading lawyers of the country, and particularly your New York friends, are behaving towards this Act the way they have behaved towards all regulatory legislation since the Interstate Commerce Act was put on the statute books. You are more tender-hearted towards their worries than I am. But then I have seen their actions and lived with them, as it were, almost since the days when I left the Law School in 1906. Insofar as this specific Act is concerned, I happen to know in some detail what some of the leading law firms have been up to in order to create a state of mind for amendments on the plea of recovery. You know as well as I do that the notion that the Securities Act has stopped capital issues is just rubbish. And if those fellows don't look out, they may get clarifying amendments that won't be at all to their liking. As for your Business School friends, some day I'll tell you what President Eliot told me about the way

the Business School had been going and what he had hoped the Business School was going to be when he founded it.

In the meantime, I am having the fun of the fellow who watches the game from the bleachers. Things that seem to shake the heavens for a day subside, within a week or two weeks, and are seen in their proper perspective. And I can watch our national scene, while at the same time taking in the ends and means of education, and particularly legal education, in England, and generally watching the world go round. In such a mood I am much more skeptical than you are, apparently, of the large schemes of which you speak for curbing corporate abuses. I share your "sympathy with local regulation" to such an extent that I am not at all for federal incorporation and don't at all agree that it "must be done at once." It'll be nuts for the big corporations to have it so done. Where do you men get your great confidence in the effectiveness of piling on everything on the back of federal administration. I was a hot Hamiltonian when I went to Washington in 1911, but years in the government service and all the rest of the years watching its operations intently have made me less jaunty about devices for running a whole continent from Washington. This isn't theory but fear that the big fellows will thus be relieved from the effective controls that we can fashion against them without putting all our eggs into their basket. I wish you would turn your mind to an instrument of control far more effective than federal incorporation - resourcefully and skillfully formulated devices of federal taxation, graduated according to size, as it were, of the big corporations. That'll prevent all sorts of nonsense that we never could touch through a federal incorporation act. And so also as to direct control of capital issues. What gives you such firm hope that those will be wisely controlled, rather than the reverse - that you'll put the whole prestige of the federal government behind financial transactions that are too complicated or supported by too much power to be stopped by the

officials that would pass on them. It's awfully easy to write these nice laws for control. I think your lawyer-banker friends would be glad to write them for you, but when I think what has happened in regard to railroad reorganizations, when I think of the stuff that gets by even high-minded judges - well, I prefer to use the taxing power, and other devices such as those affecting federal jurisdiction, to curb the mischief and abuses of corporate activities.

All of which will make you realize how old-fashioned I am. At all events, I have seen for too long powerful interests playing ducks and drakes with regulatory schemes. Tax 'em, my boy, tax 'em, and otherwise reduce the opportunities for bludgeoning that interrelation and concentration of money interests make possible.

I hope the world goes well with you and that you are having all sorts of good times.

With warm regards,

Always yours,

F.F.

Prof. William O. Douglas