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Strengthening the Corporate Board: A Constructive Reponses to Hostile Takeovers

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CENTER FOR THE STUDY OF AMERICAN BUSINESS

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I. Introduction

Discussions of that venerable institution—the corporate board of directors—are moving from the financial pages and the learned journals to the front pages and the nightly TV news. It is becoming apparent that during a period of dramatic takeover battles the role of the board can be crucial.

A prestigious group of heads of major U.S. companies, the Business Roundtable, states that, in responding to hostile takeovers, first consideration should be given to three factors—the fundamental values of the free market, the rights of shareholders, and "the judgment of corporate boards of directors." On the positive side, the Roundtable endorses mergers and acquisitions approved by boards of directors of acquired companies. In contrast, it criticizes corporate raiders proceeding "without appropriate involvement of directors. . ."[1] The Roundtable is referring to acquisitions that are made by buying large amounts of the company's stock directly from existing shareholders.

On the legislative front, Senator John H. Chafee of Rhode Island has introduced a bill to regulate takeovers which provides a special role for the boards of directors of both the bidding and the target companies. In the case of the bidders, a majority of their outside directors would have to approve takeover attempts when the value of the transaction amounts to less than 20 percent of the target company's net book value. Above 20 percent, the effort would require shareholder approval. For the target company, majority approval by outside disinterested directors would be needed on any tender offer for over 20 percent of the company's outstanding shares.

Senator Chafee maintains that only the disinterested directors can be counted on "to do what's best for the long term interests of the corporation." He notes that the decisions of the target managements become "solely self-serving" when hostile takeover efforts threaten their personal positions. He downplays the role of the shareholders because "arbitrageurs acquire large blocks, if not control, of a target almost immediately upon, if not before, the announcement of a takeover."[2]

Meanwhile, some individual companies have enacted anti-takeover provisions which put the board of directors squarely in the middle of these merger and acquisition battles. In the case of Household International, the directors adopted such a "poison pill" to discourage unwanted takeovers. The "pill" is in the form of new rights to shareholders to acquire, at a marked discount,

Note: Dr. Murray L. Weidenbaum is Mallinckrodt Distinguished University Professor and Director of the Center for the Study of American Business at Washington University in St. Louis. Numerous useful suggestions on earlier drafts of this study were made by Kenneth Chilton, Arthur Denzau, Clifford Hardin, and Barry Weingast. Helpful research assistance was provided by Richard Cook and Melinda Warren.

a large equity stake in any successful suitor whose offer has not been approved by the company's board. This provision is being contested in the courts on the grounds that "poison pills" effectively usurp the voting rights of the stockholders.

Simultaneously with these efforts to expand the role of corporate directors, criticism of the board has become pervasive. One retired board chairman of a successful company describes the board of directors as the Achilles heel of the American corporation.[3] A leading scholar refers to the corporate board as an impotent legal fiction.[4] "Rubber stamp" seems the kindest description that critics offer.

The new burst of public attention to the corporate board, from friend and foe alike, is matched by widespread ignorance—both of how that important economic institution functions and how it has been changing on its own in recent years. Under the circumstances, it is not surprising that many have proposed that government regulate more closely the activities of corporate boards. Given the private nature of the workings of this institution, most people—including many of those who write on the subject and recommend major changes—have never attended a board meeting and seen the institution in operation.

Thus, it is appropriate to examine in detail the evolving role of boards of directors, with special attention to strengthening the board at a time when it often is the focal point of corporate responses to external threats. This report focuses on the boards of larger publicly held corporations in the United States. Although the author presents his own viewpoint, developed in part from his service as a corporate director, most of the material in this report is a distillation of a great many specialized studies in law, economics, and business administration. The intent here is to provide an up-to-date synthesis and some findings and proposals to guide the development of a constructive response to the pressures increasingly felt in the boardroom, particularly unsolicited takeover efforts.

Section II of this report examines the different views of what corporate boards of directors can and should do. Section III presents many of the specific criticisms of the institution, while Section IV analyzes voluntary changes in the functioning of boards of directors. Section V examines a variety of proposals for improving the performance in the boardroom. The report ends with specific recommendations to enhance the board's ability to respond to external challenges.

Notes

1. "Free Market, Shareholder Rights, Directors' Judgment Are Key to Takeover Solution," *Roundtable Report,* April 1985, pp. 3-4.
2. *Statement by Senator John H. Chafee in the United States Senate Introducing the Tender Offer Reform Act of 1985 and Amendments to the Internal Revenue Code,* March 7, 1985, pp. 3-4.
3. Kenneth N. Dayton, "Corporate Governance: The Other Side of the Coin," *Harvard Business Review,* January/February 1984, p. 34.
4. Peter Drucker, "The Bored Board," *Wharton Magazine,* Fall 1976, p. 19.

II. What a Director Does: The Gap Between Expectation and Reality

In examining the changing role of the corporate director, let us begin with first principles. According to Richard Eells, director of Columbia University's program of studies of the modern corporation, "The board of directors of the modern corporation is the helm from which one of the major institutions of our society is guided."[1] From a more formal viewpoint, corporate boards exist to meet the legal requirements imposed by the state chartering authorities; a board of directors of three or more individuals must be constituted to direct the affairs of the corporation. The Model Business Corporation Act sets forth the basic legal role of the board of directors of a corporation in less majestic terms than Eells, but in equally powerful legal phraseology:

> All corporate powers shall be exercised by or under authority of, and the business and affairs of a corporation shall be managed under the direction of, a board of directors...[2]

Prior to 1974, the Model Act stated that "the business and affairs of the corporation shall be managed by a board of directors." The change reflects the rising importance of part-time outside directors who delegate the conduct of the corporation to full-time management. In earlier years, senior corporate members comprised the typical board.

A. The Formal Role

The legal statement of the board's authority, incorporated in the statutes of more than 25 states, is so vague and sweeping as to provide little guidance as to what a board of directors really does in practice. The Section on Corporation, Banking, and Business Law of the American Bar Association has attempted to flesh out that role by focusing on the board's primary function:

> The fundamental responsibility of the individual corporate director is to represent the interests of the shareholders as a group, as the owners of the enterprise, in dealing with the business and affairs of the corporation within the law.[3]

In its modern form, the typical board does not manage, but is expected to provide oversight over the professional management of its company. State law, for example, typically provides that merger agreements must be approved by the directors. Added detail on the board's role was provided in an important statement on corporate governance adopted by a conference of the American Assembly in 1978. The group consisted of 68 distinguished leaders from many walks of life. They concluded that boards of directors have five primary functions:

- Appraising management performance and providing for management and board succession;

- Determining significant policies and actions with respect to present and future profitability and the strategic direction of the enterprise;
- Determining policies and actions with a potential for significant financial, economic, and social impact;
- Establishing policies and procedures designed to obtain compliance with the law; and
- Monitoring the totality of corporate performance.

The Assembly also stated that boards have a primary role in interpreting for management society's expectations and standards.[4] The totality of board power envisioned by the American Assembly is impressive. In contrast, Peter Drucker sees the board's role in more passive terms. He contends that there are six essential corporate needs which only an effective board can fill:

- Asking crucial questions;
- Acting as a conscience, a keeper of human and moral values;
- Giving advice and counsel to top management;
- Serving as a window on the outside world;
- Helping the corporation be understood by its constituencies and by the outside community; and
- Assuring management competence.[5]

If the American Assembly approach puts the center of gravity of the corporation in the boardroom, Drucker implicitly sees it elsewhere, presumably in the top management. Nevertheless, his view of a properly functioning board is that of an active and important mechanism. James G. Lagges, a vice president of A. T. Kearney, the management consulting firm, is even more explicit on that score. He describes the desirable role of corporate directors as follows:

> The proper function of directors is to act as an adjunct of management, to protect owner interests and to serve in a quasi-auditing capacity. In fulfilling these roles, they should determine policy, establish and approve strategy, evaluate performance, and perform similar high-level actions.[6]

George A. Steiner, professor of management at the UCLA Graduate School of Management, extends that approach in describing the board's "core" functions:

- Providing for management succession;
- Considering decisions and actions having major economic impacts;
- Considering major social and political effects; and
- Establishing policies and procedures for compliance with the law.

Cutting across these functions, in Steiner's view, is the need to make certain that there is an appropriate flow of information to the board and that internal policies and procedures of the company are fully capable of responding to board decisions.[7]

Each of the writings cited—and they are representative—provides an impressive array of duties and responsibilities for the corporate director. At least, this is the theory. What is the practice?

B. Actual Practice

Views on the actual role of the board vary substantially. Most analyses show that the operations of many corporate boards fall short of the standard expectation. A considerable literature exists which provides an unflattering evaluation of how corporate boards actually function. For example, Courtney C. Brown, retired dean of the Columbia University Business School and board member of several leading corporations, provides this negative view:

> The role of the governing board remains one of ambiguity, uncertainty, and doubt. . . Without considerable clarification and strengthening of their roles, members of governing boards cannot be reasonably expected to fulfill, to the extent of their capabilities, their inherent opportunities to contribute to the healthy future development of a corporation.[8]

Former U.S. Supreme Court Justice Arthur J. Goldberg has noted that "the board is relegated to an advisory and legitimizing function that is substantially different from the role of policymaker and guardian of shareholder and public interests contemplated by the law of corporations."[9]

Harold S. Geneen, retired CEO of ITT, has restated Brown's position, with greater vehemence (although he was a notoriously imperious chief executive):

> Among the boards of directors of Fortune 500 companies, I estimate that 95% are not fully doing what they are legally, morally, and ethically supposed to do. And they couldn't, even if they wanted to.
>
> . . .The board's primary function is to oversee and evaluate the performance of management. . .if that performance is not satisfactory, to do something about it. . .That is what is supposed to happen. . . But it doesn't.[10]

The retired chairman wrote that, every time you find a business is in trouble, "you find that the board is unwilling or unable to carry out its responsibilities."

In 1984, Kenneth W. Dayton, the retired chairman of the Dayton-Hudson Corporation, wrote that, every time a business is in trouble, "you find that the board is unwilling or unable to carry out its responsibilities."[11]

Can we reconcile the Brown-Geneen-Dayton "do-nothing" role of corporate directors with the standard or more formal approach? For one thing, we need to realize that in any human institution the actual performance of activities varies over time, circumstance, and with the individuals involved. In any event,

we can obtain an intermediate view of this important part of the corporate governance process by examining surveys of what corporate managers themselves believe.

As we might suspect, the typical company executive does not view the board as the key decision-maker in the organization. He sees it as exercising a useful, albeit more modest, function. In his pioneering study of leadership practices in large companies in the 1930s and 1940s, R. A. Gordon noted that individual board members often act as trusted counselors of the CEO and frequently are able to exert a strong influence.[12] Four decades later this finding still holds.

According to a survey in the early 1980s of the managements of 600 publicly held companies, the most important function of the board is to counsel the senior executives. In management's view, the next highest ranking duties of the board are assuring the integrity of the company's operations, assuring a strategic plan for the future, and monitoring the performance of the chief executive officer (CEO). Less than two-fifths ranked responsibility for management succession as a high priority (see Table 1, p. 10).

It is interesting to note that the directors' own view of their responsibilities does not differ significantly from the way that management sees them. A 1981 study of individual board members reported that "assuring the integrity of the company's operations" was viewed as the primary responsibility of the board. (Both of these studies were performed by the auditing firm of Arthur Young.)[13] These studies also attempted to gauge the actual influence of boards of directors on company decision-making. More than two-thirds of the correspondents reported "compensation of the management as a key area of influence." Less than one-fourth listed "long-range planning" or "capital expenditures" in that category.[14]

C. The Board's Ultimate Power

There are other, less measurable aspects of the potential contribution of corporate directors. The presence of a board of directors helps to assure the outside world that the organization is in good hands. Company spokesmen can point to the distinguished list of board members. And, perhaps most important, boards also provide a standby facility for emergency use in times of crisis.[15]

There are other examples of the important potential authority of the board. "Bottom line control" describes the latent but critical power of the board to remove the management.[16] Myles Mace, in his classic study of the corporate board, concludes that this power is rarely used, "only when results deteriorate to an almost fatal point."[17] However, one study found at least 16 and possibly as many as 26 firings of CEOs among the 300 largest U.S. corporations in 1965.[18]

Ultimately the board has "bottom line control"—the latent but critical power to remove the management.

On the positive side, Mace reported that, when the board does remove the

CEO, the directors usually were "impressive" in their ability and willingness to assume the top corporate responsibilities.[19]

Perhaps the most fundamental aspect of the board's power over a corporation's management is how differently the CEO and other senior officers would perform their tasks if they did not periodically have to go to the board to obtain approvals. Thus, a process that, on the surface seems to be a perfunctory ritual, may turn out to be influential after all. However, this aspect of boardroom activity is least subject to formal evaluation.

Thus, in those situations where a board approves a proposed project, but only after members raise some embarrassing questions about the details, a feedback effect is often set in motion. The next round of submissions which are being prepared for consideration by the board will be more carefully developed by management. In practice, many CEOs also "try out" major proposals on key board members prior to formal meetings. Similarly, directors often express serious concerns to the CEO outside of the boardroom.[20] Thus, the overall impact of the board may be far greater than can be inferred from specific decisions on the items on its formal agenda.

Notes

1. Richard Eells, "Foreword," in Courtney C. Brown, *Putting the Corporate Board to Work* (New York: Macmillan, 1976), p. xvii.
2. *Corporate Director's Guidebook* (Chicago: American Bar Association, 1978), p. 37.
3. *Ibid.,* p. 12.
4. *Corporate Governance in America* (New York: American Assembly, 1978), p. 6.
5. Peter Drucker, "The Bored Board," *Wharton Magazine,* Fall 1976, p. 31.
6. James G. Lagges, "The Board of Directors: Boon or Bane for Stockholders and Management," *Business Horizons,* March-April 1982, p. 44.
7. George A. Steiner, *The New CEO* (New York: Macmillan, 1983), p. 69.
8. Courtney C. Brown, *Putting the Corporate Board to Work* (New York: Macmillan, 1976), p. 107.
9. Arthur J. Goldberg, cited in Neil H. Jacoby, *Corporate Power and Social Responsibility* (New York: Macmillan, 1973), p. 166.
10. Harold G. Geneen, "Why Directors Can't Protect the Shareholders," *Fortune,* September 17, 1984, p. 28.
11. Kenneth W. Dayton, "Corporate Governance: The Other Side of the Coin," *Harvard Business Review,* January/February 1984, p. 34.
12. R. A. Gordon, *Business Leadership In the Large Corporation* (Berkeley: University of California Press, 1948), p. 135.
13. Cited in Edwin S. Mruk and James A. Giardina, *Organization and Compensation of Boards of Directors* (New York: Arthur Young, 1983).
14. *Ibid.,* p. 12.
15. Edward S. Herman, *Corporate Control, Corporate Power* (New York: Cambridge University Press, 1981), p. 31.
16. Mark S. Mizruchi, "Who Controls Whom? An Examination of the Relation Between Management and Boards of Directors in Large American Corporations," *Academy of Management Review,* July 1983, p. 429.
17. Myles L. Mace, *Directors: Myth and Reality* (Boston, Mass.: Harvard University Graduate School of Business Administration, 1971), p. 41.
18. D. R. James and M. Soref, "Profit Constraints on Managerial Autonomy," *American Sociological Review,* 1981, Vol. 16, pp. 1-18.
19. Mace, *Directors,* p. 184.
20. Murray L. Weidenbaum, *Serving As An Outside Director,* Contemporary Issues Series 11 (St. Louis: Washington University, Center for the Study of American Business, 1984), pp. 3-4.

Table 1

PRIMARY RESPONSIBILITIES OF THE BOARD
Percentage of Companies Ranking Each
Item as First, Second, or Third Priority

Responsibility	Manu-facturing Group	Nonmanu-facturing Group	Financial Services Group
Counsel Top Management	65%	70%	59%
Assure the Integrity of the Company's Operations	52	54	51
Assure a Strategic Plan for the Future	51	51	49
Monitor the Performance of the CEO	51	42	54
Assure Management Succession	38	36	39
Monitor Financial Reporting	18	21	17
Serve the Public Interest	12	10	13
Represent the Board as Required	5	6	3
Assure Compliance with Government Regulations	1	1	5
Monitor Product Integrity	0	1	0

Source: Edwin S. Mruk and James A. Giardina, *Organization and Compensation of Boards of Directors* (New York: Arthur Young, 1983).

III. Criticisms of the Board

Three major and interrelated criticisms have been leveled at the institution of the corporate board of directors.

A. "The Board Is a Rubber Stamp"

The most frequent criticism of the corporate board of directors is that it is ceremonial, that it rubber-stamps the views of management.

This belief comes from many sources and has been widely held for a considerable period of time. In his study of large companies four decades ago, Gordon concluded that directors are closer to top management than to the stockholders and that ratification of management proposals by the board is largely a formality. [1]He also reported that, as a result of its control of the proxy machinery, it is more common for management to select directors than vice versa.[2]

The most frequent criticism of the corporate board of directors is that it is ceremonial, that it rubber-stamps the views of management.

Mace, in his authoritative study of corporate boards in the late 1960s, reported that the role of directors is largely advisory and not of a decision-making nature. He quotes one company president as saying, "The board of directors serves as a sounding board...The decision is not made by the board..."[3]

An account of the bankruptcy of the Penn Central reached an even stronger conclusion:

> Penn Central's directors seem to have done very little to earn the $200 each received each time they attended a board meeting...With few exceptions, they appeared to be blind to the on-rushing events that sent the Penn Central hurtling off the tracks.[4]

Frederick D. Sturdivant concludes that most research lends credence to the critics' notion that the board of directors is a weak, ineffectual body in providing accountability for corporate actions. In this view, the corporate board is seen as a cozy group of insiders—"members of top management, an attorney from the corporation's outside law firm, the president from the company's bank, and a few of the chief executive officer's personal friends."[5]

According to the general counsel of Peat, Marwick, Mitchell & Co., "...the managers of the business, the supposed servants of the shareholders, effectively became their own supervisors and the control ostensibly exercised by the board of directors became wholly formal."[6] Drucker makes a similar point. He states that board meetings rarely go beyond such trivia as approval of promotions which already have become accomplished fact; review of last month's operating results when they have become history; and spirited debates over a branch manager's right to sign checks.[7]

Surely, Gordon's conclusion on the basis of corporate practice in the 1930s still rings true in the 1980s: "It is no secret that the board's actual role in most large corporations is far different from the conventionalized picture."[8]

On the other hand, too much may be expected of the board. There is a parallel between the relationship of the board and the top management described here and the similar relationship of the senior executives and the operating divisions. Thomas A. Murphy, retired CEO of General Motors, explained why the top ranking executives do not necessarily believe that they are at the center of power. He described the company's management processes as almost dictating important decisions before they arrive for formal approval of the central management. He viewed GM as being nearly as self-governing as a Cadillac on cruise control.[9]

Well-functioning boards are not newsworthy. Only those that malfunction are "interesting" topics for discussion.

In evaluating the various criticisms of the corporate board, we should be mindful of the fact that well-functioning boards are not newsworthy. Only those that malfunction are "interesting" topics for discussion. Given the numerous success stories in American industry and commerce over the years, it is likely that corporate boards of directors often do make a useful contribution, even if it is merely to support a talented and effective management. After all, a board that is happy with the way that the CEO and his associates are running the company is likely to perform its role in a quiet and low-key manner.

Along these lines, a recent body of economic research has shown that the personal interests of the senior executives of the largest companies have indeed become closer to those of the shareholders than envisioned by Berle and Means in their writing on the divorce between ownership and management. According to the earlier view, managers of the corporation used its resources to enhance their personal interests, rather than those of the shareholders.[10]

The more current and upbeat conclusion is based primarily on the fact that top management has often become large holders of their company's stock. Frequently, the yearly change in the market value of an executive's shares in his company exceeds substantially his total formal compensation.[11] This development suggests that the concerns about management domination of the board may not be relevant or, at the least, they are overstated.

However, this line of reasoning should not be pushed too far. The very personal and thus limited nature of the shareholder orientation of top management should not be misunderstood. Shareholder-managers do not hesitate to propose "greenmail" payments—above-market purchases of the shares held by potential raiders—in order to maintain their control of the company. Studies show that shareholders suffer when managements engage in such strategies

to insulate the company from efforts of outsiders to gain control. (Management actions that encourage bidders to raise their offers, in contrast, tend to enhance shareholder wealth.)[12]

Some corporate managements, and their boards, have gone much further than greenmail, disposing of the corporation's most attractive assets in an effort to discourage an unwanted takeover. In these circumstances, it is clear that—when the welfare of specific managers diverges from that of shareholders in general— the company's executives have little difficulty in choosing their own self-interest.

B. "The Board Is Dominated By The CEO"

A closely related criticism is that the board's deliberations are dominated by the CEO, who typically also serves as chairman.

When the CEO controls both the agenda and conduct of boardroom proceedings as well as the day-to-day performance of the company, the power of the individual director can indeed become attenuated. In the case of 77 percent of the corporations surveyed in a 1984 study, the chairman of the board is also the chief executive officer. Moreover, 42 percent reported that their CEO is also the chief operating officer.[13]

Management consultants report that many directors appear to act as part of top management, rather than as monitors able and willing to reward and penalize the performance of senior executives.[14] Also, they contend that it is the rare board that dares to remove a CEO who is incompetent, let alone one who is merely mediocre.[15]

A former board chairman concludes that the board environment is not particularly conducive to nurturing challenge when most directors are beholden to the chairman-CEO.[16] Another states that the "ambiguity" of the role of the corporate board begins with the prevailing combination of management leadership and board leadership in the same person.[17] One senior executive provides a pithy evaluation of the relationship:

> Management creates the policies... We tell our directors the direction of the company and the reasons for it. Theoretically, the board has a right of veto, but they never exercise it...[18]

On reflection, it should not be surprising that CEOs believe that they do not jump to the signals of board members. But, similarly, it may be the rare board member who considers the position to be that of a mere "rubber stamp." It is interesting to note the high departure rate of CEOs of major corporations who approach the customary retirement age of 65. For younger individuals who serve as executives, the odds are only one in six that they will leave the job in a given year. For those 64 years of age, the odds are one out of two.[19] That surely shows that board policies can be meaningful and that many CEOS do conform to them.

As we will see in Section V, numerous suggestions have been made to dilute the current concentration of corporate power in the chairman-CEO.

C. "The Board Is Plagued With Conflicts of Interest"

Corporate directors often are criticized for conflicts of interest and for showing greater concern for the welfare of other companies. Many outside directors of corporations do business with the companies on whose board they serve. The literature contains a number of cases of apparent wrongdoing on the part of outside directors who also were officers of companies that supplied services to the corporation.[20]

In the case of the Penn Central, a staff report of the Committee on Banking and Currency of the U.S. House of Representatives censured the company's board members for their excessive involvement in other corporate boards. The Committee staff noted the subservience of many of the outside directors to the interests of the financial institutions of which they were officers.[21] A broader criticism has been leveled at investment and commercial bankers serving on corporate boards. Critics note the possibilities of both direct conflicts of interest and restricting the company to using the services of the investment banker or commercial banker represented on the board.[22]

There is, however, another side to the conflict-of-interest argument. Keeping suppliers and bankers off the board may generate substantial costs to new, small, and marginal firms. Having creditors on the board provides them with an opportunity to monitor the firm's activities and may be in lieu of drastic loan covenants. The alternative may be, in a pristine environment which excludes all "dependent" outside directors, a lessened availability of credit to some corporations.[23] However, studies show that financial institutions tend to avoid serving on the boards of risky companies.[24] Thus, the presence of prestigious bankers on a board can be an important signal to other business firms of the creditworthiness of the company. The service of such "dependent" outside directors may be an efficient way of transmitting information and may thus reduce the interest rates that the company pays on its indebtedness.

In the case of the larger firms, in contrast, a different problem is emerging, one that does not involve any conflicts of interest, at least as technically defined by the law. An example is the opportunity for "backscratching" in setting management compensation by the board's compensation committee. This group typically is dominated by outside directors. What's wrong with that? After all, corporate critics have recommended that very approach.[25]

The problem is that frequently those outside directors are senior officers of other firms, who are very sympathetic to motions for generous increases in the compensation of their counterparts. Aside from the intrinsic merits of the matter, their self-interest dictates such a stand. After all, the compensation committees of their own boards are often similarly composed of CEOs of peer firms. Moreover, the management consultants advising those committees take full account of such peer group action by the other boards. The ratchet effect that results is quite obvious.

Several studies of selected samples of large corporations show a limited relationship between the remuneration of top management and the performance

of their companies. At times, compensation of officers was increasing even when the value of the company's stock was decreasing significantly.[26] As we will see subsequently, these officials may simultaneously be suffering substantial losses because of the negative effects on their own stock portfolios. Nevertheless, such reports do little to inspire confidence in the actions of board compensation committees.

In recent years, many corporations have changed their compensation plans for top management from market-based approaches (such as stock options) to performance plans (based on objective measures of the company's performance).[27] Thus, if a takeover occurs, a manager compensated via performance plans does not necessarily share in the market appreciation associated with the merger. This suggests that senior executives now may have more to lose from a takeover.[28]

Other potential conflicts of interest may arise on a board when nominally independent outside directors, in practice, represent the special interests of the local community. This may be the case when they are senior officers of local companies that primarily sell goods and services to the surrounding area. Under the circumstances, they may see great value in the company donating lavishly to local causes—even if its markets are national or international.

In contrast, some of the so-called dependent outside directors, such as widely-criticized bankers and other creditors, may take a more cautious and independent attitude toward spending the company's money. This illustrates the difficulty of developing useful hard and fast rules in these areas of managerial decision-making.

Geneen raises a different aspect of the conflict of interest question. He asks how independent board members can be if they accept all the perks heaped on them by the management they are to judge. "Isn't there a fundamental conflict of interest here? Certainly the board would object if the company's purchasing agent accepted free dinners and trips abroad from suppliers."[29] Geneen's point does seem to be overstated. It is hard to conjur up an outside director who feels beholden to the management because they sign for the lunch or dinner tab at board meetings. On the other hand, in those circumstances where generous directors' fees become a major portion of the individual's income, the feeling of independence may be weakened.

An experienced director reports that he never saw a subordinate officer serving on a board dissent from the position taken by the Chief Executive Officer.

A far more serious concern is the relationship of the inside directors to the chairman-CEO. After all, he (or she) is their day-to-day supervisor, usually with the effective authority to radically change their role in the company and even to fire or demote them. An experienced director such as Courtney Brown reports that he never saw a subordinate officer serving on a board dissent from the position taken by the CEO.

In contrast, those in favor of having inside directors serve on a board believe that they provide a valuable window on the corporation. Also, they reduce the likelihood that the CEO can control the board by virtue of being the sole source of information about the organization.[30]

Important changes have been made voluntarily in board policies and procedures in response to the criticisms that have been leveled. The next section examines the key voluntary developments in recent years.

Notes

1. R. A. Gordon, *Business Leadership In the Large Corporation* (Berkeley: University of California Press, 1948), pp. viii, 131.
2. *Ibid.,* p. 117.
3. Myles L. Mace, *Directors: Myth and Reality* (Boston: Harvard University, Graduate School of Business Administration, 1971), p. 13.
4. J. R. Daughen and P. Binzel, *The Wreck of the Penn Central* (Boston: Little Brown, 1971), p. 12.
5. Frederick D. Sturdivant, *Business and Society* (Homewood, Ill.: Richard D. Irwin, 1981), p. 341. See also Francis W. Steckmest, *Corporate Performance* (New York: McGraw-Hill, 1982), p. 183.
6. Victor M. Earle III, "Corporate Governance and the Outside Director," *Washington and Lee Law Review,* Summer 1979, pp. 787-788.
7. Peter Drucker, "The Bored Board," *The Wharton Magazine,* Fall 1976, pp. 20-21.
8. Gordon, *Business Leadership,* p. 116.
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IV. Voluntary Changes in the Boardroom

While the criticism by writers on corporate governance continues unabated, important changes in the boardroom are being made on a voluntary basis. These adaptive adjustments have resulted from significant shifts in the environment in which corporations and their boards function. Developments in that external environment have included increased government regulation and the threat of further intervention, heightened activity by citizen groups, greater foreign competition, rising levels of litigation by shareholders, and criticism from the press.

Some international perspective is useful. Most of the major industrialized, capitalist nations have been reconsidering the role of the corporate board of directors. Several Western European countries have changed the statutory requirements imposed on corporate boards. For example, West Germany, the Netherlands, and Austria have enacted "co-determination" statutes which require labor union representation on major company boards. In Sweden, the government appoints public representatives to the boards of large companies.

In the United States, in contrast, the key developments in the nature of boards of directors have come from the voluntary changes instituted by the corporations themselves. Because of the informal nature of these adjustments, variations are great and descriptions of trends are subjective and impressionistic.

In good measure, these voluntary developments are responses to the various criticisms leveled at the board as an institution.[1] In part, these changes deflect or at least reduce the pressures for new statutes or regulations requiring compulsory modifications in corporate governance. Also, the increased liability of corporate directors for their actions is reinforcing the trend toward their greater involvement in company decision-making.

Efforts to philosophize on existing shortcomings in corporate governance should not blind us to the reality that boards of directors are functioning more aggressively and more critically.[2] According to the board chairman of a major

Many boards are taking on a more active role; "passive ceremonial directors are fast becoming an endangered species."

consulting firm, "passive ceremonial directors are fast becoming an endangered species..."[3] A recent survey of the boards of directors of large American corporations concludes that "the days of the 'rubber stamp' board are over."[4] Clearly, many boards are taking on a more active role. The key structural changes are described below.

A. The Shift to Outside Directors

1. *Outside directors have become a majority of most boards of large companies in the United States—and the move toward more outside directors*

continues. The proportion of industrial corporations in the United States with majorities of outsiders on their boards increased from 50 percent in 1938 to 83 percent in 1979.[5] A 1984 study reported that the typical board of the larger corporations contained nine outside directors and four inside directors or a ratio of 69 to 31 percent.

The larger the firm, the more likely is the predominance of outside directors. In fact, the biggest companies were the first to name a majority of outside directors. The extent to which the board decision-making process changes with a shift to outside directors is examined in later sections of this report. In any event, the prevalence of "dependent" outside directors is diminishing. In 1974, commercial bankers served on slightly more than one-half of corporate boards and only on 31 percent in 1984. Similarly, attorneys providing legal services for the company served on 28 percent of corporate boards in 1984, down from 40 percent in 1974.[6]

2. *A broader diversity of backgrounds is evident in the types of persons serving on corporate boards.* Increased numbers of directors have public service, academic, and scientific experience. Boards also include rising percentages of women and minorities. One survey shows that 45 percent of the boards examined had female directors in 1984 compared to 11 percent in 1974. During the same period, the percentage of boards with ethnic minority members rose from 11 percent to 26 percent; those with academics from 36 percent to 52 percent; and those with former government officials from 12 percent to 31 percent.[7] Data are lacking, however, on the impact of these changes on board decision-making. Yet, we can infer a positive role because of the increased activity on the part of corporate boards generally.

B. The Rise of Strong Committees

3. *Auditing committees have become a nearly universal phenomenon.* Typically, these financial oversight bodies are composed entirely of independent outside directors (that is an absolute requirement for firms listed on the New York Stock Exchange). The audit committees have direct access to both outside and inside auditors and usually review the financial aspects of company operations in great detail. As recently as 1973, only one-half of large U.S. corporations had auditing committees. By 1983, 95 percent of large U.S. firms had such a committee. A 1984 study indicated the proportion at 98 percent.[8]

Yet the heightened activism of auditing committees has not prevented a spate of recently revealed shortcomings in the financial practices of leading defense contractors. Despite the impressive array of internal and external auditors bolstering the auditing committees, stories on dog kennel fees charged to the company (and in part passed on to the government as overhead costs) have reduced public confidence in corporate performance. Actually, such practices are in the minority and frowned upon, but they are not new. In 1977, one executive used his company's private plane to fly his pedigreed bull terriers to and from dog shows.[9]

4. *In many companies, nominating committees propose both candidates for the board and senior officers.* These committees usually have a strong majority of outside directors (typically, four out of five). A 1984 study reported that 48 percent of the companies surveyed had nominating committees. This compares to 7 percent in 1973. These statistics do little to illuminate the powerful role of the CEO in initiating or informally approving committee selections. As in many other areas of corporate governance, it is often difficult to distinguish between form and substance.

5. *In most large companies, compensation committees evaluate the performance of top executives and determine the terms and conditions of their employment.* These committees are composed largely or entirely of outside directors. In 1983, 88 percent of the large companies surveyed had compensation committees. In practice, many of these committees rely extensively on outside consultants hired by the management. As noted earlier, those compensation surveys often set the framework for committee deliberations.

In the past decade, the percentage increase in the average chief executive's spendable income probably was double that of foremen and hourly workers. But of greater relevance is the evidence of a positive relationship between executive pay and the returns achieved by shareholders.[10] Yet, board members depend heavily on chief executives for guidance in making compensation decisions, often signaling their views by the increases they propose for their subordinates.[11] On the other hand, it can be inferred from the close relationship between top management compensation and the firm's stock price performance that, at least in a general way, corporate senior managers have powerful incentives to respond to the desires of the shareholders,[12] whether or not the compensation committees perform their assigned task effectively.

6. *Since 1970, about 100 major companies have established public policy committees of their boards.* These committees give board level attention to company policies and performance on subjects of special public concern. Topics with which public policy committees often deal include affirmative action and equal employment opportunity, employee health and safety, company impact on the environment, corporate political activities, consumer affairs, and ethics.[13] Cynics may wonder whether this new activity is mainly a sop to the proponents of greater corporate social responsibility, rather than a substantive change in business policy. Yet the potential for broadening the horizons of corporate decision-making is now present.

C. The Expanded Flow of Information

7. *Internal management and accounting control systems have been strengthened.* In part, the impetus has come from the need to comply with the provisions of the Foreign Corrupt Practices Act. The activities of the audit committees surely are a reinforcing factor. As a result, the flow of information to board members has been upgraded and expanded.

As a positive byproduct of these internally-oriented activities, a substantial increase has occurred in the voluntary disclosure of company information. The heightened public and shareholder interest in corporate performance has been a contributing influence.

D. A Broader View of the Voluntary Changes

Scholars have provided a broader view of the changes that are occurring in the boardroom. They see the typical corporate board as moving through three stages.[14]

The typical corporate board is moving through three stages—"legitimizing," "auditing" and "directing." For many boards, phase three remains a target to strive for.

In the first phase, which can be referred to as the *legitimizing* role, the directors merely sign the necessary legal papers and the board adopts the resolutions required by law. Little involvement occurs in decision-making activities. Any suggestion of change in a resolution proposed for board action is tantamount to voting a lack of confidence in management. Except for small and closely held corporations, this phase of corporate governance (or the lack thereof) has passed into history.

Subsequently, in the second phase of development, the board adopts the *auditing* role. In this mode, the Board recommends specific actions to improve the functioning of the management control or auditing process. Specific recommendations tend to relate to technical matters such as reporting procedures. Virtually every large and medium size company, as well as many smaller firms, has advanced fully into this second phase and often beyond it.

Many companies are moving to a higher, third phase in the development of board influence. In this *directing* role, the board becomes more involved in choosing alternative directions, key strategies, and major investments. The focus is increasingly on the future. In the case of many boards, this third phase is still just a target to strive for, although it increasingly is an accurate description of current boardroom activity.

Notes

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5. E. S. Herman, *Corporate Control, Corporate Power* (New York: Cambridge University Press, 1981), p. 36; *The New Director* (New York: Arthur Young & Co., 1981), p. 6; Edwin S. Mruk and James A. Giardina, *Organization and Compensation of Boards of Directors* (New York: Arthur Young & Co., 1983), p. 11.
6. Korn and Ferry, Twelfth Annual Study, pp. 4, 15.
7. *Ibid.,* p. 15; Lester B. Korn and Richard M. Ferry, *Board of Directors Annual Study (New York: Korn/Ferry International, 1975),* p. 9.
8. Mruk and Giardina, *Boards of Directors,* pp. 19-20. See also, *The New Director* (New York: Arthur Young & Co., 1981), pp. 8-9; Korn and Ferry, *Twelfth Annual Study,* p. 16.
9. Jim Montgomery, "How a Company Jet Eases the Dog's Life of a High Executive," *The Wall Street Journal,* November 14, 1977, p. 1.
10. Kevin J. Murphy, "Corporate Performance and Managerial Remuneration," *Journal of Accounting and Economics,* April 1985, pp. 11-42.
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V. Popular Proposals for Further Change

The voluntary evolution of the corporate board that has taken place in the United States in recent years does not satisfy the critics. Several key proposals for further change occur time and again in professional writings on boards of directors. Let us examine these suggestions as well as several off-beat ideas.

A. Give the Corporate Board More Authority

Many students of corporate governance respond to the litany of complaints about the work of the board with a plea to strengthen the role of the institution. A representative view of this position was presented by the late Neil H. Jacoby, former dean of the UCLA Business School and an active board member. He contended that there is merit to the various complaints about the shortcomings of corporate boards of directors. Thus he urged that the institution should be reformed to cure its "three most frequent weaknesses": a restricted social perspective, domination by the company's management, and conflicts of interest with financial institutions.[1]

His recommendations to carry out these changes were rather general. Jacoby concluded that the key to better corporate government is to increase the power, the independence, the range of competence, and the compensation of outside directors in public corporations. How to accomplish this change in a constructive manner is the heart of the problem. Surely, turning the board into a debating society would be undesirable.

The management literature provides a conceptual basis for strengthening the role of the directors, distinguishing between the board's function of governing and the executive responsibility for managing. In this view, the board is concerned with the basic purpose of the enterprise. Its primary focus is on the firm's continuity and on overseeing its strategic direction and the relationship to its external constituencies.

Management, in contrast, is seen as more of a hands-on activity. This involves performing or supervising action to accomplish assigned objectives over a definite time frame and in the organization prescribed by the board.[2] Economists make a similar distinction. They emphasize the separation of the initiation and implementation of decisions (a management function) from ratification and monitoring of those decisions (the board's responsibility).

In this view, the board is not an effective device for decision control unless it limits the "decision discretion" of individual top managers. Accordingly, the domination of corporate decision-making processes by the chief executive officer signals the absence of that desirable separation of decision management and decision control.[3] We can recall, from Section II, that the legal powers of the board of directors fully cover the strong role envisioned here. As we will see later in this section, part of the problem is the unwillingness of many directors to assume this role.

Several authorities have proposed that outside directors on the board generally be given more staff support to help them carry out their functions more effectively.[4] As a precedent, we can cite the fact that, in the mutual fund industry, independent directors sometimes hire outside experts to help review investment advisory contracts.

An alternative approach is to make the corporate secretary and related personnel responsible only to the board. However, the provision of independent resources to the board raises severe problems where the CEO dominates board decision-making.[5] Moreover, growth of the board staff would likely create a competition for influence with the existing corporate organization. That would make more difficult the relationship between senior managers and outside directors.

B. Shift the Balance of Power to Outside Directors

The most controversial recommendations deal with the question as to whether inside (or management) directors should serve on the corporate board. The pioneer proposal in this field was made by the late Supreme Court Justice William O. Douglas in 1934, when he was chairman of the Securities and Exchange Commission: "The minimal requirements in this regard are statutory provisions that a board of directors shall be composed of stockholders who are not employees or officers of the corporation."[6]

The result of Justice Douglas' proposal would be a corporate board consisting entirely of outside directors. He did not distinguish between independent and other outside directors. Douglas' idea, however, remained a curiosity in the legal literature for over four decades.

Harold M. Williams, who has served as CEO and board member of many corporations and nonprofit institutions, joined the issue in resurfacing a variation of Douglas' general approach in 1978, when he was chairman of the SEC. He contended that some people do not belong on boards, specifying members of management and "dependent" outsiders. The latter include outside counsel, investment bankers, commercial bankers, and others who might realistically be considered suppliers hired by management. Williams recommended that the chief executive should be the only member of management to serve on the board.[7] The SEC considered Williams' suggestions but took no action on them.

In 1984, Harold Geneen returned to Douglas' pristine position. He suggested that the best way for a board of directors to regain its independence is to take all the management members off the board, including the chief executive. Each group—board and management—would then have separate and distinct responsibilities.[8] We can only speculate as to Geneen's reaction if an outside director had dared to make that suggestion at ITT while he was board chairman!

Less extreme positions on the issue of inside versus outside directors have been taken by such organizations as the American Assembly, the American Law Institute (ALI), and the American Bar Association.

In 1978, the American Assembly proposed that the majority of board members should come from outside corporate management, "unencumbered by relationships which limit their independence."[9] Unlike Williams, the group recommended that key inside managers, in addition to the chief executive officer, be eligible to serve. They noted that the presence of other management officials on the board also helps outside members evaluate possible successors to the chief executive.

A draft "restatement" of corporate governance law by the American Law Institute would codify certain aspects of prevailing practice. For example, the draft restatement would require amending corporate law to mandate that a majority of the members of a board of a publicly held corporation be directors who have "no significant relationships" with the company's senior management.[10]

The ALI draft also proposes that corporate law should require every large publicly held corporation to set up audit, nominating, and compensation committees (Section IV showed that this has become the general practice in the United States). The vehement opposition from the business community[11] and from some scholars[12] has led to lengthy consideration of the ALI draft, but so far no action has been taken.

The Section on Corporation, Banking, and Business Law of the American Bar Association has developed a proposed model for the board of a publicly-owned corporation which is less extreme than the ALI draft restatement. According to the ABA group, the model Board should include "a significant number" of members who are able to provide independent judgment regarding the proposals under consideration.[13]

Although the concept of outside directors controlling the board is appealing, there has been no comprehensive analysis to date that demonstrates that the performance of companies with outside-dominated boards is superior.

Although I share the prevailing positive attitude toward outside directors dominating a corporate board, I know of no comprehensive analysis that demonstrates that the performance of companies with outside-dominated boards is superior.[14] One study covering 103 large companies concluded that, on the average, inside-dominated boards of directors were more effective than outside-dominated boards. However, the data are more than two decades old.[15]

Table 2 (p. 28) compares the formal strengths and weaknesses of inside and outside directors. Outside directors can perform important but limited functions in the areas in which shareholders are most vulnerable:

- Protecting against a take-the-money-and-run management;
- Serving as a check on self-dealing and fraud;
- Insisting on proper auditing procedures;

- Reviewing corporate decisions of a magnitude sufficient to entail the risk of foul play;
- Providing a perspective different from that of people immersed in the company's affairs;
- Providing helpful analysis in decision-making; and
- Asking tough questions about a proposal which even a fully conscientious management may not face directly because of an unconscious pride of authorship.[16]

However, management's knowledge and experience are inevitably superior to those who play a part-time role and receive part-time compensation. Outside directors cannot be on an equal footing with management unless they spend comparable amounts of time, receive comparable compensation, and have comparable resources. Then, however, they are, in good measure, "inside" directors.

In a fundamental sense, the basic question involved is how to balance objectivity of judgment with knowledge of the company. One obvious answer is to combine a majority of independent directors with an adequate number of management directors. If the outsiders take their role seriously, objectivity is served and if the insiders are represented on the board, its knowledge base is greatly increased.[17] Reginald H. Jones emphasizes the desirability of having a "critical mass" of outside directors. Rather than specifying a specific proportion, he urges a number sufficiently large to have a significant impact on the board's decision-making process.[18]

Having a preponderance of outside directors does not ensure a company against bad judgment or even dishonesty. That was certainly the experience of a number of prominent companies in the 1970s. At Lockheed, during the time of its bribery problems, the ratio of outside directors to insiders was 12 to 5. Penn Central, when it went bankrupt, had 18 outsiders and 4 insiders. At Gulf Oil, during its illegal payments travail, the ratio of outside to inside directors was 9 to 3. W. T. Grant's ratio, when it declared bankruptcy, was 11 to 6.[19]

It also has been suggested that boards should consider formalizing the position of devil's advocate, assigning the responsibility on a rotating basis. Presumably, under this approach, no single director will "outwear his welcome," yet the management directors will hear criticism from someone who is required to assume that task. A negative aspect is that the work of the "official critic" may expose the board to greater risks of liability.[20] A variation of that suggestion was made by Gordon. He proposes that the board act as management auditors, reporting periodically to stockholders and the public on the company's progress and the quality of its leadership. Warning that the board should not try to run the company, he acknowledges that the auditing and reporting function would result in a new type of board.[21]

Table 2

CHARACTERISTICS OF OUTSIDER-DOMINATED BOARDS

Advantages	Disadvantages
1. Provide a bridge between shareholders and professional managers.	1. Outside directors spend too little time on board matters.
2. Extra layer of review to confirm major decisions.	2. They show little interest in the company except in times of crisis.
3. Independent resolution of inherent insider conflicts—compensation, performance review, etc.	3. Lack good knowledge of the company and are not competent to make key decisions.
4. Prominent directors enhance corporate image.	4. Independence may be an illusion.

CHARACTERISTICS OF INSIDER-DOMINATED BOARDS

Advantages	Disadvantages
1. Intimate familiarity with company operations.	1. Lack of independent perspective.
2. Substantial time devoted to board matters.	2. May fail to detect changes in external environment.
3. Unanimity of purpose.	3. Possibility of self-dealing and excessive compensation.
4. Policymakers are responsible for execution and success of policy.	4. Cannot independently judge their own performance.

Source: Compiled from *Board Models,* Corporate Directors' Special Report Series, Vol. III (Washington, D.C.: National Association of Corporate Directors, undated).

And that gets us back to the question that is rarely raised in the formal writings on corporate governance—what considerations motivate and guide the directors in their decision-making? Implicitly, most of the literature assumes that outside directors will do a better job than inside directors. Yet, the key point really is that the outside directors should be expected to do a different job of decision-making, especially to respond more fully to the desires of the stockowners. Thus, even without changing the board's formal structure or its operating procedures, an increasing number of managements is restructuring their companies to maximize shareholder value.[22] Such actions may involve selling off parts of the company that involve historic tradition but low returns. It will be recognized that this approach runs counter to the sales or size maximization which is supposed to motivate many corporate managers.[23]

C. Separate the CEO from the Board Chairmanship

One specific proposal to strengthen the position of outside directors is to require the chairman of the board to be an outside director. This would separate the management role of CEO and the governing role of presiding officer in the boardroom. The American Assembly suggests this approach, as does Harold Williams. He emphasizes the importance of having the agenda of issues presented at board meetings determined by a chairman who is not a member of management.[24] These suggestions differ from current practice, where the board chairman is almost invariably an inside director, and usually but not universally also the CEO.

It has been suggested that the board chairman act as the "discussion leader." That person, avoiding the expression of personal views, would stimulate participation by all directors, encourage questions, and protect those holding minority positions. This approach, it is contended, would develop an atmosphere of open inquiry and encourage the impartial exploration of a wide range of policy alternatives. Moreover, even as an individual director, the CEO's view would carry a great deal of weight. It is held that, in contrast, the traditional approach whereby the CEO announces his position at the outset "colors the decisions."[25]

At times the separation operates effectively, but Jones reminds us that often it creates an unworkable, competitive situation between the occupants of the two posts. Thus, the separation of the functions of CEO and board chairman will only work if the people involved are compatible and operate in good faith. But, when serious rivalries develop between the two "consuls," great damage can be done to the enterprise. Jones concludes that experience and common sense tell us to expect this rivalry in a considerable number of cases.[26]

This separation is very common for non-profit institutions, where it has not been challenged or greatly criticized. However, in the case of many non-profit institutions, such as hospitals, the board members are usually very senior to the chief administrator in terms of their professional or business accomplishments and total income. In the case of the corporate board, in contrast, the outside directors are often the peers of the CEO, which makes for a very different working relationship.

D. Tie Liability to Responsibility

One way to introduce independence in the board of directors is to strip away some of the protection given to board members. Harold Geneen asks, "What's wrong with holding directors personally responsible—in terms of money from their own pockets up to some reasonable limit?" He would tie the liability to the size of directors' fees.[27] Directors who just did it for the honor would have little liability. Geneen's suggestion possesses serious defects. Would it be wise to entrust the greatest amounts of corporate power to the people who have the least stake in the outcome?

But this suggestion does raise the important question of directors' liability. For those directors who assume substantial financial responsibility (far more so than for many other forms of business activity), Geneen's proposal does not deal with the problem of recruiting and retaining qualified individuals. The conclusion of Judge Learned Hand on this point is worth considering: "No men of sense would take the office, if the law imposed on them a guaranty of the general success of their companies..."[28]

"No men of sense would take the office [of director], if the law imposed on them a guaranty of the general success of their companies..."

In current practice, the "business judgment" rule is supposed to protect directors from liability for their mistaken business decisions, in the absence of fraud, gross negligence, or self-dealing. One legal commentator has summarized the rule:

> A court...will not substitute its judgment for that of directors when they act reasonably and in good faith. In the absence of self-dealing, therefore, if a decision of a board of directors can be attributed to "any rational business purpose," a court will not hold a director liable for honest errors or mistakes of judgment.[29]

Several rationales support this rule: encouraging qualified persons to serve as directors, minimizing judicial interference to permit business enterprises to function at maximum efficiency, freeing directors to take business risks without inordinate caution, and avoiding the imposition of unfair liabilities by judges and juries who lack competence to evaluate complex business decisions.[30] Moreover, the market can generally be relied upon to punish companies for the negative outcomes of honest but erroneous decisions.

In general, the courts have been extremely reluctant to second-guess the judgment of management and directors who have been running the business.[31]

Section 35 of the Model Business Corporation Act (the part dealing with boards of directors) concludes with the following statement:

> Where a director has exercised his duties of oversight in the manner contemplated by Section 35, it is intended that he will have no liability by reason of being or having been a director of the corporation.[32]

Nevertheless, several court decisions have narrowed the scope of the business judgment rule. For example, in 1968 a court held that outside directors had failed to fulfill their "due diligence" responsibilities in connection with the preparation of a prospectus for a public offering of securities. In a 1972 case, outside directors were held liable for their negligence in failing to review a merger proxy statement carefully enough.[33]

In January 1985, the Supreme Court of Delaware ruled that the directors of a company breached their fiduciary duty to shareholders when they agreed very quickly to the sale of the company to another corporation. The court held that the directors acted too hastily and did not seek enough information to make a responsible decision. Another court will decide if the price paid was too low. If so, the directors may have to pay the shareholders the difference between such higher value and the price actually received.[34]

Increasing the liability of individual directors for their "business judgment" actions may unintentionally discourage experienced people from accepting new board positions.[35] Moreover, increasing the liability of directors may generate a feedback effect in terms of reducing their desire to innovate and make changes.

Liability insurance for directors is becoming more expensive and more difficult to obtain. Some insurers are shying away from companies involved in takeover battles.[36] The absence of such insurance would make recruitment of directors more difficult.

E. Select Directors from Major Constituencies

In the 1970s, proposals were frequently made for stockholders to select directors from key "constituency" groups representing consumers, civil rights activists, ecologists, etc. Ralph Nader also proposed that, for the largest companies, a portion of the directors be chosen by national elections. (Consider the consequences of adding "only" a few hundred director candidates to the November ballot!) Individual directors would be assigned responsibility for specific areas of company operations, such as employee relations. Supposedly, such action would "popularize" boards of directors.[37]

The specific proposals were subjected to great criticism when they were first made.[38] Nevertheless, in recent years, a body of theory has developed which, to a limited extent, provides a conceptual underpinning for that approach. Using a broad concept of the ownership of the business firm, some scholars maintain that ownership of capital should not be confused with ownership of the firm. Thus, each factor in the firm is seen as being owned by someone.[39]

In this view, control over the company's decisions is not necessarily the province of security holders. To bolster this position, we can note that stockholders are often referred to as investors rather than owners.

This approach is a variation on an older theme—that economic interest groups to which the company is beholden should be represented on the board. Officers of key creditors have often been on a company's board, as well as major customers and suppliers. The community is frequently represented, with civic leaders—ranging from heads of local organizations to the president of the state university—serving as directors. Although, as shown earlier, the number of blacks and women board members has risen substantially, corporations have avoided appointing directors who are beholden to specific social interest groups, such as consumer or civil rights organizations.

The one exception to this avoidance of interest group representation on the board is the selective election of labor leaders. This development almost always comes about in conjunction with union concessions on wage costs. In 1980, Chrysler became the first major U.S. corporation to elect a union officer to its board. In 1982, Pan American World Airways added a union representative to its board. In 1984, two union officers were elected directors of Eastern Air Lines.

Union memberships on corporate boards are still isolated examples. Although the concept of employee representation on the board is common in Western Europe, it is not a widely accepted notion in the United States and it remains a voluntary matter. It is generally recognized that the idea of constituency directors is difficult to reconcile with the central principle of the accountability of the directors to the owners of the enterprise.

Douglas Fraser, who was the first labor leader to serve on the Chrysler board, came away from his service as director with a very positive attitude. He claimed that labor union leaders are more knowledgable about the company's operations than other outside directors. Thus, labor directors can raise better questions and offer more useful insights. To avoid conflicts of interest, Fraser stayed away from board discussions dealing with collective bargaining.[40]

Other observers provide a far more negative view of the phenomenon of special-interest directors. Recent behaviorial science research suggests that appointing board members to represent different corporate constituencies is counterproductive. For example, some empirical evidence shows that an adversary relationship among members reduces the quality of decision-making. Groups faced with intense disagreement either compromise on a third decision or the less aggressive members surrender to the other faction.[41]

The notion of constituency directors has been labeled a "Noah's Ark proposal" and a "tower of Babel."

The notion of constituency directors has been labeled a "Noah's Ark proposal" and a "tower of Babel." Irving Shapiro, retired CEO and board chairman of DuPont, sees it as an extension of the false parallel between corporations and elected governments. The basic flaw in the notion is that people representing specific interest groups would by definition be committed to the goals of their groups. Shapiro notes that it is a matter of law and not simply of tradition that directors serve the organization as a whole.[42] Another negative is that the presence of special-interest directors on the board would put a premium on logrolling."[43] The result might also be the reduction of serious matters determined at formal board meetings.

The American Bar Association notes that, under United States law, neither the corporation nor the individual director is in general responsible to other constituencies, such as employees, customers, or the community. However, the ABA's *Corporate Director's Guidebook* goes on to state the following qualification:

> Nevertheless, the director should be concerned that the corporation conducts its affairs with due appreciation of public expectations, not only by compliance with existing laws but also alert recognition of trends in the law and social norms which may affect the corporation's activities in the future.[44]

The evidence suggests that the overwhelming majority of shareholders have little interest in greater participation in the details of corporate governance or in the firm's broader social responsibility. They consistently vote down resolutions which limit the independence of management, regardless of the topic. In any given year, defeated proposals have ranged from requests to add women to the board of directors to establishment of corporate responsibility committees to disclosure of minority group employment.[45] Yet each of these changes has been undertaken by many corporate managements on a voluntary basis.

The overriding concern of shareholders is with dividends and the market price of their shares, factors which the self-styled corporate activists usually ignore. Numerous instances at annual meetings demonstrate the antagonism of serious investors to social activists who attempt to use corporate resources to further their own political and social agendas. This is in dramatic contrast to the frequently positive attitudes of shareholders to hostile takeover efforts which appear to offer large and immediate increases in stockholder wealth.

F. Limitations of Reform Proposals

Several writers on corporate governance have noted the limitations of formal changes. Irving Shapiro warns that the danger is not that boards will pick the wrong formula, but that boards will put too much emphasis on the wrong details.[46] Former SEC commissioner Roberta Karmel points out that there is little evidence that an independent board of directors would be more informed or more competent or would function any better or any differently than a board selected by management:

> Every organization benefits from an outsider's perspective. . . . However, every corporation also needs directors with business acumen, experience and

expertise, and some corporations have more difficulty obtaining competent "independent" directors than others do.[47]

Much of the emphasis and fervor on board changes may arise from an overdramatization of marginal shifts of limited impact, as well as from the fact that much writing on the subject is exhortative, tending to confuse what ought to be with what is. We should not underrate the ability of corporations to absorb new instructions and new types of individuals by using co-optation, obstruction, and tokenism.[48]

Although most directors are intellectually aware of and ready for changes in the boardroom they are often too emotionally and politically involved to allow these changes to occur. It is difficult to acquire the detachment necessary to make changes without upsetting relations with management or owners.[49] Some evidence suggests that recent innovations to strengthen the boards' role have been cosmetic.[50]

One detailed study of the board of a major corporation during a period of considerable challenge concluded that change in the formal powers of the board cannot by itself improve the institution. In that case, the directors did not use the powers they had because, as they saw their role, provoking conflict or acting in any way which could be interpreted as hostile to the CEO was unsupportive and therefore undesirable. The author concluded that this board remained impotent, not for need of more or different reforms, but because the directors had never developed the knowledge, attitudes, and skills required to use the expanded authority already available.[51]

However close their working relationships with management, outside directors must understand that their responsibility to the shareholders is basic to the American scheme of corporate governance.

However close their working relationships with management, outside directors must understand that their responsibility to the shareholders is basic to the American scheme of corporate governance. As two legal authorities point out, "It is not by chance that the legal basis for their [the directors'] presence on the board is by election by the shareholders rather than by appointment by management or by the board itself."[52]

Notes

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VI. Conclusions and Recommendations

A. Findings and Conclusions

Most writers on the role of the corporate board reach some variation of the same conclusion: *The board of directors is a vital part of the business firm, but it often does an inadequate job of carrying out its responsibility to represent the shareholders.*

The result can be a policy vacuum which provides opportunity for those outside of the corporation to attempt to change prevailing relationships. Dramatic moves have been made to respond to—or rather to take advantage of—the fundamental shortcoming of corporate boards. These responses have come from the so-called predatory raiders, who attempt to take advantage of the latent support of shareholders for changes in the status quo.

Of course, corporate managements view this phenomenon differently. A spokesman for the Business Roundtable describes the strategy of "professional raiders" as waging "blitzkrieg warfare" devised to outflank the corporate board of directors and "stampede the stockholders."[1] There is no need to glamorize the activities or the motives of the raiders. One of the most successful takeover specialists describes his efforts as "acting in pursuit of personal financial gain and not out of altruism...I do it to make money."[2]

We must recognize the extent to which takeover battles have occurred because of the cumulative inaction of boards of directors.

We must recognize the extent to which takeover battles have occurred because of the cumulative inaction of boards of directors. It is easy enough to denounce the current crop of financial entrepreneurs who have little interest in the production of goods and services, but who profit—often in the form of "greenmail"—merely from making unsolicited takeover bids. But if they are opportunists, we must ask whether existing boards and management practices have created those opportunities.

A clue is given, perhaps inadvertently, by the Roundtable's lament that a successful corporate defense may involve drastic restructuring "to maximize share value in the short run."[3] Without endorsing the desirability of such a change, we can wonder whether—for better or for worse—it does reflect the true desires of many shareholders who indeed want "to maximize share value in the short run."

An earlier report of the Business Roundtable noted that the board of directors is located at the interface between the owners of the enterprise and its management. In this view, the directors are stewards—stewards of the owners' interest in the enterprise and stewards also of the owners' legal and ethical obligations to other groups affected by corporate activity.[4]

Despite their attraction to defending managements, legislative proposals to make unfriendly takeovers more difficult do not deal with the fundamental need to respond to the desires of the shareholders. That is both the basic responsibility of the board and the key to its potential power. Corporate officials, both board members and officers, may forget that shareholders continually vote with their dollars. The less frequently that key issues are presented to the shareholders the more likely they are to resort to their ultimate weapon.

It is ironic that some of the problems of the takeover "targets" may have arisen from their desire to be more socially responsible. Much of the modern management literature refers to the need for top management to balance the desires of employees, customers, suppliers, public interest groups, and shareholders. For example, the Committee for Economic Development (CED), in its widely circulated report on the social responsibility of business, stated that the modern professional manager regards himself as a "trustee" balancing the interests of many diverse participants and constituents in the enterprise (note that shareholders are only listed as one among many worthy groups):

> The chief executive of a large corporation has the problem of reconciling the demands of employees for more wages and improved benefit plans, customers for lower prices and greater values, vendors for higher prices, government for more taxes, stockholders for higher dividends and greater capital appreciation...[5]

The corporate responsibility approach—whether that of the CED or of less responsible corporate activists—is fundamentally flawed. It has fostered dissatisfaction on the part of shareholders and thereby undermined the support for management. A 1982 survey by the National Association of Corporate Directors revealed that only 53 percent of shareholders believe that directors consider stockholder interests when acting on mergers and acquisitions.[6] That is not exactly an overwhelming vote of confidence.

The heart of a positive response to unsolicited takeover efforts is that directors should act more fully as fiduciaries of the shareholders, as the law requires. Let us recall that the same authorities who are almost universally critical of the manner in which corporate boards operate are unanimous in their belief that a well-functioning governing board is essential to the future of the modern corporation. It is not mere coincidence that most of the suggestions that we reviewed earlier would enhance the role of the corporate board.

What is especially significant is that virtually no one has concluded that the board of directors has outlived its usefulness. Even such business critics as Ralph Nader would lodge major responsibility for governing the corporation in a revitalized board of directors.[7]

The most fundamental need in corporate governance is educational—to get senior corporate officers to understand their high stake in enhancing the role of the board of directors. There would be fewer challenges to the existing managements of their companies if more boards acted from a day-to-day concern with the interests of their shareholders.

The benefits of a more active board will not be attained without costs. *Achieving a stronger and more effective board means sharing the authority now lodged in the CEO—and at times reaching somewhat different decisions.* But that does not require the establishment of a competitive power center. It does mean being more conscious of the desires of shareholders—and of the need to keep them more fully informed. Only one person—the chief executive—can guide the corporation's day-to-day activities. That function cannot be performed by a committee.[8]

Successful directors learn to monitor and question while creating an atmosphere of confidence in the management.

Successful directors learn to monitor and question while creating an atmosphere of confidence in the management. On the other hand, a truly secure CEO will not attempt to stifle criticism by individual directors. The legendary Alfred P. Sloan reportedly made the following statement at a General Motors board meeting:

> Gentlemen, I take it we are all in complete agreement on the decision here... Then I propose we postpone further discussion of this matter until our next meeting to give ourselves time to develop disagreement and perhaps gain some understanding of what the decision is all about.[9]

It is also important that the members of the board be furnished reports and proposals sufficiently in advance so that they can carefully review them prior to board or committee meetings. Few directors can intelligently consider a five-year plan or a major capital project in an hour or two.

What about the composition of the board? Experience teaches us to be leery of simple solutions. An example is the popular proposition that only outside directors should serve on a corporate board, with the possible exception of the CEO. Boards should not be composed exclusively of any single type of director. Diversity of talent is a strength in the management of an economic organization. Directors need to be serious, intelligent people and they need to be concerned with promoting the shareholders' interest in an environment of responsible corporate citizenship—and that is a tall order.

Corporate boards should consist primarily of independent outsiders but with strong representation of knowledgeable insiders. Outside directors should not represent banks or law firms or customers or the community in which the corporation happens to have its headquarters. Such actual or potential conflicts of interest should be avoided. If banks and other creditors are worried about the financial status of the company, the law provides covenants and other restrictions to serve their concerns. Modern financial reporting lends itself to keeping those with a financial stake in the company very up-to-date on changing developments.

Retired officers of a company do not belong on its board. It is enough to have independent outside directors looking over the shoulders of the management, without the previous generation of management also doing so. Outsiders have less stake in defending the status quo than do the retirees who may have created existing conditions.

There are advantages in retired corporate officers drawing on their experience by serving as directors of other companies, so long as they are not competitors of or suppliers to the company from which they have retired. Although much is made of the notion of having a majority of outsiders on the board, the results depend on who the outsiders are. The CEO of another major corporation is likely to have far more inherent authority than a faculty member at a local university. Even in that situation, however, much depends on the personality and knowledge of the individual.

Opinions differ sharply on whether the CEO should also serve as chairman of the board. *The chairman should be an outside director in order to assure the independence of the board.* But given the varying circumstances of individual firms, I would not codify that practice into law. It would be helpful if the presiding officer had relevant prior experience—a recently retired CEO of another firm or of a large non-profit institution, for example. Probably the chairman should serve for a fixed non-renewable term, thus avoiding the possibility of the development of an entrenched competitor to the CEO while maintaining his or her independence.

In addition to the CEO, other senior members of the management can be useful board members. For example, one or more vice-chairmen would be appropriate. Usually, these are people of considerable experience who hold primarily a counselor or advisory relationship to the CEO, and who served in major operating positions earlier in their careers. Their presence on the board does not give rise to the kind of problems that occur when operating officials are made board members—when they in effect participate in reviewing their own operations and those of their colleagues. Because of the crucial relationship of financial reporting to the monitoring function, the chief financial officer probably should also be a board member. None of these inside directors can be expected to differ frequently with the CEO, thus emphasizing the need for a substantial representation of outside, independent directors.

The board chairmanship should be a private role while the CEO represents the firm to the public. Only the CEO and his subordinates can truly represent the firm in public arenas since they bear the responsibility and possess the authority to conduct the business of the company. Consistent with these points, the board chairman should write a message to the shareholders to be included in the annual report. To be useful, such a statement should not be perfunctory, but truly a report on the stewardship of the board of directors. This would be in addition to the customary CEO letter to shareholders.

For this approach to be successful requires a high degree of good will on the part of both outside directors and corporate officers. As most boards now

function, an excess of independence can make a board member's position uncomfortable. But no management can be expected to function saddled with board members whose persistent position appears to be that of adversaries. [10]

The indispensable factor in ensuring an effective board is that directors and management be committed, each in its own long-term self-interest, to making the board work. As Harold M. Williams has pointed out, "No legislation or rule can substitute for that commitment." [11] A great deal of effort and discretion is required on the part of outside directors to carry on an active and constructive role that is simultaneously probing and supportive.

The points just made for board service apply with equal force to committee work. Compared to plenary board meetings, directors are more likely to take the initiative in committees. [12] *Some institutional protections of the independence of board committees are necessary and are now often in place.*

Specifically, the audit committee should consist entirely of independent outside directors—this is already a requirement for corporations listed on the New York Stock Exchange. The compensation committee—which passes on the pay and fringe benefits of top management—should be similarly constituted. Also, the nominating committee—with a key role in selecting directors and senior executives—should be comprised of independent outside members.

In contrast, the finance and public policy committees can benefit from a balance between insiders and outsiders. The management directors bring a special institutional knowledge, while the outside directors hopefully operate with a wider framework. Another reason for the "mixed" finance committee is that it provides a built-in opportunity to balance the pressures for dividends and retained earnings. Often many shareholders emphasize the short-run benefits of increased income, while management is more concerned about investing in the company's future growth. Also, the officers may simply find it easier or at least more satisfactory to use retained earnings rather than going to the credit markets. For the typical business firm, this is not an either-or choice, but a case of balancing two important and basic considerations.

CEOs and other busy professionals will have to ration more carefully the number of boards on which they serve than is now the prevailing practice—and boards should be more selective in their new appointments. Outside directors should be truly independent. They should not also simultaneously be paid consultants or advisers to the management. Moreover, they should not have their own ax to grind, be it supporting the local community or advocating more generous treatment of corporate executives generally. Outside directors need to bear in mind that, in a very special way, the future of the corporation is in their hands—so long as they serve the desires of the shareholders.

Management consultant Arch Patton has an intriguing suggestion for reducing the "coziness" between CEOs who serve on each others' boards:

> Since their own companies pay them rather well and they take time off from their own businesses to help someone else, it seems to me that they should turn over any remuneration as outside directors to their companies. [13]

The subject of Board turnover is often a painful matter. A directorship is not a type of civil service appointment. It should not become a sinecure, but it is not easy to dislodge a long-term director. There are important benefits to a company from having members whose longevity provides a wealth of background and experience with the company—sometimes in excess of that of the current top management. Yet, there is danger that long-time directors become so accustomed to the existing way of doing business that they viscerally oppose innovation on the oldest bureaucratic grounds: "We have never done it that way." Also, the needs of a company may change—with shifts in its markets, product line, regulatory status, and external environment.

John Gardner suggests that board members be limited in their length of service, perhaps to two nonconsecutive five-year terms. The point of the compulsory turnover is not to deal with the age factor, although it would be less likely to arise. Rather, it would be a way of bringing different people with fresh approaches to the proceedings in the boardroom.[14] At present, the average retirement age for outside directors is 70 and that for inside directors is 68.[15]

In representing the interests of the shareholders, directors need to exercise especial discretion and independence in dealing with unsolicited tender offers. The hostile tender often presents a situation in which the interests of the management of the target company may diverge from those of the shareholders. Common sense tells us that the usual reaction of existing management is to oppose the efforts of outsiders to take over control of "their" company. Such action may deprive shareholders of the opportunity to sell their stock at a premium above the current market value. Leech and Mundheim warn that directors may be personally liable under certain circumstances if they acquiesce in improper attacks on tender offers.[16] The much maligned "golden parachutes" (financially protecting senior officers from the adverse effects of a takeover) can be a way of dealing with this problem. However, these special provisions also tend to insulate management from the day-to-day concern over shareholder interests.[17]

There are important reasons, however, for resisting some takeover efforts. For example, the price offered, even though at a premium above market, may be inadequate. Resistance may result in a higher offer, either from the same source or from another. Also, the offerer may be considered a potential looter or someone who would mismanage the company. It is also possible that the tender price is attractive only in the light of a temporarily depressed stock market.

Moreover, the offer may be of a coercive (*i.e.*, two-tiered) nature. That is, only a portion of the company's stock would be purchased at a high price. Subsequent sellers would receive much lower amounts. Often large institutional investors sell on the first "tier," while small stockholders wind up getting much lower prices on the second "tier" of sales.

It is difficult for outside directors to monitor management decisions, to fight tender offers, and to make informed decisions. Leech and Mundheim have proposed that corporate boards should establish special committees of outside directors whose major function would be to determine whether continuation of the opposition to a given tender offer makes sense. They caution that such a committee should avoid being drawn into any separate negotiations with the offerer.[18]

The federal government should avoid increasing its role in corporate takeovers or other aspects of corporate governance. The long and intriguing history of government involvement in making business decisions does not provide an inspiring basis for expanding the role of the federal government in corporate governance. Whether that intervention is made by the judicial, legislative, or executive branch, government regulation often does more harm than good.[19]

In recent years, we have painfully and repeatedly learned about "government failure." That is, the presence of some shortcoming in the private business system (often called "market failure") is not sufficient cause for government intervention. Study after study shows that much government regulation frequently fails to meet the most elementary benefit-cost test.

Moreover, another lesson from recent economic history is that government intervention begets more government intervention. In the present situation, for example, if government should limit defensive maneuvers by company managements, that would tilt the balance of power in takeover battles. Invariably, it would lead to pleas to restrict offensive actions of the corporate raiders (and vice versa).

Surely it is legitimate for well-financed groups of investors to attempt hostile takeovers of private companies. So, too, resistance by the target company's board of directors may be perfectly proper. To ascribe the public interest to just one side of the controversy is to ignore the fundamental role of competition in the marketplace.

No compelling case has yet been made for government intervention in corporate takeover battles—on behalf of either side.

The visceral instinct of many is to urge the federal government to "do something." But no compelling case has yet been made for government intervention in corporate takeover battles—on behalf of either side. Given the many instances of costly and counterproductive government intervention, the best advice to Congress and to the regulators may be: "Don't do something foolish."

B. A Look to the Future

A growing array of external forces impinges on the contemporary corporation. Some of these factors are financial and economic, focusing on the traditional functions of business enterprise. Others are social and political, dealing with business responses to other issues. Together, these influences will likely produce significant further changes in the composition of corporate boards of directors and in conduct in the boardroom. The following five trends are highlighted on the basis of an extrapolation of recent developments,[20] tempered by the knowledge that inevitably there will be feedback effects which we do not now foresee.

1. *The board of directors is becoming a more important center of corporate power.* Recent changes in the structure of boards—more outside directors and stronger committees—will, with the inevitable lag, result in substantive changes in the decision-making process. External pressures are forcing the board to focus more fully on the fundamental reason for its existence: to represent the interests of the owners of the enterprise. As Korn and Ferry report from their surveys of corporate boards, "Increasingly, directors are becoming less bashful and more assertive."[21]

2. *The board is becoming more of a peer group than it has been in the past.* It is moving in the direction of being a collegial body of equals. The trend toward more work is also resulting in higher compensation which, in turn, reinforces the desire of outside directors to devote more time to corporate matters. Their outlook can be longer-term than that of the management, as they have little financial stake in the year-to-year fluctuations of the company's sales and earnings.

3. *As they gain more experience in their emerging role, the new breed of directors will be striking a better balance between self-interest and indifference than the traditional board.* But it will be the rare board that attains that happy middle position easily or for an extended period of time. The most satisfactory relationship between conscientious directors and strong, effective company managers will border on "creative tension."

4. *The larger boards will be shrinking in size in order to adapt to their emerging role.* Those directors who serve on too many boards or whose available time is limited will resign.[22] Outside directors will tend to be more independent of the management than is often the case today. The resultant more cohesive group will require and receive an improved flow of information on company activities as well as developing problems. That will help them carry out their function of serving as surrogates for the shareholders.

5. *The growing role of board members is increasing their liability and accountability for the way they carry out their duties.* That legal liability, ultimately, will serve as a check on the expansion of board functions, as well as on its size. But, the concern with legal and financial liability for board actions also will be a continuing incentive for directors to probe more deeply into company plans and operations.

Looking ahead, researchers and practitioners alike in the 21st Century will probably still be speculating about the needed changes in the roles and activities of corporate directors. Fundamentally, that will reflect the fact that the corporation is a continually evolving institution in the American economy and, as external requirements change, key elements such as the board of directors continue to adapt and modify their actions. All this helps to explain the basic

strength and resiliency—as well as long-term unpredictability—of private enterprise institutions in the United States.[23]

Notes

1. *Testimony of Andrew C. Sigler, Chairman and Chief Executive Officer of Champion International Corporation Before the House Committee on Energy and Commerce,* May 23, 1985, p. 3.
2. Quoted in Murray L. Weidenbaum, "Probing the Government's Role in Hostile Takeover Attempts," *Christian Science Monitor,* April 26, 1985, p. 18.
3. Testimony of Sigler, p. 6.
4. *The Role and Composition of the Board of Directors of the Large Publicly Owned Corporation* (New York: Business Roundtable, 1978), p. 8.
5. *Social Responsibilities of Business Corporations* (New York: Committee for Economic Development, 1971), p. 22.
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