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Role of Independent Directors in Corporate Governance

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Public discussion of corporate governance and the role of independent directors in recent years has begun to polarize over the extent to which government should interject itself.[1] Do those who favor government intervention into the process of corporate governance really seek to control one of the great levers of power in our society? Or do they have much more modest goals of forcing corporations to be more "responsive" to various social needs as defined by critics of American business? And are those who align themselves on the side of business correct when they deny that there have been problems in the governance of corporations so significant and pervasive as to justify major changes? Is there perhaps a third group, those who believe that the economic problems of the coming decades are so challenging that changes do need to be made in the forms of corporate governance, but that these changes should be accomplished in the private sector and insofar as possible without government mandate?

Our purpose is to analyze the role of independent directors in corporate governance and to suggest directions that the law and prevailing practice might take. We will generally align ourselves with the third group above. Critical examination of governance issues should not be limited to business, although this article is so limited. It would be useful to apply such analysis to all institutions, including the independent sector consisting of educational institutions, hospitals, nonprofit organizations, and the other structures so fascinating to deTocqueville[2] by which we accomplish much work in America. And it should apply especially to government, which in recent years has presumed to tell business just how to run itself while managing its own affairs with somewhat limited success. The comparison with other institutions shows the strength of the private sector by virtue of its dispersing decisionmaking functions among thousands of diverse entities; it enables us to conclude that business has emerged from the confrontation of the 1960's and 1970's with greater capacity for innovation in the 1980's than has government.

I. Changes in the Role of Independent Directors

There have been important writings and vigorous debates on the role of

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1 *See, e.g.*, Sloate, *Outside Corporate Directors: Will Increasing Liability Send Them Running Out of Board Rooms?*, 31 BUS. LAW. 1295 (1976); Moss, *The Crisis of Corporate Accountability: A Legislator's View*, 3 J. CORP. L. 251 (1978); Wakeling, *A Proposal to Limit the Civil Liability of Corporate Directors and Officers*, 1976 INS. L.J. 608.

2 *See* A. DE TOCQUEVILLE, DEMOCRACY IN AMERICA (1900).

corporations and the responsibilities of directors at various times in our history, particularly around 1900[3] and in the 1930's.[4] But the period beginning in the late 1960's produced an important change of direction by focusing on the internal workings of corporations, by questioning the corporate decisionmaking process, and by challenging the manner for selecting corporate and board leadership.[5] This change, like other changes in our society, has led to increasing participation by the legal profession.

The movements of the 1960's were concerned with issues not immediately perceived to involve "corporate governance," a phrase not even in use at that time.[6] These concerns included civil rights, the "war against poverty," and the Vietnam war. With articulate pressing of these issues on college campuses, many major institutions soon came under challenge, including the American corporate sector in general and particular target companies that found themselves the center of attention.

If many of these target companies, and American business generally, were initially slow to respond effectively to the issues, the events of the 1970's brought even greater shock. Before the concerns of the 1960's had faded, new issues were added: consumerism, environmentalism, Watergate, and disclosures of international corporate bribery. Highly publicized corporate financial scandals such as Equity Funding and messy collapses such as Penn Central helped tarnish the corporate image.

The public's perception of American business, confirmed in all public opinion polls, was low and dropping.[7] And the initial reaction of most of business to the surfacing problems was negative, aloof and ineffective. There was little attempt to confront those critics who misconceived or distorted the role of American business, or to examine the critics' proposals to see whether any were worth implementing. The critics made the most of the opportunity, and the public's perception of business deteriorated even further.

As a result, corporate leadership carried not public approval but a mark of suspicion and distrust. The lack of appropriate response was well illustrated by what occurred during preparation of the 1980 Securities and Exchange Commission (SEC) staff study into corporate governance.[8] The SEC examined the entire range of corporate governance issues and invited participation from the broadest spectrum possible. The weight of testimony was on the side of critics of Ameri-

3 *See, e.g.*, Dwight, *Liability of Corporate Directors*, 17 YALE L.J. 33 (1907); Jessup, *Are Directors of Corporations Held to a Sufficient Accountability?*, 3 N.Y. BENCH & B. 23 (1905); Williams, *Responsibility of Directors of Corporations for Wrongful Acts*, 47 AM. L. REG. 317 (1899).

4 *See, e.g.*, Berle, *For Whom Corporate Managers are Trustees: A Note*, 45 HARV. L. REV. 1365 (1932); Dodd, *For Whom are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145 (1932); Dodd, *Is Effective Enforcement of the Fiduciary Duties of Corporate Managers Practicable?*, 2 U. CHI. L. REV. 194 (1935); Douglas, *Directors Who Do Not Direct*, 47 HARV. L. REV. 1305 (1934); LaFollette, *Management, Too, Must Be Responsible*, 1 NAT'L L. GUILD Q. 3 (1937).

5 *See, e.g.*, Blumberg, *Reflections on Proposals for Corporate Reform Through Change in the Composition of the Board of Directors: "Special Interest" or "Public" Directors*, 53 B.U.L. REV. 547 (1973); Moscow, *The Independent Director*, 28 BUS. LAW. 9 (1972).

6 The phrase "corporate governance" came into vogue in the 1970's. It was first used in a judicial opinion in Wilson v. Commissioner, 560 F.2d 687 (5th Cir. 1977).

7 For example, in mid-1975 "Big Business" had a 61% negative confidence rating. Business in general had a 48% negative rating. These negative ratings were strongest among young educated persons. G. GALLUP, THE GALLUP POLL: PUBLIC OPINION 1972-1977, at 529 (1978).

8 SEC, REPORT ON CORPORATE ACCOUNTABILITY (Comm. Print 1980) (submitted to the Senate Comm. on Banking, Housing and Urban Affairs, 96th Cong., 2d Sess. (1980)).

can business; few corporate proponents came forward to present contrary views.[9] As a result, it was difficult for the SEC to sort out the good from the bad ideas. There was little articulate expression of the considerable steps already taken by American business to improve corporate governance.[10]

In any case, the events of the 1960's and 1970's have created a healthy climate for addressing and solving the problems of corporate governance. A good deal of progress has already been made and the trends are all in the right direction.

The current emerging role of independent directors has developed from three interrelated forces: (1) court decisions; (2) the role of the SEC; and (3) directors' own perceptions of their role. Although the last force may be the most important and lasting, the first two are critical in affecting the third.

A. *Court Decisions*

Although there have been a number of important state law decisions pertaining to directors' legal responsibilities,[11] it is the federal court decisions interpreting the federal securities laws that have had the greatest influence on the way directors view their role and the risks attendant upon that role. Early federal cases in this development were *Escott v. BarChris Construction Corp.*[12] and *Gould v. American Hawaiian Steamship Co.*[13] The significance of these cases is that directors not themselves guilty of deliberate misconduct were nevertheless held liable for failing to perform duties conscientiously. In *BarChris*, a director accepted without inquiry factual statements in a prospectus.[14] In *Gould*, a director argued unsuccessfully that his failure to read a document containing a false statement absolved him of liability.[15] It is a mark of progress how unreal such a defense seems to us.

B. *The Securities and Exchange Commission*

Not surprisingly, the SEC began to extend the judicial authorities imposing the duty of affirmative oversight as part of independent directors' responsibilities. In *Report of Sterling Home Corp. Investigation*,[16] the Commission reviewed the conduct of two independent directors of a corporation which had engaged in securities laws violations. Although these directors had not been part of the illegal scheme, the SEC criticized them for "not play[ing] a significant role in the direction of a company's affairs," and declared: "[T]his case illustrates a situation where these directors, in the opinion of the Commission, did not provide the shareholders with any significant protection in fact, nor did their presence on the Board have the impact upon the company's operations which shareholders and

9 *See generally* SEC, Record of Proceedings, *id.*

10 *Id.*

11 *See, e.g.*, Graham v. Allis-Chalmers Mfg. Co., 41 Del. Ch. 78, 188 A.2d 125 (1963); Diamond v. Oreamuno, 24 N.Y.S.2d 494, 248 N.E.2d 910 (1969).

12 283 F. Supp. 643 (S.D.N.Y. 1968).

13 351 F. Supp. 853 (D. Del. 1972). The United States Court of Appeals for the Third Circuit vacated the district court's judgment on certain issues but upheld the standard and determination of the outside director's liability. Gould v. American Hawaiian Steamship Co., 535 F.2d 761 (3d Cir. 1976).

14 283 F. Supp. at 688.

15 351 F. Supp. at 865.

16 [1974-1975 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 80,219.

others might reasonably have expected."[17]

C. *Directors' Self-Perceptions of Role*

Along with judicial authorities and the SEC came an increasing number of knowledgeable commentators who began to speak out responsibly on these issues. SEC Commissioner A.A. Sommer, testifying in 1976 before a Senate Committee, observed:

> Until fairly recently, certain patterns were clearly discernible in many publicly held corporations: the directors were the personal choices of the chief executive officers; some directors frequently regarded directorships as pelts to be displayed proudly on their belts; directors frequently regarded board memberships as sinecures, honors, pleasant experiences and paid scant heed to the responsibilities that attended such office.[18]

The SEC's emphasis on corporate governance during the Chairmanship of Harold Williams[19] continued the effort already established in the prior administration.

Under the thrust of these forces, many constructive changes began to occur starting with directors' own perceptions. Commissioner Sommer in his testimony also stated: "The situation is changing dramatically and drastically. I would suggest that persons asked to join boards of publicly held companies now do so only after reflecting carefully upon the responsibilities they assume and the availability of time to perform adequately . . . ."[20]

II. The Current Role of Independent Directors

In light of these legal developments and changed perceptions, what can (and should) independent directors do when asked to serve? What benefits will accrue to particular corporations and society generally if they perform such roles? Is there inherent conflict between what society wants from independent directors and the ultimate success of the corporations they serve? To analyze the independent director's role it is necessary to identify (1) the major responsibilities of all directors,[21] and (2) the independent director's relationship to broader societal objectives—for example, "responsiveness," integrity, democracy, and productivity.

Four responsibilities of all directors of corporations stand out: (1) authorizing major corporate actions; (2) delegating board authority; (3) monitoring corporate conduct; and (4) advising and counseling top management.

Authorizing. The first of these corporate functions, from a strictly legal and functional point of view, is the most basic—yet one where the distinction between independent and inside directors may appear least significant. Corporate

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17 *Id.* In this regard, see also the Commission's complaint in SEC v. Penn Central Co. [1973-1974 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 94,527.

18 PRACTICING LAW INSTITUTE, PUB. NO. 229, DUTIES AND RESPONSIBILITIES OF OUTSIDE DIRECTORS 64-65 (1977).

19 *See, e.g.*, Williams, *Introduction—Symposium on Corporate Governance*, 8 HOFSTRA L. REV. 1 (1979); Williams, *Corporate Accountability and the Lawyer's Role*, 34 BUS. LAW. 7 (1978).

20 PRACTICING LAW INSTITUTE, *supra* note 18, at 67.

21 A useful review of the responsibilities of corporate directors is available in Section of Corporation, Banking and Business Law, ABA, *Corporate Director's Guidebook*, 32 BUS. LAW. 5 (1976).

practice in the United States has developed reasonably well-understood principles as to what types of action must be authorized by the board. Almost all medium sized and large corporations have counsel able to assure compliance with state corporate laws. This aspect of corporate authority appears little abused.

One could conclude that inside directors can perform this function at least as well as independent directors. Inside people have a better working knowledge of the company's activities and are better able to recognize actions important enough for board level consideration. Yet there are notable exceptions, particularly where corporate decisions directly affect the jobs and authority of current management. For example, tender offers present the critical question of whether the takeover attempt is in the best interests of the target company and its shareholders. In a number of highly publicized instances,[22] serious questions have developed as to whether directors, in opposing one suitor or favoring another, have acted in the corporation's best interests or have acted to preserve their own positions. A board with a fair degree of independence from inside management can make a more objective decision.

Delegating. Most large corporations have committees authorized to act for the board in defined areas. Only a few years ago independence on auditing and nominating committees was considered good but unusual. Now, accepted practice requires that these committees be largely, if not totally, independent. Such committees also may function in the area of management compensation incentives.

Monitoring. Although monitoring relates to the corporation's overall productive performance, its control aspects are also crucial. The board and its committees must serve as a conscience to prevent the kind of overzealous activity in specific cases that led corporate America into disrepute. Independence on a board promotes a code of corporate conduct which comes down on the side of honesty in difficult situations.

Advising and Counseling. This is ultimately what the board is all about. A strong chief executive officer surrounded by able top officers, working with a supportive but demanding and attentive board—perhaps this is an accurate definition of good corporate governance.

We now turn to independent directors' role in meeting the objectives of the corporation and of society at large, particularly with reference to corporate accountability, integrity, diversity, compensation, and productivity.

Accountability. Many individuals and groups interested in corporate governance in recent years have declared their goals to be "accountability" and "responsiveness." These are a new type of demand, and contrast interestingly with American history. The empire builders of the 19th century—Carnegie, Rockefeller, Harriman, Stanford—and tens of thousands of miners, farmers, and businessmen fanned out across a vast, seemingly limitless new continent. Their concern was first in surviving and then in producing and moving products to the market. They gave little attention to the environment, civil rights, safety, the rights of

22 These instances have often led to litigation. *See, e.g.*, Chris-Craft Indus., Inc. v. Piper Aircraft Corp., 480 F.2d 341 (2d Cir.), *cert. denied*, 414 U.S. 910 (1973); Berman v. Gerber Prods. Co., 454 F. Supp. 1310 (W.D. Mich. 1978).

workers, consumers or customers, or social needs. Questions of fairness in the society had not really surfaced.

The demands of the 1970's and 1980's for greater corporate "responsiveness" have to do with each of these items. And a major function for independent directors is to monitor the progress of the companies they serve in each of these areas. They are not the sole monitor—government, the "marketplace," and consumer and civil rights activists also monitor. But the independent director is in a position both to monitor and to direct the company along effective lines.

A number of companies have appointed committees (variously called social policy committees, public affairs committees, etc.) to increase their activities in the area of social responsibility.[23] These committees are frequently composed solely of outside board members who are charged with bringing to the attention of the board and management such concerns as environmental protection, fair employment practices, establishment of plants in such controversial countries as South Africa, and bribery. This useful development provides a forum for considering such matters upon the request of outsiders and a window through which the corporation's managers can evaluate the broad social forces impinging on the corporation. This element in corporate governance was not present until the last half dozen years.

Integrity. Much of the discussion about corporate governance concerns bribes, self-dealing, improper use of inside information, antitrust violations, and similar transgressions. These are areas in which a corporation's independent directors can be especially useful in their monitoring and guidance capacities. Independent directors' ability to support management's decision not to pursue markets where unacceptable practices are maintained can be crucial in corporate decisions. Those who operate in certain international markets must determine the level to which American ideals may be bent in order to achieve the useful goals of selling goods and providing jobs.

A primary mechanism by which outside directors perform their monitoring responsibility is the audit committee.[24] In 1977 the New York Stock Exchange (NYSE) began requiring all listed companies to have an audit committee composed of outside directors.[25] At the time this requirement was established most listed companies already had such committees, while others had to add them and a few had to add enough outside directors for the first time to fill such committees. This salutary development reveals the private sector's ability to accomplish ends that otherwise would require government intervention. This use of independent directors should be extended to such areas as compensation and nomination for board memberships.

In late 1980 the NYSE staff reviewed the most recent proxy statements of some 1,420 listed companies regarding the prevalence of audit, compensation, and nominating committees. The results were as follows:

> In compliance with the Exchange's Audit Committee Policy, all 1,420 companies had Audit Committees composed exclusively of independent directors.

23 *See* Lovdal, Bauer, & Treverton, *Public Responsibility Committees of the Board*, HARV. BUS. REV., May-June, 1977, at 40.
24 *See generally* Greene, *Audit Committee—A Measured Contribution to Corporate Governance: A Realistic Appraisal of its Objectives and Functions*, 34 BUS. LAW. 1229 (1979).
25 New York Stock Exchange Rule 2495H.

> 1,195 of the 1,420 companies included in the review—84%—had voluntarily established Compensation Committees. More than 1,100 had at least a majority of independent directors, and about 800 were entirely composed of independent directors.
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> The number of listed companies that had established Nominating Committees had also increased substantially since 1978, although the Nominating Committee concept remains an untried innovation for many. A total of 528 out of 1,420—37%—had such committees. More than 90% of them had independent director majorities, and about half were composed entirely of independent directors.[26]

Diversity. During the last ten years America's corporations have sought directors from a much larger pool of talent. The number of women and minorities serving on boards has significantly increased.[27] Greater effort has been made to reach out beyond "establishment business types" into the ranks of consumers, labor, academics, and government. One of the extensive discussions of the 1980's regarding corporate governance will concern "representation" on boards.[28] Consumers, shareholders, workers, union leaders, environmentalists, and others have long demanded that boards include "representatives" of their interests. The placing of the Rev. Leon Sullivan on the General Motors board some years ago brought to the board of a great American corporation an exceedingly able black who "represented" a number of interests and backgrounds not previously represented. The appointment of Douglas Fraser, head of the United Auto Workers, to the board of Chrysler Corporation during its initial governmental rescue was an act of "representation" quite different from that of the Rev. Sullivan. The controversial appointment of Mr. Fraser raises questions regarding fiduciary responsibilities and the interests both of consumers who want to purchase cars at the lowest possible price and of taxpayers whose own businesses might well profit from public subsidy.[29]

Suggestions are sometimes made for "achieving greater democracy" on boards by competitive voting for corporate directors.[30] This probably will occur first in mutual savings institutions. A number of legislative proposals requiring such elections have already been introduced in savings bank states,[31] but none seems close to passage. It can be hoped that corporations will experiment with nominations of more than a single candidate for at least some board memberships.

A word of caution should be added. There are those who seek to establish an adversary relationship between the board and management. Their demands

26 Remarks by William M. Batten, Chairman, New York Stock Exchange, Inc., to the University of California Securities Regulation Institute, San Diego, California (Jan. 23, 1981).

27 In 1977 there were 400 female directors of major American corporations—up from only a handful in 1970. BUS. WEEK, Jan. 10, 1977, at 49. According to the latest Korn/Ferry International study, the trend toward increased women and minorities may have slowed during the past year, although the numbers are still much higher than in the past. Korn/Ferry International, Board of Directors, Eighth Annual Study (1981).

28 For a discussion of the role and responsibilities of "Special Interest Directors" see 35 THE RECORD 26 (1980).

29 Mr. Fraser's Chrysler directorship seems more an isolated situation than a trendsetter. There is little indication of interest in American corporate governance to adopt recommendations for substantial labor representation on boards such as Germany's codetermination. *See* Weideman, *Codetermination by Workers in German Enterprises*, 28 AM. J. COMP. L. 79 (1980); Britain's Bullock Report, *Report of the Committee of Inquiry on Industrial Democracy*, Cmnd. 6706 (1977).

30 Korn/Ferry International, Board of Directors, Seventh Annual Study (Feb. 1980).

31 *See* SEC, REPORT ON CORPORATE ACCOUNTABILITY 37, 208-10 (Comm. Print 1980).

for "representative" board members may be motivated by this desire. To acquiesce in these demands would merely extend "special interest group" pressuring, now so worrisome in government, into the board room. Vigorous discussion, even tension, is to be sought after; continual contention is not.

Under the heading of "diversity" one might also discuss how to govern with zest. In spite of the changes that have occurred, few boards reach nearly their potential in being useful to the corporation. Major reasons for this are the manner of recruiting board members, the long tenure provided most board members, and the stultifying atmosphere of most board meetings.

Effective corporate governance requires a creative, zestful, and dynamic board. A few changes in board organization could increase the vigor of most boards. Corporate boards should seriously consider limiting participation on the board to a given number of terms, and of course, to a given age.[32] Most corporations presently have some kind of a retirement age for board members and a few have a limitation on terms.[33] Some provide for turnover and rotation of board members in the event individuals leave the activity which originally brought them to the board and made them knowledgeable in its affairs.[34] But few indeed have clear-cut ways to achieve vigorous turnover other than a retirement age.

Every corporation should consider just what it needs in the way of board members—how much it needs technical knowledge, experience, and corporate memory, and how much it needs youthful contact with what is transpiring in research, marketing, international trade, or any other activity in which the corporation engages. Then it should consider how to achieve enough turnover to develop new ideas and to replace persons who have lost their creativity or interest.

Compensation. It is likely that the public, government, stockholders, and workers will take greater interest during the 1980's in compensation of top officers of American business. Increasingly, shareholders are voting perceptively on management proposals that SEC rules[35] require to be in the proxy statements. Many institutional investors now look carefully at stock option, pension, bonus, and other compensation plans for reasonableness and inducements for good management. It seems predictable that long-term, highly remunerative contracts will receive particular scrutiny, especially by shareholders. This suggests that all such contracts should be negotiated and controlled by an outside nominating or compensation committee of the board.[36]

Productivity. Amazingly, the undiscussed question in governance of American corporations concerns the corporation's ability to perform its main function. One rarely hears such words as productivity, competitiveness, creativity, or other words that describe what the successful corporation is all about.[37]

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32 *Accord*, Lewis, *Choosing and Using Outside Directors*, HARV. BUS. REV., July-Aug., 1974, at 70. Exceptions would have to be made for continuing the chief executive officer on the board. There also should be flexibility for continued service of the "father" of a business, for a person whose "corporate memory" is useful in board deliberations, or for one whose extraordinary talents should remove him or her from the operation of a term and rotation requirement.

33 Korn/Ferry International, Board of Directors, Seventh Annual Study (Feb. 1980).

34 *Id.*

35 Rule 14a-3, 17 C.F.R. § 240.14a-3 (1980).

36 For a discussion of procedures at a large public corporation in the public eye, see Murphy, *The G.M. Nominating Committee: Its Role in Corporate Governance*, DIRECTORSHIP, Oct. 1978.

37 Not once does the 782-page SEC STAFF REPORT ON CORPORATE ACCOUNTABILITY use any of

Perhaps this is the problem. Perhaps our preoccupation with other goals has allowed America to lose its competitive edge. America's savings rate is the lowest of any of the Western countries.[38] Expenditures for research and development badly lag behind those of our trading partners.[39] We have lost much of the electronics market.[40] It is not beyond possibility that we can lose our automobile industry, an unthinkable prospect only a few years ago.

The primary task in running American corporations is to make them dynamic and productive. Unless the corporation itself is viable, all other governance objectives—for example, greater responsiveness to environmental concerns, civil rights, safety, and social needs—will avail little. A primary function of independent directors in the future will be to attend to the main job of running the corporation, producing a dependable and worthwhile product, and making a profit, while also trying to see that important social and environmental goals are achieved. Perhaps a crucial function of outside board members is to consider whether their corporation is lean and hungry or fat. It is worrisome when the American automobile industry gets in trouble, and workers, management, directors, and politicians all demand that the industry be protected from foreign automobile imports. Having failed in their first task—to monitor performance of the corporation and keep it out of trouble—directors' job should be to restore the competitiveness of their company. This is a key area for outside director interest.

A great opportunity for the independent director is to provide the board with vision and to support those elements of management that need to be strengthened, in order to make American business newly creative and vigorous. We have in too many economic areas become careful, conservative, dull, over-regulated and over-constricted. Here is another area where the experience, judgment, and objectivity of outside directors can be useful. Confrontational politics developed over the last half-century have led to redundant, expensive, and dampening regulation instead of strong but flexible and economical regulation. Independent directors, with their broad contact with other segments of the economy and society, can help their corporations discern those areas in which government regulation needs to be "rolled back," strengthened, or amended.

Conclusion

Corporate governance is changing in America, and probably for the better. It is moving toward great equality, a more effective monitoring of the performance of individual companies, and more democratic selection and operation of the board itself. Boards are far better informed than they were a few decades ago.

But there is so much interest among the public and government in telling American business how to run itself that the next ten years will see repeated

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these words. A welcome exception is Harold M. Williams, former SEC chairman. See H. Williams, Corporate Accountability and Corporate Power (Oct. 24, 1979) (paper presented in the Fairless Lecture Series, Carnegie-Mellon University, Pittsburgh, Pa.).

38 America's savings rate was only 4.5% in 1979 compared with Japan's 20.1% (1978), Canada's 10.3%, West Germany's 14.6%, France's 17.1%, the United Kingdom's 15.7%, and Pacific Basin countries' 15%. U.S. DEPT. OF COMMERCE, INTERNATIONAL ECONOMIC INDICATORS 12 (Dec. 1980).

39 By 1976, the Soviet Union, West Germany, France, and Japan all spent a greater percentage of their gross national product on research than did the United States. TIME, May 3, 1976, at 56.

40 *See, e.g.*, *Japan is Here to Stay*, BUS. WEEK, Dec. 3, 1979, at 81.

assaults upon specific elements of that governance. Directors are, and should be, giving more attention to their role in selecting corporations' goals and directions. They must achieve a number of sometimes conflicting governance objectives, such as (1) how to maintain a competitive and innovative company while meeting the outside social demands upon it; (2) how to achieve business goals without unacceptable damage to the environment, civil rights, competitors, or the general public; and (3) how to achieve widespread participation in the decisionmaking process while still maintaining a capacity for decisive action.

We have become so consumed by the process of governance, and the interaction of government and private enterprise, that we are placing substantial barriers in the road of effective corporate management. Americans can no longer enjoy the luxury of inefficiency, confusion of goals, and multiplicity of regulation. Our objective in governance must be to retain flexibility, diversity, and creativity in management, all leading to renewed productivity in an economy gone soft. Corporate governance is at the center of this reinvigoration. The independent director has a significant challenge ahead of him in achieving these objectives for private enterprise in America.