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# The George A. Leet Business Law Symposium: Corporate Governance: Directors vs. Shareholders? - Introduction

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## INTRODUCTION

The history of the corporate governance debate began with the publication of *The Modern Corporation and Private Property*[1] in 1932. It announced to a surprised public the notion of separation of ownership and control; that is, the idea that the shareholders who, in a general sense, own the corporation do not actually control it. In economic theory, the directors are the agents, and the executives mere subagents, of the shareholders. In fact, however, the executives, the managers, and the officers are the ones who really run the business and often do so to some extent for their own benefit rather than for the benefit of the shareholders.

Enthusiasm for reform since then has waxed and waned. Not surprisingly in the 1990s, with the stock market soaring and everybody making money, nobody pushed for fundamental changes in corporate governance. Then at the turn of the millennium we were hit by a number of corporate scandals—Enron, Tyco, et cetera.

One disturbing aspect of those scandals was the absence of the boards of directors. Also disturbing was that by their composition and practices, these boards did not seem to be defective. In many respects they seemed to be at least average, if not above average boards of directors, yet they did not detect the scandals brewing within their own companies.

Now the tide has shifted; there is a lot of agitation for reform. We have seen a number of changes as a result of that enthusiasm, the

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1 ADOLF AUGUSTUS BERLE, THE MODERN CORPORATION AND PRIVATE PROPERTY (1932).

most notable being the Sarbanes-Oxley Act of 2002[2] and changes to the listing requirements of the New York Stock Exchange and the NASDAQ. We also see some initiatives in the Securities and Exchange Commission, most notably the proposal for Rule 14a-11,[3] which would enhance the role of shareholders in the nomination and election of directors. This symposium, therefore, occurs at an opportune time to discuss corporate governance.

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[2] Pub. L. No. 107-204, 116 Stat. 745 (2002).

[3] Proposed Rule: Security Holder Director Nominations, Exchange Act Release No. 34-48626 (Oct. 14, 2003), 68 Fed. Reg. 60, 784 (Oct. 23, 2003), *available at* http://www.sec.gov.rules/proposed/34-48626.htm (last visited June 9, 2005).

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