

COMPANY AND SECURITIES LAW JOURNAL

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ARTICLES

Catalysing corporate governance: The evolution of the United States system in the 1980s and 1990s – Ronald J Gilson

This article examines the evolution of United States corporate governance in the 1980s and 1990s. In the 1970s, a snapshot of the United States system would have revealed a familiar formal structure, but with limited functionality – a corporate governance Potemkin village. By the 1990s, the formal structure of United States corporate governance remained largely unchanged, but the substance of each of its elements had been energised. The progression of the United States corporate governance system during the 1980s and 1990s was an ecological phenomenon – the outcome of exposing interactive systems to environmental change. And this recognition highlights a critical feature of the United States corporate governance system that a review of only the formal corporate governance structure misses. In an environment undergoing profound change, as was plainly the case for large United States corporations in the 1980s, the quality necessary to successfully negotiate the transition is mutability – the organisation’s capacity to alter its structure to adapt to new environmental conditions. The “genius” of the United States corporate governance system is that little in the formal or informal structure allows the corporation to erect a barrier that shields it from changes in economic conditions. 143

Media World: Using a pocket watch in the digital age – Luke Bentvelzen, Belinda Bible and Elisabeth McDermott

The decision of Finkelstein J in *Media World* (2005) 216 ALR 105; 52 ACSR 346; 23 ACLC 281; [2005] FCA 51 raised the spectre of shareholders proving as creditors in insolvency proceedings where those shareholders were induced to purchase shares through misrepresentations. This article analyses the legal and commercial issues raised by *Media World* and subsequent cases and concludes that from both a legal and policy perspective, transferee as well as subscribing shareholders should not be precluded from participating in such proceedings, nor be subordinated to other unsecured creditors. ... 161

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Editorial inquiries:

Tel: (02) 8587 7000

HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

Tel: (02) 8587 7000 Fax: (02) 8587 7100



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