

## What Every Corporation Director Should Know (Book Review)

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In 1937 New York University School of Law published, also under the direction of Professor Reppy, a monumental collection of essays marking the conclusion of a century of development of substantive law. Among the notable contributors were Dean Pound and Professor Millar, who are also contributors to the present volume. A few years ago this reviewer, in commenting on one of the annual surveys of American law published by New York University School of Law, suggested the possibility of enlarging the service of the annual survey by enlisting an all-American team of scholars from the whole nation. This reviewer now nominates Professor Reppy as quarterback of the team.

RALPH A. NEWMAN.\*\*

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WHAT EVERY CORPORATION DIRECTOR SHOULD KNOW. By Percival E. Jackson. New York: The William-Frederick Press, 1949. Pp. 198. \$3.50.

This little manual is not pretentious, but in result it is even slighter than it seems. It is a handbook for corporation directors, seeking to point the corporate executive to the proper use of "the practical tools of the director's trade." Without elaboration of technical detail, and in a style which the author says he has chosen "for the tired business man," the book states in outline form the functions and duties of corporate directors.

*What Every Corporation Director Should Know* is broken into four parts. First comes the composition of the board of directors; next the organization and procedure of the board, including a section on compensation of directors; third, the powers and functions of directors; and last, their disabilities and liabilities. While the work is not intended to be an exposition of the law, the author in discussing the practical functioning of powers of directors necessarily and properly relates them to the legal bases of the director's powers. The counsel given and conclusions stated by the author rest upon a long background of varied legal experience.

Nevertheless it is hard to see how this work can be of very great help to the corporate director not a member of the bar, who is desirous to perform his duties properly. The author's extensive discussion of problems and relationships boils down to a very few working rules: while serving as director of a corporation do not acquire interests adverse to and in conflict with your duty to the stockholders, exercise as great care as you can in scrutinizing the matters that come before you, insist upon reasonably full reports from the management, and consult the technical men, such as accountants and lawyers, on all technical questions. These are simple injunctions and would, if well understood, eliminate the neglect and abuse which minority stockholders' suits have

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often disclosed in the conduct of corporate affairs. The proper understanding and application of these simple rules for the ordinary non-technical director, however, requires in a book of this kind careful, accurate, and extensive illustration and differentiation. This we do not have to a sufficient degree in Mr. Jackson's manual. There is some, but not enough.

The book contains some excellent precept and some illustration as to the necessity for attendance and discussion at board meetings.<sup>1</sup> For the most part, however, the reader will find sententious generality of a somewhat rhetorical character, ill adapted to guide the practical man in the exercise of a director's functions. In discussing the relationship between the board of directors and operating management, the author uses sometimes the metaphor of a turbine engine,<sup>2</sup> sometimes that of a rubber-stamp Congress.<sup>3</sup> He tells us that a corporate concept that embraces a hamburger stand "cannot enfathom" a huge life insurance company with many policyholder-stockholders,<sup>4</sup> although one asks why not? He correlates the weakness of the American corporate system with the strength of world Communism,<sup>5</sup> a connection as fanciful as it is irrelevant. He brings in "the Voltairian theory of not believing in the proposition, but furthering the other's right to have it considered," in connection with motions,<sup>6</sup> although Voltaire has nothing to do with the matter and probably did not use the words ascribed to him on the *Herald Tribune* masthead. The author talks about "the slip between the cup of profit-making and the lip";<sup>7</sup> likens the improper profits of inside trading to oil gushers;<sup>8</sup> describes the Securities Act and the Securities Exchange Act as "pulmotors" of "the drowning trustee doctrine";<sup>9</sup> and in numerous other ways escapes from the concrete and practical matters which the non-legal director badly needs to know, into facile flights of illusive prose the utility of which is hard to see.

On the technical side it should be mentioned that the author is probably wrong in indicating that a director is unqualifiedly liable for his participation in *ultra vires* acts of the corporation or for corporate acts which contravene statutes.<sup>10</sup> On the former branch, *Litwin v. Allen*<sup>11</sup> appears still to be the leading authority in New York at least. The treatment of the requirement of due care by a director, which the author calls a convenient verbal refuge when the judge has determined "to 'soak' a director,"<sup>12</sup> is inadequate and probably wrong. The courts are better than that, and it is not reassuring to a layman to be told they are so bad. The statement that a motion to amend must be "accepted"<sup>13</sup> does not represent the best parliamentary practice. The author

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<sup>1</sup> Pp. 48-54.

<sup>2</sup> P. 112.

<sup>3</sup> P. 106.

<sup>4</sup> P. 4.

<sup>5</sup> P. 20.

<sup>6</sup> P. 65.

<sup>7</sup> P. 131.

<sup>8</sup> P. 170.

<sup>9</sup> P. 171.

<sup>10</sup> P. 138.

<sup>11</sup> 25 N. Y. S. 2d 667, 699 (Sup. Ct. 1940).

<sup>12</sup> P. 138.

<sup>13</sup> P. 62.

uses the words "derivatively" and "derivative"<sup>14</sup> needlessly in a mere literary sense with such effect that when he comes to talk of a "derivative" suit,<sup>15</sup> the non-legal reader is likely to be confused. The reader who is told that "directors shall manage the enterprise"<sup>16</sup> will have difficulty subsequently in understanding the distinction drawn between the function of the executives as managing the corporate enterprise and that of the directors as determining corporate policy and appointing the management.

The bringing in of the maxim of tort law *volenti non fit injuria* in connection with selection and service of dummy directors<sup>17</sup> cannot be of assistance to the non-legal reader. And this particular reader believes that in his discussion of the composition of boards of directors of large banks<sup>18</sup> the author misunderstands the contribution made by the directors on such boards who are also "busy top-ranking executives of other large corporations." The precise judgment combined with the broad view which these business men bring to a bank board is of the greatest service to a financial institution, and is applied with diligence and fidelity in innumerable cases.

In short, this is a disappointing book. Notwithstanding its good points and useful discussion, it falls short of the difficult assignment which the author has undertaken.

RALPH M. CARSON.\*

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<sup>14</sup> Pp. 97-98.

<sup>15</sup> P. 180.

<sup>16</sup> P. 18.

<sup>17</sup> P. 17.

<sup>18</sup> Pp. 7-8.

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