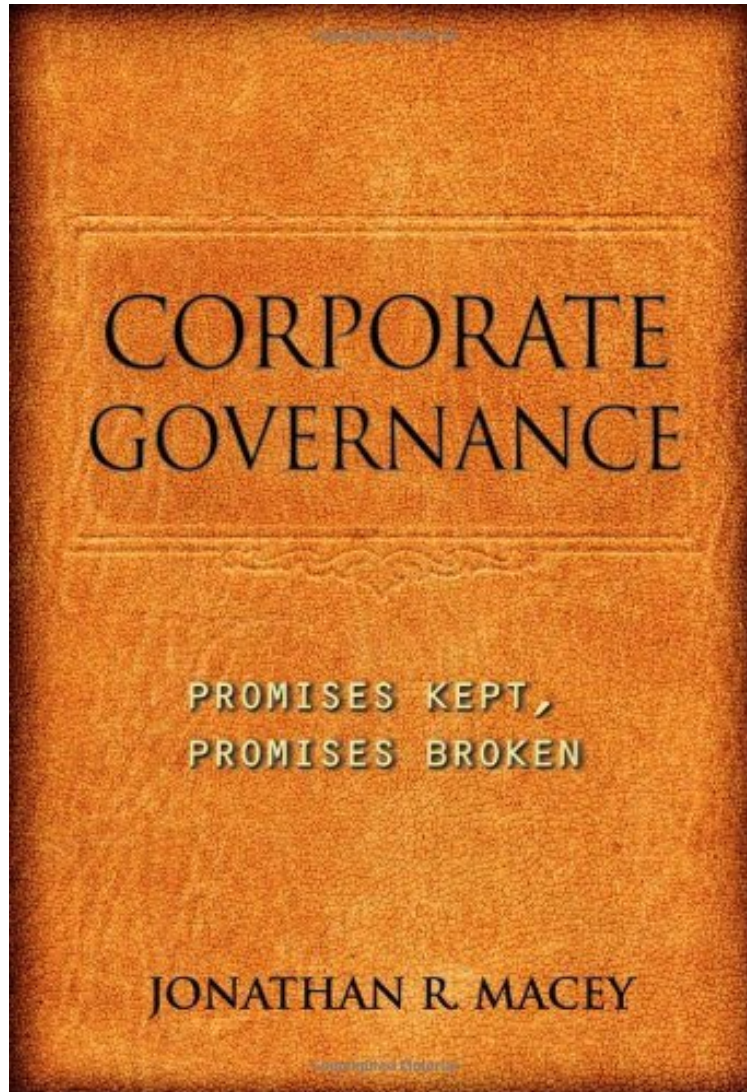


(Download pdf ebook) Corporate Governance: Promises Kept, Promises Broken

## Corporate Governance: Promises Kept, Promises Broken

*Jonathan R. Macey*

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**Jonathan R. Macey : Corporate Governance: Promises Kept, Promises Broken** before purchasing it in order to gauge whether or not it would be worth my time, and all praised Corporate Governance: Promises Kept, Promises Broken:

0 of 0 people found the following review helpful. Finally, something original and new on the topic of corporate governance By Avid Reader This book explains a number of puzzles. Most importantly, it explains what corporate governance is, what it does, and what we should expect it to do for investors and the public. The chapters on corporate boards of directors and hedge funds and private equity funds are particularly interesting and important. 7 of 7 people found the following review helpful. seminal scholarship By CorpGovNet Macey examines various market and regulatory mechanisms to improve corporate governance and concludes that our emphasis on regulations and those

that have developed are the result of the fact that shareowners are not well organized into effective political coalitions, while managers are. "Managers will staunchly resist corporate governance reforms that put their jobs in jeopardy or threaten their ability to remain independent..."Regulators and politicians follow the path of least resistance and satisfy the public's outcry that they "do something" "by passing laws like Sarbanes-Oxley that increase the power of 'independent' directors and like the Williams Act that weaken the market for corporate control without upsetting the top managers of public companies or any other well-organized special interest group."As a result, the most effective corporate governance mechanism, the market for corporate control, is hampered by excessive regulation, whereas "ineffective institutions, such as administrative agencies, credit-rating agencies, and even boards of directors, enjoy regulatory 'subsidies,'" according to Macey. Macey is on the right track. Look at what works and what doesn't in keeping the promises that corporations make. For example, he examines the effectiveness of "independent directors" and notes the problem of "board capture," which renders "independence" relatively meaningless, since directors become reputationally linked to management. He later notes that dissident directors put forward by activist investors are far less likely to be captured by managers, since their allegiance lies with shareowners. Strengthening of board independence hasn't reduced the incidence of board capture, he says. Instead, "What the intense focus on boards has done is to increase managerial autonomy and draw attention away from other potentially more effective solutions to the challenge of providing reliable, objective monitoring of corporate management."Since the really independent directors come from hedge and private equity funds, that's where Macey says we must turn for solutions. While he is mostly right, his focus on reviewing existing institutions and what works doesn't drive him to apply the tool of imagination as much as he could to explore what might work. Are there other ways to have directors be reputationally linked to shareowners? One mechanism would be proxy access. Although he dismisses Bebchuk's proposal for reimbursing rivals because it exacerbates the "credibility problems" facing challengers, he doesn't explore other options of using proxy access. In examining shareowner voting, he notes that while it may pay investors to become well-informed about "generic or market-wide" corporate governance issues like poison pills, since the costs of learning is spread across all public companies in their portfolio, it doesn't pay for most diversified investors to dig into "firm specific" corporate governance issues, because the cost is greater than the probable reward. Hedge and private equity funds hold larger blocks in fewer companies, so for them firm specific research pays. However, instead of largely dismissing the power of the vote by most investors, I wish Macey had explored other options. Macey says the core dilemma of corporate governance is that shareowners have "fidelity to the objects of the corporation" (usually maximizing shareowner value), but not the "knowledge by which these things can be best attained." "While managers and directors, who often (though of course not always) have the knowledge (skill) to run the business, they often lack sufficient commitment to the objectives of the shareholders of the corporation."The market for corporate control, hedge funds and dissident directors all bridge the problem. Right now, several broadly diversified funds, such as CalPERS, also take positions in activists hedge funds that primarily use corporate governance strategies to unlock value. Through such efforts, they not only move the bar of averages, they also improve their return. Another potential unexplored by Macey is the idea of more robust proxy monitoring services selected by all shareowners, paid with corporate funds that would remove "free-rider" issues involved when one fund, even a hedge fund, has to do all the heavy lifting. Mark Latham has written extensively on this possibility, and the idea of "voting by brand," an idea that adds some intelligence with minimal effort. See [...]. Building from the power of shareowners coalescing around brands are two other worthwhile projects. [...] facilitates the ability of users to see how respected shareholder activists, which should include hedge funds at buildout, are voting. This allows retail shareowners to learn from or copy the voting behavior of more knowledgeable investors. Eventually, the site could facilitate direct voting by brand. A "proxy exchange" proposed by the Investor Suffrage Movement ([...]) would also facilitate voting by brand by allowing shareowners to assign their proxies to aggregators and ultimately voters, which would include hedge funds and others with firm specific knowledge. Over time, the proxy process would be taken out of the hands of management and would become the responsibility of a self-regulating agency, the proxy exchange. However, what Macey lacks in imagination, he more than makes up for with by explaining existing legal and political problems. Macey's *Corporate Governance* is a seminal work, in terms of actually exploring the various corporate governance devices to determine which ones are working, which don't, and why we keep focusing too much on those that don't. As I write this the world's economies are in meltdown, largely the result of promises broken by many self-interested parties. Macey's readers will have a better understanding of how this happened and what can be done so future promises are kept. Readers who enjoy Macey's book are also likely to enjoy *Entrepreneurs and Democracy: A Political Theory of Corporate Governance (Business Value Creation and Society)*

Even in the wake of the biggest financial crash of the postwar era, the United States continues to rely on Securities and Exchange Commission oversight and the Sarbanes-Oxley Act, which set tougher rules for boards, management, and public accounting firms to protect the interests of shareholders. Such reliance is badly misplaced. In *Corporate Governance*, Jonathan Macey argues that less government regulation--not more--is what's needed to ensure that managers of public companies keep their promises to investors. Macey tells how heightened government oversight has

put a stranglehold on what is the best protection against malfeasance by self-serving management: the market itself. Corporate governance, he shows, is about keeping promises to shareholders; failure to do so results in diminished investor confidence, which leads to capital flight and other dire economic consequences. Macey explains the relationship between corporate governance and the various market and nonmarket institutions and mechanisms used to control public corporations; he discusses how nonmarket corporate governance devices such as boards and whistleblowers are highly susceptible to being co-opted by management and are generally guided more by self-interest and personal greed than by investor interests. In contrast, market-driven mechanisms such as trading and takeovers represent more reliable solutions to the problem of corporate governance. Inefficient regulations are increasingly hampering these important and truly effective corporate controls. Macey examines a variety of possible means of corporate governance, including shareholder voting, hedge funds, and private equity funds. Corporate Governance reveals why the market is the best guardian of shareholder interests.

"Macey is a scholar who has mastered the latest and best scholarship in law, economics, finance, sociology, public choice theory, management and organization science, accounting and history. He prescribes a rational policy toward large corporations in a very readable and insightful work."--Henry G. Manne, Forbes.com "Against a backdrop of the most pervasive corporate failures since the Great Depression, Macey's book is must-reading for those who want to understand how we got into this mess. . . . It should be hoped that his well-documented criticisms of those corporate governance mechanisms that investors most heavily rely upon will be heeded."--C. Evan Stewart, New York Law Journal "A must read for governance scholars and policy makers."--S. Grove, Choice "Macey's discussion of a wide range of interrelated issues is marvelously clear and provocative."--Christopher C. Faille, Federal Lawyer "Given the governance failures in our post-Enron environment, now is a particularly good time to read this book. . . . I wish I'd written this book, although I could never have done it with the same flair and wisdom that Macey has done."--Nancy B. Rapoport, Business Law Today "Corporate Governance is a strong step forward."--Gabriel D. Rosenberg, Yale Law and Policy "Macey makes a strong case for his judgment about most of these institutions and practices, and events since his book was completed reinforce his judgments."--William A. Niskanen, Regulation "Corporate Governance: Promises Kept, Promises Broken provides a cogent analysis of the various institutions and systems that are supposed to promote effective corporate governance. Meanwhile, Macey's provocative theories and opinions present interesting fodder for all students of corporate organization. The book would be a valuable addition to any academic law library. Indeed, though the work is academic in tone, law firms or public law libraries with strong corporate collections may also be interested in this text."--Sara R. Paul, Law Library Journal "Overall, the book is detailed, thorough, and easy to read and follow. . . . Macey's thoughts are obviously well-considered and thoroughly researched, and this book should be considered a must-read for anyone interested in the governance of U.S. companies. The book, or excerpts from it, would make a great companion to a corporations course because of its disagreements with the status quo."--Michael Sirkin, Concurring Opinions From the Back Cover "A refreshing look at corporate governance that resonates in the real world. For example, Macey argues that so-called 'independent' directors are not really as independent as they appear and explains why the handpicked members of the boards of directors of publicly held companies often are more attentive to managers' interests than to shareholders' interests. Macey points out that there is something wrong with a corporate-governance system that regularly allows ostensibly independent corporate directors to refuse to permit shareholders to decide for themselves when to sell their own companies. Macey does an excellent job of explaining the legal and political problems that give too much power to incumbent managers and not enough to shareholders and free markets."--Carl Icahn "Macey's book is must reading for any serious student of corporate governance. He brings his usual keen analyses and fresh insights to a field where unexamined received wisdom and advocacy of me-too 'best practices' have too often been the norm."--John F. Olson, senior partner at Gibson, Dunn Crutcher LLP "The ambition and achievement of this work is dazzling. Macey leaves no stone unturned in his penetrating examination of the system of American corporate governance. The book will doubtless be an important contribution to the longstanding debate over how best to support the bedrock role that the public corporation plays in the American economy."--Ronald J. Daniels, University of Pennsylvania "Intriguing, provocative, and readable. One comes away from this book with a good sense of why the institutions of corporate governance are not always what they seem, and why politics plays too large a role in the choice of what to embrace and what to shun. The existing literature on corporate governance is enriched by this book."--Donald C. Langevoort, Georgetown University "This book is important, interesting, and argumentative. It is wonderfully useful for bringing us up to date with how theory applies to an important set of issues and what those issues say about theory. Corporate Governance will be valuable to many readers, from faculty to students, from journalists to directors, from those who like the system we have to those who are critical of it, and from those who agree with the author and those who don't!"--Peter A. Gourevitch, coauthor of Political Power and Corporate Control About the Author Jonathan R. Macey is the Sam Harris Professor of Corporate Law, Corporate Finance, and Securities Law at Yale Law School. He is the author of a number of books, including "Macey on Corporation Laws".