Comments on Hill, Directors’ Duties, the Courts and the Public/Private Divide

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Comments on *Directors’ Duties*

Basic argument:

There is a growing appreciation, or expectation, that corporations serve public functions – e.g., to avoid harms, to benefit society, to have a “positive corporate culture”
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This has implications for directors’ duties -- reconsidering the Berle/Dodd debate over whether duties extend to shareholders only or other stakeholders as well.
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Focus on the comparative legal treatment of director oversight for the benefit of non-owner stakeholders. Evidence of an expanding scope of such duties in the US, with explicit if under-enforced duties in the UK and Australia.
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Queries:

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3) And regarding directors, should their duties extend to monitoring to avoid negative externalities that don’t create liability for the firm or to provide social benefits
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General comment:

If the scope of the corporation’s/director’s duty to provide oversight is ultimately coextensive with law and regulations, is that enough to support a public conception of the corporation.
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In that case, it seems that

- the avoidance of negative externalities is imposed from outside
- the corporation’s role is a matter of compliance in an otherwise private pursuit