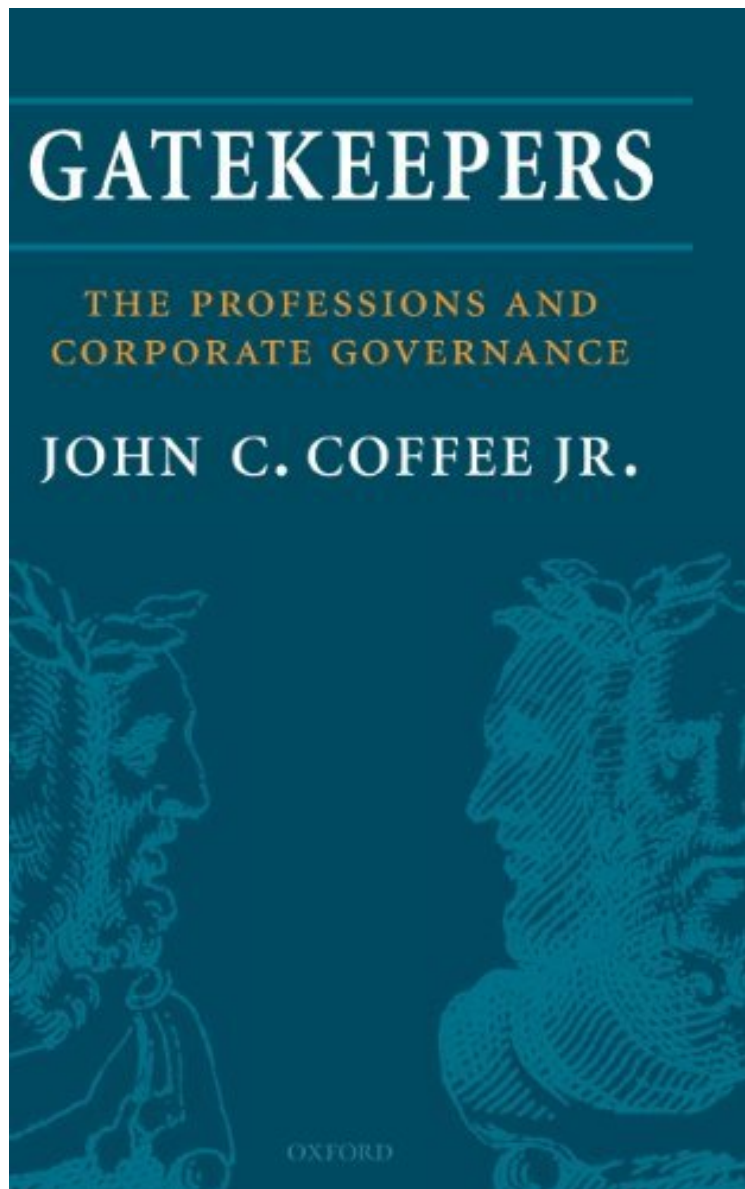


[Library ebook] Gatekeepers: The Role of the Professions and Corporate Governance (Clarendon Lectures in Management Studies)

Gatekeepers: The Role of the Professions and Corporate Governance (Clarendon Lectures in Management Studies)

John C. Coffee

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John C. Coffee : Gatekeepers: The Role of the Professions and Corporate Governance (Clarendon Lectures in Management Studies) before purchasing it in order to gage whether or not it would be worth my time, and all praised Gatekeepers: The Role of the Professions and Corporate Governance (Clarendon Lectures in Management Studies):

5 of 5 people found the following review helpful. Timely for 2008 Elections
By CorpGovNet
The book's timing could hardly be better, since substantive reform only seems to occur with a crisis. Implosion of the savings and Loan Industry brought us the Federal Institutions Reform, Recovery and Enforcement Act of 1989. Accounting scandals at Enron, WorldCom, etc. brought us the Public Company Accounting Reform and Investor Protection Act of 2002 (Sarbanes Oxley). The subprime debacle is likely to bring significant reform as well. It would be great if those advising Presidential candidates would consult Gatekeepers in preparing such proposals. Coffee focuses on auditors, attorneys, securities analysts and credit-rating agencies who inform and advise corporate managers, boards and shareholders. After a brief introduction explaining the failure of gatekeepers and a comparative overview of their roles internationally, Coffee devotes a chapter to each of the four groups. He typically provides an informative history, a review of current issues such as conflicts of interests, and an evaluation. He wraps up the book with a thematic discussion of what's gone wrong and how it might be fixed. In general, gatekeepers act as "reputational intermediaries" by verifying corporate statements to investors. When trusted and successful, this lowers the cost of capital. However, as Coffee notes, "Watchdogs hired by those they are to watch typically turn into pets, not guardians," especially in the euphoric environment typified by stock or housing bubbles, when the public is typically lulled into complacency. As management incentives were aligned with shareholders through options, income smoothing gave way to robbing the future for earnings that could be recognized immediately. Coffee explains how Enron's audit committee was blinded by professional advisers who fed it only the information senior management wanted them to have. Auditors were retrained and incentivized to sell consulting services. He explains why fund managers and gatekeepers tend to herd and why, until four days before Enron declared bankruptcy, its debt was rated "investment grade." Only those with a financial self-interest, the short-sellers, searched beyond the surface and predicted Enron's accounting restatements. At WorldCom, "the limited due diligence that was conducted appears to have been constrained by the need not to offend the client" and the actual fraud was detected by the firm's internal auditors. Coffee helps the reader see from a different perspective. For example, while some studies have found that audit firms with high consulting revenues were more likely to acquiesce to questionable earnings management, others found no such correlation. Coffee points out that instead of looking what is already in hand, we should look to possibilities. "The real conflict lies not in the actual receipt of high fees, but in their expected receipt." That explains why audits became a "loss leader" to obtain consulting services. Similarly, disclosure of conflicts of interests often does not lead to expected results. Social psychologists find those on the receiving end often let down their guard, thinking because conflicts were disclosed they are being dealt with fairly. However, the conflicted party often feels that, having made the disclosure, they are now free to pursue their own interests aggressively. Gatekeepers is filled with such insights. The major problem is that gatekeepers have come to view corporate managers, not shareowners, as their principals. Their livelihood depends on being viewed as flexible, problem-solving and cooperative, rather than rigorous or principled. "If left to their own devices and subjected to a significant threat of private litigation, professionals will respond by defining GAAP and auditing standards in their own interest, rather than that of investors." "Absent a litigation threat, professionals acquiesce in dubious and risky practices that their 'client' wants; but once subjected to an adequate litigation threat, professionals insist upon narrow duties, hopelessly specific safe harbors and a rule-based system that often seems devoid of meaningful principles." According to Coffee, "The challenge for the regulator is not to take discretion out of the system, but to preserve and expand it. But discretion must be accorded to the gatekeeper, not the client (whereas present-day GAAP does the reverse)." The gatekeeper must assess not simply whether GAAP contains a rule authorizing a given treatment, but whether discretion so exercised is reasonable. Pressure to reform must come from regulators, investors and the young that the profession hopes to recruit who would find that greater discretion enhances the professions' image in their own eyes and those of the public. Some of Coffee's more interesting recommendations, at least as I read them: * Break-up the major accounting firms to provide more competition. * Establish an intermediary that receives payment from the issuer but then selects the analyst based on objective criteria, such as their record of predictions. * Restore "aiding and abetting" liability for professionals instead of de facto immunity for knowingly or recklessly participating in fraud. * Formalize the role of "disclosure counsel" by requiring audit committees to retain them to investigate and test corporate disclosures on an on-going basis.

2 of 2 people found the following review helpful. How the gatekeeping professions came to be and why they let us down
By Craig Matteson
John C. Coffee Jr. takes an interesting look at the role the gatekeeping professions failed us in the major scandals at Enron, WorldCom, Parmalat and many others. These professions are accounting (auditing), attorneys, the credit rating agencies, and securities analysts. He provides us with a history of how each of these professions came into being, how they became gatekeepers in protecting the public by providing reliable information over many decades. However, things changed over time and he shows us how it happened. While it was different for each, the primary source was a change in incentives. While I can't recount everything in these short comments, you will see how the change in compensating CEOs from pay to equity and the expansion of auditing firms into more profitable consulting services changed auditing. The rise of the in-house legal counsel also changed the role of the legal advice corporations sought, received, and used. Rating agencies probably suffered by the lack of competition and a kind of groupthink. Securities analysts were conflicted by who paid for their advice and the impact negative ratings would have on their firm's customers and

their own industry standing. I think this is a useful and informative book. Reviewed by Craig Matteson, Ann Arbor, MI 2 of 3 people found the following review helpful. A clear-eyed view on how to fix corporate gatekeeping By Rolf Dobelli Although everyone may be fascinated by the corporate scandals of the past decade, figuring out how to make sure they don't happen again is what's really important. John C. Coffee Jr. shows how the professions of accounting, law, ratings and securities analysis let investors and consumers down. He is not interested in assigning blame but rather in demonstrating how changing corporate cultures, conflicts of interest, diminishing competition and declining professional standards combined to leave the public vulnerable. After explaining who the gatekeepers are, what their duties were in the past and what they do now, Coffee provides valuable recommendations for creating a viable gatekeeping function for the future. His ideas are sensible and he is modest, admitting that they are not complete or perfect. His writing about this complex subject is surprisingly clear, and his ability to illustrate his points with cogent examples from the headlines makes for an interesting read. getAbstract recommends this book to executives, board members and others with a stake in good corporate governance.

Much of the debate and investigation of corporate collapse and failure has focused on boards and directors. Not so much attention has been given to the role of those who inform and advise them: the gatekeeping professions who play a vital and influential role in modern business. In the book, John Coffee, world-renowned Professor of Corporate Law, explains how the professions have evolved, performed and changed their behavior over the last century. Coffee argues that all boards of directors are prisoners of their gatekeepers and only if the board's agents properly advise and warn it, can the board function efficiently. This well-informed, accessible and challenging account will be vital reading to all who wish to understand the contemporary business landscape and 'why the dogs didn't bark' for Enron and WorldCom.

About the Author John Coffee is the Adolf A. Berle Professor of Law. Listed by the National Law Journal as one of 'The 100 Most Influential Lawyers in the United States', he is a leading international authority on business and the law, corporate governance, and security regulation, and has served on a wide range of corporate and governmental advisory boards. His previous publications include *Cases and Materials on Securities Regulations* (with Seligman, 9th ed. 2003), *Knights, Raiders, and Targets: The Impact of Hostile Takeover* (with Lowenstein and Rose-Ackerman, 1988), *Cases and Materials on Corporations* (with Choper and Gilson, 6th ed. 2004), and *Business Organization and Finance: Legal and Economic Principles* (with Kellin, 9th ed. 2004).