As a corporate lawyer involved in a number of the major takeover battles of the 1980s, Martin Lipton has influenced the jurisprudence of the law regulating mergers and acquisitions. In 1982, he created the ‘poison pill’, a takeover defence mechanism that provided many target firms with the means to withstand some of the more rapacious corporate raiders of that era. Subsequently, Mr Lipton has continued his advocacy of a wider role for the corporation in American society.

The business corporation in the US has undergone a rapid transformation in the twentieth century. Until the unification of the American national market at the end of the nineteenth century, most corporations were owned and managed by entrepreneurs and their families. Faced with the need to raise capital to exploit new opportunities for scale and scope, but hindered by the owner’s wealth constraints and risk aversion, corporations moved to widely held ownership structures with professional managers. However, these managers often continued to retain strong ties to the founders and maintained traditional relationships with local board members and strong identification with the surrounding communities. The primary focus of senior managers was to balance the interests of corporate stakeholders such as employees, customers, suppliers, communities and even the nation itself.

In the 1970s efficient market theory, principal–agent models and a focus on short-term returns came to dominate academic research in finance. At the same time, the rise of the market for corporate control provided a testing ground for many of these theories.
Influenced by academic theory (see Jensen in Chapter 2) and the poor performance of the US economy in the 1970s, the US went through a period of significant corporate restructuruing in the late 1970s and 1980s. Managers of public corporations divested many of their historical relationships. Boards become more independent of traditional ties, although not necessarily of management as they were often composed of other CEOs. The primary focus of managers shifted from balancing the interests of corporate stakeholders to a narrow focus on the maximisation of the share price. This focus was further strengthened by reforms which tied executive compensation to share price performance (see Murphy and Main in Chapters 10 and 11).

**Legal background**

This evolution in corporate focus has taken place in the context of shifting legal constraints. In the twentieth century, these included the creation of anti-trust, consumer protection, environmental and labour regulation. These areas were all subject to a degree of consensus across developed economies. However, the role of the corporation in society, defined as the obligations of the board to other constituencies beyond the shareholders, remains controversial, and this is one of the key differences between models of market capitalism across the world. This issue has been dealt with at two key points in US corporate jurisprudence – firstly, in relation to directors’ duties to multiple stakeholders in general and secondly in relation to their obligations to stakeholders when faced with a hostile takeover offer.

**The business judgement rule**

The business judgement rule protects directors from personal liability in discharging their duties if they have acted in good faith, with due care and within their authority. It also highlights director primary duties towards shareholders. Under *Dodge vs Ford Motor Company* (1919), the Michigan Supreme Court declared that they would not scrutinise boards’ decisions on how to maximise profits, if they comply with the criteria which shield directors from liability: