

HARVEY GOLDSCHMID: THE INDISPENSABLE BRIDGE BUILDER

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Others in this tribute, more qualified to do so, will certainly comment on Harvey Goldschmid's impeccable scholarship and outstanding public service. I will devote my space to our personal and professional relationship spanning forty-plus years in many endeavors, often connected to Columbia Law School. Harvey will be remembered as not only brilliant, but kind, gentle in demeanor, respectful of differing views, never dogmatic, and as such, trusted. Trusted by his universe of students, regulators, peer academics, and from my vantage point, the business community.

Harvey was the bridge builder between all. As such, indispensable, and impossible to replace. As a bridge builder, he was, however, no serial compromiser. When it came to his core he could be stubborn. But he would never let it come to an impasse. He was a true professional, never seeking to embarrass or demean others. Always seeking to solve, not exacerbate. It worked because of the universal trust in him built through the years.

Just a few examples in this limited space. Harvey and I often had differing perspectives and temperaments, his positions largely formed by his regulatory and academic background, mine shaped by my experience in the private sector. We started out in the 1970s as "antitrusters," recognizing that the old economics of structure had to be modified to meet the times. While we didn't agree on "how," we did agree that the two strains of economics deserved a hearing. The result was *Industrial Concentration: The New Learning*.¹ Harvey produced the scholars and edited the book, which included papers and transcripts of debates that grew out of a Columbia Law School conference on differing approaches to antitrust enforcement. I brought in support for the project from the business community and trusted the conference to be even-handed. It was our first bridge.

Then came the American Law Institute's project, the *Principles of Corporate Governance: Analysis and Recommendations*.² By this time our joint interest had broadened, in the late 1970s and early 1980s, to better corporate governance as necessary to augment antitrust law, which had been embargoed under different national leadership. Here we differed at the outset on exactly how in fact to implement "better" corporate governance. Harvey, the true believer in needing more than just guidance to improve corporate gover-

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1. *Industrial Concentration: The New Learning* (Harvey J. Goldschmid, H. Michael Mann & J. Fred Weston eds., 1974).

2. *Principles of Corporate Governance: Analysis and Recommendations* (Am. Law Inst. 1992).

nance practices, and me, representing a business community, dubious of regulations. Again Harvey, the bridge builder, found a way to bring it all together. But this was no easy feat—Harvey, a valued member of the ALI team, found common ground among the various communities. The *Principles* became a landmark basically structured to be acceptable across the spectrum. Moreover, Harvey personally softened for me, after a while, the opprobrium, in academia, for my contesting the ALI.

Then in the 1980s came our book *The Impact of the Modern Corporation*.³ It was a serious consideration of contentious issues dividing business and academia, which we coedited. By this time we had gone beyond wrangling about antitrust and governance to the point of being able to write each other's scripts. Harvey never allowed us to come to impasse; it wasn't in his DNA.

On reflection I can candidly say that my views were sometimes excessive, but he never said so, in so many words. He calmly, with learning, avoided collisions, so that it looked to me we were meeting in the middle, but in reality that middle leaned more towards him. Harvey again the bridge builder.

We went on together, more and more often sharing common views on the subjects about which we chose to collaborate. Harvey's way was rubbing off on me, as well as so many others, as the world became ever more complicated. There were many such collaborations, including, inter alia, a Blue Ribbon Commission for the Securities and Exchange Commission and the New York Stock Exchange.

A turning point in corporate governance for both the institutional investor and business community was the Institutional Investor Project at Columbia Law School in the 1990s and thereafter. It was groundbreaking in terms of bringing together, for the first time, institutional investors and large corporations in a neutral forum to facilitate dialogue between investors, directors, and management. It was supported by both academia and business leadership. The Project spawned studies, meetings, reports, and books—work that is credited with being the foundation for modern corporate governance. The Project brought to life the important role of shareholders. Harvey's guidance, as a member of the Project's board, kept it neutral yet influential. Without his bridge building it might well have gone off track.

Indeed, I wish he were here today to help us deal with the unintended consequences of the shift in power from boards and management to shareholders, a shift the Project influenced. If there ever was a need for more bridge building, it's now in corporate governance.

What followed until he left us was his complete dedication to building with me a Governance Center which now resides at Columbia Law School. The Center, with Harvey's vision, focuses its efforts on research and projects related to the structure of the current capital markets and its impact on corporate governance, building upon the work of the earlier Institutional Investor Project.

3. *The Impact of the Modern Corporation* (Betty Bock, Harvey J. Goldschmid, Ira M. Millstein & F.M. Scherer eds., 1984).

The Center's board members always turned to him to be sure we hadn't strayed from the mission of practical and pragmatic research.

Harvey was a true believer that we could, and should, bring much needed change to our financial services industry. I had the privilege of serving on the Systemic Risk Council (SRC) with Harvey. The SRC is a private sector, non-partisan body of former government officials and financial and legal experts under the leadership of Sheila Bair, the former Chair of the Federal Deposit Insurance Corporation, who believe that regulatory and structural changes are needed to reduce, or at least constrain, systemic risk. The SRC was created to comment on policies and proposals for change. Containing systemic risk, especially through Dodd-Frank, raises a host of prickly policy and practical issues. Harvey's bridge building often gave us the means to speak with one voice. That voice is heard.

Perhaps one of Harvey's greatest accomplishments, though it is truly hard to choose, was his role as the Professor. I shared with him, for the last few years, a seminar at our law school that became known as "Two Hours with Harvey and Ira." He had a meticulous outline for each hour; I was the color commentator as we wandered through current issues in corporate governance. I looked over his shoulder at his class outlines, and marveled at his ability to fend off my interventions, and cover what he, always the dedicated teacher, insisted we cover. Harvey loved, and I use the term intentionally, his students. And they loved him. It's where Harvey really lived.

The classroom was his home away from home. He cared about teaching not just black letter law, but the way of the law. When he counseled our practitioners at Weil, Gotshal & Manges, they quickly became his students as well. He reached a core in his students, which sticks with the generations he taught. My son, one of those generations, summed it up. Harvey would "engage and illuminate us all, giving life to the policy behind the law and the history that drives its evolution."

Harvey will be remembered for sure by so many for years to come. That gentle brilliance and disposition will live on for all of us who seek progress in our respective fields of law. His bridge-building approach, I hope, will remain on many shoulders. I am vastly proud to have been his colleague and friend.