THE CONFERENCE BOARD

DIRECTOR NOTES

When Does Gender Diversity on Boards Benefit Companies?

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Companies embrace diversity, especially regarding gender. Overtly optimistic predictions of a diversity dividend, some built on gender-based stereotypes, lead these companies to count on profits that may never materialize. This *Director Notes* report attempts to reset the agenda on how to study corporate board diversity. We can only assess if and how sex diversity yields benefits by understanding the who, what, and where of diversity. Whether sex diversity produces a "diversity dividend" depends on three key factors: (1) the nature of the benefit of including women (whether for their experience or other qualities); (2) the kind of company and its governance; and (3) the jurisdiction(s) in which the company operates. Only by further investigating the precise conditions under which diversity will have an effect can we estimate the potential instrumental benefits of gender diversity.

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Introduction

Diversity matters, or so we're told. Studies by management consultants, companies, and some scholars assert that diversity benefits business. Corporate diversity advocates claim that diversity propels companies toward greater profits, share prices, and better governance. Management consultants go furthest in their predictions of a "diversity dividend," a term that presumes a regular payout from inclusion.[1] In 2015, the McKinsey Global Institute asserted that "advancing women's equality can add $12 trillion to global growth."[2] As fabulously optimistic as these projections seem, they nonetheless inspire companies to expand diversity and inclusion initiatives. Armed with such studies, companies may reason that they can do well by doing good.[3]

A flashpoint of diversity is the struggle to include women in corporate leadership, which has led many developed economies to mandate board quotas. While quotas prove anathema in the United States, recent events may have turned the tide. The Weinstein Company had to pass through bankruptcy to find a buyer. Ford fired its CEO for "inappropriate behavior." Stock in Wynn Resorts dove after its founder and CEO stepped down in disgrace. These scandals exposed not only the prevalence of sexual harassment, but the widespread exclusion of women from corporate governance. Boards with only men (the Weinstein Company), almost all men (Wynn Resorts), or mostly men (Ford) suffer from some groupthink, which has been brought to light by the #MeToo moment.[4]

The corporate world had earlier warnings. In 2013, a swirl of controversy greeted Twitter's IPO because its proposed board of directors included no women. Twitter rushed to include a woman on the board. On occasion, companies may bring in "outsider" women to clean the mess of errant male leaders, a role Arianna Huffington played on Uber's board. Indeed, McKinsey's grandiose assertion of the growth that awaits a world of sex equality relies on savior stories like Ms. Huffington's. Most women, however, find themselves left outside corporate leadership, or included as a small minority. Companies may place them in onerous circumstances hoping these outsiders will become savior.[5] Methodologically, we can be skeptical about diversity dividend arguments. What benefits, precisely, will women's inclusion bring?

Much of the research involving women on boards fails to report any negative or neutral outcome. Part of the reason for this may be the replication crisis which has revealed that many studies cannot be repeated and that there is a strong bias toward positive results.[6] Social scientists tend to refrain from reporting data that reflect neutral outcomes. With data on women on corporate boards, the normative support for inclusion may affect the bias on results away from negative findings. A notable exception is one study that argues that stock prices in Norway dipped after full implementation of the corporate board quota in part because of the newly inexperienced boards serving those companies.[7] How then can we determine when board diversity will benefit companies?

This report presents a friendly but critical challenge to the argument that diversity pays. One can favor diversity but recognize that some companies may not accrue diversity dividends. Women, though providing identity diversity to a male-dominated board, may bring little experiential diversity. As I argue here, diversity benefits depend on each specific context: the type of women that companies include on their boards, the types of companies participating in inclusion, and the jurisdictions where companies are diversifying. While normative rationales, such as equality prompt support of diversity, this report contests the less controversial and apparently universal belief that including women yields an instrumental value.

More specifically, this report presents a theoretical architecture for *systematizing* diversity's value. The degree of a diversity dividend depends on three contextual factors: the who (which women bring beneficial values?), the what (what types of companies?), and the where (in what nation?). The chart below integrates these contextual factors that mediate the interaction between diversification and the instrumental benefit.

Figure 1: **Map of Contextual Factors**[8]

FACTOR ONE	FACTOR TWO				FACTOR THREE
A. **Women's traits**	B1. **Company Governance**	B2. **Company Type**	B3. **Ownership**	B4. **Age**	C. **Jurisdiction**
1 Caring/ stakeholder 2 Risk averse 3 Methodical 4 Outsider/ new network 5 "More guys than the guys"	a Exec. dominated b Managerial board c Monitoring board d Labor presence e Supervisory board structure f Close corp.	a Industrial b Tech c Telecom/media/ communications d Finance e Natural resource f Consumer goods g Pharma/ healthcare	a Concentrated/ family b Small/dispersed c Institutional/ hedge funds d State-dominated e Venture capital/ private equity	a Start-up b Mid-aged c Established d Post-peak/ decline	1 Social democracy 2 Liberal democracy 3 Developing economy 4 Oligarchy

As if ordering from a take-out restaurant menu, one might select a variable from Factor One and a combination of variables from Factor Two and Factor Three. The resulting diversity benefit will vary with each combination. From left to right (although not necessarily in a linear fashion), the chart links particular traits to potential instrumental benefits.

I. DIVERSITY: A CAUTIONARY NOTE

U.S. law favors vague definitions of diversity because of its heterogeneity. As a consequence, diversity efforts in the United States have been ambiguous. This approach engenders slippage between normative and instrumental rationales. Should boards diversify to rectify inequality or rather, to serve corporate needs? A critique on these motivations helps understand why research on diversity's benefits proves challenging.

A. DIVERSITY'S OMNIPRESENT HAZE

Diversity involves the inclusion of differences in a group or organization. While leading institutions in government, business, and nonprofits attempt to further diversity, especially in the U.S., they lack a precise plan of how and with whom to diversify. Most large U.S. companies have a diversity infrastructure of employee identity groups, human resource professionals, and outside consultants. This effort plays a central role in recruiting. The Securities and Exchange Commission's (SEC) rule on diversity in company governance exemplifies the distinctions of diversity measures within the United States. The SEC's Rule 407(c) of Regulation S-K declines to define diversity but requires companies that have diversity quotas or initiatives to disclose how the policy is implemented.[9] A recent study of U.S. board members revealed that while all agreed to diversity's paramount status, it suggested diversity lacked real meaning or impact.[10]

Vague definitions of diversity allow companies to select the one that suits their needs. First, the more facile focus on identity stands in for experience diversity, even though research shows that the latter is more important than the former. U.S. companies may, for example, include black employees by hiring West Indian elites rather than African Americans. Similarly, some companies bring in foreign diversity to mask a lack of diversity among employees from the United States. Second, this vague diversity permits its use for other broader diversity, such as sexual orientation. The SEC rule mentioned above favors this breadth, as it permits companies to self-define. Third, companies use diversity rhetoric to avoid discrimination litigation, or alternatively, to obscure diversity efforts to maintain a non-diverse status quo.

B. INSTRUMENTALISM V. NORMATIVITY

Several normative arguments support sex diversity in leadership: to provide a symbol for newer generations, to reflect the need for public values in private institutions, or to rectify structural exclusion through equality of opportunity, or outcome. Normative proponents may couch their support within instrumentalism to gain more traction as normative assertions arouse little widespread agreement. Yet, these business case arguments may conflict with the normative reasons for diversity. Instrumentalism evades contested debates like affirmative action to focus on profitability, which proves entirely uncontroversial. Thanks to this slippage, instrumentalist arguments dominate, bolstered by sincere instrumentalists and normativists who seek a means to their end goal of diversity.[11] Strong political incentives exist to advance instrumentalism.

Instrumental studies promise stronger growth and better governance. They reflect the following goals: (a) to attract more and higher quality talent; (b) to increase the company's market; (c) to avoid employment discrimination litigation; (d) to improve employee relations; and (e) to strengthen corporate governance. Nevertheless, some persuasively question the methodological basis for instrumentalist studies and others may contradict each other in their findings. Despite these concerns, instrumentalist arguments continue to gain traction.

Diversity's widespread acceptance benefits from slippage between instrumentalist and normative arguments. Instrumentalism can serve to hide normativity both for and against diversity. Normative opponents of diversity may accept instrumentalist diversity arguments to avoid uncomfortable debates. Instrumentalism seems nondiscriminatory and allows adherents to say they favor diversity even as they skirt conversations about its value. They may deploy the language of "fit" to avoid inclusion,[12] claim that no "skilled" diverse people were in the pool or rely on diversity of identity to bypass diversity of experience, as in the Caribbean/African-American example above.

II. DIVERSITY OF PEOPLE

Companies cannot simply add women and expect an instrumental benefit – gender alone cannot do the work. However, regulators and corporate leaders seem to prefer sex diversity over other kinds for two reasons: the perceived clarity of sex diversity and the strength of instrumental arguments. But the categorization of "women" (as diverse based on sex alone) predicts less change than many people think.

The weakness of "sex" as a binary becomes clear in the following thought experiment: imagine a female board member, subject to a corporate board quota, who wants to transition from woman to man, but risks losing their board position because the quota requires increasing numbers of women. Here, a discrepancy surfaces between identity and experience. Does changing sex change one's perspective? The male board member would presumably no longer meet the quota's definition. He would, however, fulfill the purpose of sex diversity. This Part explores how sex identity operates in the boardroom.

A. WOMEN AS WOMEN

The focus on identity rather than experiential diversity is a key shortcoming in many diversity efforts, including quotas. Sex diversity will benefit companies when identity serves as a proxy for experience. As Daria Roithmayr and I suggested in our study on the French corporate board quota, including women may bring other experiential diversity to the table: different schools, social networks, countries of origin, corporate expertise, etc. Women might make a difference in these companies not because of their gender identity, but because of their newness.

Some research suggests that the inclusion of women in corporate boards improves profit and corporate governance thanks to "womanly" traits, such as concern for stakeholders (reflecting a caretaking orientation), or an aversion to risk.[13] Some social science links these traits to sex – people with caretaking roles tend to avoid riskier work.[14] Other traits ascribed to women include higher levels of deliberation, or posing more methodical questions. Society also places women in ethical decision-making roles.[15] Although women in the aggregate may exhibit certain traits, we cannot presume any one woman will behave as "women" do. Experience and identity diverge. Within the corporate board context, many women have professional trajectories that parallel or match those of men, thereby making their traits akin to those of the men already on the board.

Including women for their traits poses bigger problems. If we drop facile presumptions of sex, a fuller picture materializes. What traits does the market ascribe to women? Will their inclusion fulfill those elevated expectations? How do women perform as "women"? Drawing on the social science described above, Figure 2 disaggregates the traits ascribed to women. It analyzes stereotypical traits of women (Column 1) and what benefits may result from these purported traits (Column 2). In doing so, the chart attempts to pull apart how women's purported instrumental value works while also demonstrating the specificity of women's participation in particular companies – which will be addressed in Part III.

Figure 2: **The Benefits of Sex Diversity**[16]

Purported Women's Traits	Potential Related Instrumental Benefit
Caretaker	Better for stakeholders
Risk averse	Fewer losses in uncertain markets
Methodical	Better governance; newer players may be more careful
Outsider/new network	Relevant but diverse experience yields benefits in creative work
Insider/"manning up"	Adds sex diversity but no instrumental benefits
Role model/symbolic	Long term value of encouraging future candidates – broadens

Given the wide range of traits ascribed to women, this chart reveals the extent to which women may not fulfill company expectations, which may undermine diversity in the long term. It is not altogether clear that, as a group, elite women would even possess these prized traits. Elite executive women – educated, successful, and networked women – benefit most from the quota wave. By the time these women arrive at the corporate board level, however, they have extensive executive experience, which inculcates in them (as in their male colleagues) an instinctive market orientation that may transcend or minimize sex differences. Women who rise to the top often must perform some version of professional maleness – they must be "more guys than the guys."[17] Women in the corporate elite confront a double bind in which they perform professional maleness – manning up to get ahead – as they femme up to conform to stereotypes of women.

If companies want stakeholder-oriented thinkers, their search might prove more successful if they look for someone with caretaking experience, such as a primary parent, instead of searching for a so-called average woman. Their experience may not match that of other women, who on average tend to engage in higher levels of caretaking.

Many women share certain traits, but if a company wants to improve its governance by including a caretaker (who may be more stakeholder-oriented) or someone more risk averse, it can only use the category of "woman" as an initial proxy. The company must go further in its inquiries and, as the next subpart details, should look to a woman's experience.

B. IDENTITY MATTERS, SOMEWHAT

Social scientists have demonstrated that diversity of experience and expertise matters most. Identity may convey diversity's presence even when the relevant experience remains absent. Different experiences lead us to develop skills to respond to distinct needs. Most board members have some executive experience and a specific way of thinking about business problems.[18] One's professional experience at the time of joining a board has reached such a substantial level that identity may matter less than more prominent experiential factors. Performance as a corporate board member draws on life experiences: where one grew up, where one went to school, and one's family and community situations. Expertise also matters, including one's professional school, training, and networks. Unlike identity, this all becomes a particular skill set over which one may exercise control. Despite this, companies often use identity as a proxy for perspective.

While stereotyping can exclude women from typical models of "effective" leadership, some studies suggest that female leaders do express certain styles. Rather than adopting stereotypically male leadership behavior (power, confidence, aggression, objectivity), women may exhibit a more collaborative "transformational style," which takes greater account of others.[19]

However, as Catalyst noted, more than 40 studies spanning over 15 years have shown that there are very few differences between how men and women exhibit leadership skills.[20]

Only recently has the corporate world discovered how widespread it is for women to have faced sex discrimination or sexual harassment. Including people with experiences of subordination, discrimination, and harassment may alter processes or decisions. While not all women can represent this experience or positions building on it, identity may serve well as a proxy for experience. The inclusion of few, if any, women on boards of companies that have faced major sexual harassment scandals is a suggestive, if anecdotal, data point, which supports women's inclusion qua women.

In contrast with such identity-oriented work, the focus on experience rather than identity shows when difference matters. My recent study with Daria Roithmayr supports the theory that experiential diversity matters most.[21] Corporate board members pointed to the different experiences women brought to the table – such as distinct national exposure, distinct educational backgrounds, or interests in environmental or labor issues. These experiences, not sex, defined the quota's effects. As one interviewee said, while women may "not run a corporation in the same way as a man," when they were on the board, women "brought something [new,] less because they were women [more] because of their different background." Women who are outsiders affect and improve corporate governance primarily through their wealth of diverse experiences.

In this view, a woman's sex matters only indirectly. It matters to the extent that they have different experiences, whether that is imposed on them or chosen by them. "Identity differences lead to experiential differences that in turn create tool differences," or different capacities.[22] Identity difference can create room for cognitive difference to arise. For example, we treat large men differently than we treat small women, which leads them to have different experiences and then react to the world in distinct ways. However, inferences based on identity should not limit individuals' capacity – any person can acquire any skill set regardless of identity. The leadership context shows how experience far outweighs identity.

III. THE DIVERSITY OF COMPANIES AND BOARDS

The instrumental value of diversity varies depending on the kind of company and its governance structure. This report focuses on what boards do and how diversity might matter in terms of their work. Then, it describes the variation of company contexts for board work and assess when diversity will matter most. It concludes that diversity will matter most where boards hold a more influential role and where companies foster a critical mass of women.

A. BOARDS AND DIVERSITY

Most importantly, boards hire a CEO to lead the company. The way boards function reveals when and how diversity matters. In most U.S. companies, shareholders elect the board of directors, who in turn hire the executives. The executives make crucial strategic decisions regarding the corporation and run it on a day-to-day basis. Once the executives take office, the board considers and approves decisions made by the executives. Board members then must ensure the corporation's management complies with the law and approve "the strategic direction of the company and [oversee] the risks that the company faces."[23] The board's fiduciary duties require stakeholders to impose high standards. This accountability exposes its members to intense scrutiny for successes and failures. Boards, most importantly, hire CEOs to lead the company and decide existential questions related to mergers and acquisitions. For that reason, research on the effect women have on corporate governance should focus on those two crucial elements. Governance varies substantially. Small- and medium-sized companies face distinct governance questions, and the value of diversity within these organizations necessarily depends on whether diversity matters to key stakeholders. Governance structures vary substantially outside the U.S. and affect how companies operate. National distinctions, such as supervisory, tiered, and labor-inclusive boards completely alter board functioning. The board's role legitimizes corporations before their principal constituents: equity markets, debt markets, and stakeholders. The sizes of boards vary, as do rules implemented by both the state and the company regarding independence, representation, limitations on board memberships, term length, and renewal. Even personalities have their impacts within boards.

With these variations, some boards will benefit more from diversity than others. Scott Page's work suggests how. Repetitive work doesn't benefit from diversity, but problem solving or prediction does. Distinct experiences make a diverse group capable of better problem solving.[24] The best problem solvers tend to perform similarly, so a collection of the best problem solvers may do little more than one alone.[25] In contrast, a diverse group shows more collective strength.[26] Page infers from this that diversity may matter more than ability.[27] Various management consultancies have confirmed Page's conclusions.

Page's work clarifies when the board's engagement will reflect diversity presence and when it will not. This requires assessing whether the board's work involves repetitive/implementation work or creative effort. In analyzing the role boards play, Jill Fisch delineated a range of board work that goes from monitoring work to managerial work.[28] A monitoring board oversees the company, a role that Sarbanes-Oxley and Dodd-Frank magnified. A managerial board plays a more active role. It does not actually manage the company, of course, but may help guide strategy. Monitoring involves the assessment of management efforts and managing duties, in which the board hires the executive and assesses executive-driven, long-term strategy.

Given what we know about boards, diversity will matter most where boards matter most. The two dichotomies roughly map onto each other: diversity (repetitive or creative work) and boards (monitoring or managerial work). A monitoring board's duties focus more on the responsive work of evaluating executive proposals. On a monitoring board, process may change thanks to diversity. Even in a deferential board, women's presence may add a methodical, nonconflictual style to board discussion that could change how boards decide. On substance, however, it is rare for a board member, much less an entire board, to vote against an executive proposal. Board votes typically all lead to the same substantive outcome: approval. At the extreme, some highly deferential boards simply rubber-stamp whatever the executive puts before them, and on such boards, diversity will matter little.

By contrast, more active boards may assist in company strategy, including assessing opportunities. The creative work of imagining strategic opportunities may have boards move beyond their usual passive role within company governance. This is where diversity would matter most. The line between monitoring and managing will clearly have substantial gray areas, even within companies, especially over time. The more active the board, the more likely diversity is to augment the company's productivity.

Two factors increased the board's role. First, market factors after the 2008 financial crisis have increased the role boards play. Boards must now also protect against extreme risk and demonstrate to capital markets that the company's fortunes remain secure. As rubberstamping diminishes, and boards become more active, diversity's effects will grow. Second, independence, an increasingly valued element in good governance, correlates to diversity. Several of the traits that make independent directors seem like they would improve governance reflect those that are ascribed to women. Independent directors serve as a counterweight to the executive committee. Diversity among independent directors may prove more valuable. The increase in independent and diverse directors on corporate boards reflects a growing trend in governance.

Last, smaller companies and close corporations likely face different issues with regard to diversity. Because of their smaller teams and leaner staffing, their pursuit of diversity as a matter of good governance might be less likely. If stakeholders in the close corporation express interest in diversity, however, then it may end up as a priority for the company.

B. THE FOREST: DIVERSITY OF COMPANIES

Corporate governance varies widely. Large and small well-established companies and start-ups all differ substantially. Global companies deploy different processes from national ones. Industries and related risks diverge. This part of the report focuses on four variables within companies: company type, ownership, age, and governance. Industry matters substantially in terms of diversity. As women tend toward certain courses of study, professions and industries reflect this dynamic. With few women engineers, industries that rely heavily on this profession tend to have fewer women. For technology, aeronautics, automobiles, utilities, construction, and other lines of business in which engineering plays a dominant role in product development, the low participation of women in the field affects diversity at all levels. In such industries, the paucity of women at most levels of the company reduces the potential pool of women who could serve on the board or in the executive committee. Women form a larger proportion of professionals in certain industries that involve sales, customer service, human resources, and finance. The opposite is true in information technology. The phenomenon of Sheryl Sandberg's "Lean In" philosophy drew attention to the lack of women in the high growth area of technology as well as in other sectors.[29] By contrast, luxury goods, cosmetics, publishing, and other industries have far larger numbers of women.

Beyond management, women play a role as stakeholders, both as workers and customers. In industries with large numbers of women in these groups, management tends to be more inclusive.

Not only do certain industries tend toward more or less sex diversity, but distinct industries require distinct governance. Consider the distinctions among banks, technology, and heavy industry. Banks and technology may have fewer environmental concerns, while heavy industry may be subject to greater governmental intervention and regulation. Although the markets that finance company operations and growth function on a global scale, some companies continue to focus on distinct capital markets, which hold divergent expectations of corporations.[30] A company's age also plays a role. Newer companies have distinct challenges and methods of grappling with them, while older companies tend to have well-established infrastructures. Newer companies tend to take more risks for growth, while well-established ones that worry about risks undermining established lines of business tend toward greater risk aversion. Shareholder ownership constitutes another variable, because companies may have very broad shareholder bases or a concentrated ownership structure.

Given the increase in board diversity, how do these various kinds of companies affect board governance and, in turn, the diversity on their boards? It comes down to which companies have the wherewithal to choose how to diversify and which companies diversify unintentionally. Large companies have the resources to find and attract diverse board members, whether their motivation draws on a desire for better governance, or a fear of negative press, as with Twitter.

French companies are instructive, as they experienced the exogenous pressure of a quota to include substantial numbers of women. A diversity gold rush of sorts ensued as large companies moved out ahead of the more numerous mid-size companies with fewer resources to find "competent" women to fill their board seats. As large companies complied, though, they tended to seek out the women whose competence reflected that of the current members of the board. They looked for women with an elite background and with executive experience. If French women did not fit the bill – and few did, given the rarity of women executives in France – companies looked abroad to fill their quota. These first-mover companies may have brought on board precisely the women who would be less likely to add new experiences, as their profiles matched that of current board members.

The limited role of boards with regard to the executive undergirds a strong skepticism about the instrumental value of diversity. Perhaps proponents of instrumentalist diversity succeeded with their efforts in the board context precisely because the board does not play a large enough role to disrupt business if the diversity proves ineffective. Even in some of the most egregious groupthink moments in recent corporate history, it is not certain that diversity would have prevented what occurred.[31] However, as a thought experiment, one might wonder whether diversity would avert grave risks. One scholar argued that had Enron included women on its board, it would have averted disaster.

Which companies' governance might benefit the most from diversity? Among companies, we merely have to look for the factors that suggest stronger governance. Dispersed shareholders may weigh less heavily on a board, allowing diversity to matter. Companies with active boards also create promising environments for diversity to matter. Companies that view diversity opportunistically to improve their governance will succeed, especially those that foster a critical mass of diversity. By contrast, including women on companies with rubber-stamp boards will have little effect on company performance. Likewise, in companies with a dominant shareholder, the board's role could inevitably play a smaller role in company affairs. An example would be the technology sector, where several of the founding members of companies continue to dominate.

IV. DIVERSITY OF NATIONALITIES

The question of "where" matters enormously. State and national jurisdictions regulate companies and thus impact diversity's instrumental effect. An organization's size and national/global profile determines who populates its board, as the company seeks to garner or maintain the respect of its relevant capital markets.

The Brexit referendum and the Trump election have upended the norm of trade liberalization with their push toward de-globalization. Both votes might radically change how multinational companies operate. Subject to this uncertainty, the next part presumes that the status quo of globalized companies will largely continue.

A. LAW AND LEGAL CULTURE VARIATIONS

Variation in national origin among the members of boards proves substantial. National, regulatory, and cultural distinctions run deep and interact with each other regarding diversity. Companies develop governance cultures that respond to local, regional, and international capital market conditions as well as state regulatory frameworks. Corporate legal frameworks vary substantially. Social politics affect ownership structures and many other aspects of how companies operate. Political economy determines corporate governance systems, because it determines ownership, size, authority, and, in particular, the division between ownership and control. Some politics are national, while others are regional. One scholar notes that social democracy and diffuse ownership cannot coexist easily: social democracy (here, in the European context) stabilizes the workforce, while diffuse ownership favors shareholder primacy and maximizes profit, a distinction reflected in left-right political alignments.[32] In social democracies the ties between shareholders and managers fray, and concentrated ownership functions best.

To take but one example, several countries have tiered boards and/or labor inclusion. In Germany, for example, co-determination allocates half of all supervisory board seats to labor. Germany requires tiered boards, including an executive board that manages more detailed strategic issues and a supervisory board that performs functions closer to that of a United States board.

Other countries, such as France, require minimal labor representation. Labor participation in boards increases stakeholder representation, and clearly increases those boards' class diversity. It may also bolster other diversity. In an interview, a union representative on the board articulated why he thought women would not change board decisions: "If we go looking at Goldman Sachs, they would be biased toward Goldman Sachs like a guy. . . They will function with their own intelligence and sensibility and their experience, like a guy."[33] As he implies, to the extent that a woman on the board will act "like a guy," her inclusion may not alter the board.

This reality means that governance changes, including diversity, will be unlikely to produce desired results unless the regulatory environment and corporate governance systems align. If the state regulates and the private sector resists, companies can prove very effective at subverting the regulation. The widespread use of the business case argument for board diversity in France led the private sector to willingly adopt this requirement as it largely viewed the change as a salutary one. Even if it was designed to head off regulation, this effort aligned the private sector with the efforts at inclusion. When board members were questioned about compliance, the universal answer was that companies would comply. Only one possible noncompliance surfaced: companies might choose "marionettes" to join the board – women who served as proxies on boards when the real decision-maker was someone else.

B. REGULATORY VARIATION

Increased harmonization aside, corporate governance rules vary widely, nationally or federally. Companies may structure themselves with different entities in other jurisdictions. Diversity legislation differs enormously as other countries view inclusion as a priority for legislation, in part perhaps to attain some democratic legitimacy. Diversity will make a difference when regulations require the addition of women to boards. This chart maps the remedies for corporate diversity adopted by various countries since 2003, when Norway first adopted a quota for women on boards.

Figure 3: **National Legislation Compared**[34]

Approaches to Corporate Diversity

Regulated and fixed

- Mandatory gender quotas (Norway, France, Germany, Belgium, Italy)
- Voluntary gender quotas (Spain, UK)
- "Comply or Explain" – Regulated mandatory reporting of diversity (Netherlands, Canada)
- Regulated voluntary reporting of diversity (US)
- Industry approaches: "Name & Shame" or "Name & Praise"
- Individual firm efforts

Voluntary and fluid

These remedies range from fixed, government-imposed remedies at the top, to more fluid and voluntary remedies at the bottom. This spectrum of regulatory involvement pairs strong regulation with fixed notions of sex identity – a belief that "men" and "women" are distinct categories that will each contribute differently. On the other end of the spectrum sits weaker regulation which allows for a more fluid understanding of sex. Harder quotas guarantee women positions as they use a fixed meaning of "women." In contrast, companies like those in the U.S. set their own diversity metrics. This range of legislative remedies demonstrates what states might do to advance diversity and also how these measures relate to each other.

The skepticism about stereotypes shows that fixed remedies, such as the quotas in France and Norway, reinforce the idea that gender identity is fixed by nature into a binary. Regulation of sex diversity may vary by penalty or duration – for example, some rules can include sunset provisions. Less-fixed remedies may demand fewer changes in company culture, as companies can self-enforce. Of the softer quotas, the United Kingdom has the most substantial compliance. In the United States, the SEC allows companies to define diversity.

The greatest benefits of diversity might be seen in companies with high levels of willing compliance and in countries that foster a critical mass of diversity. Companies will then seek to implement such provisions in ways most beneficial to their own governance.

C. REGULATING CULTURE & GENDER

Gender itself varies substantially from country to country. Socioeconomic factors such as labor participation, reproductive rights, and childcare access construct power differentials between men and women. Familial roles permit or bar work outside the home. Workforce participation affects women's leadership across national lines. In countries with less sex equality, remedies that force inclusion may confront more resistance.

Contrasting the quota laws of Norway and France provides an example of how political, legal, and cultural realities affect the implementation of a diversity remedy. In 2003, Norway adopted a quota requiring each sex to comprise at least 40 percent of a corporate board, and achieved near-universal compliance in 2008.[35] In 2010, France adopted a quota similar to Norway's, requiring boards to adhere to the same floor of forty percent by 2017. Since France's adoption, several other European countries have followed suit, notably Germany. Likewise, the European Union has been debating whether to adopt a quota that encourages or imposes a requirement on companies within its borders.

Thanks to the aggressive European sex quotas, women's representation on boards grew immensely. Quotas created a new normal in which boards now typically include some women. Even in the United States, where regulatory government mandates are unlikely, companies increasingly face public pressure to include women, as evidenced in the Twitter controversy.

Considering three factors – the woman, the company, and the state – we may speculate where the greatest instrumental value will surface. In countries where national boards have strong governance structures with a critical mass of women, companies may see the largest benefit. It seems no such place exists; it would need to combine the governance typical in the United States context with the regulatory initiatives more typical in the European context. The next decade will provide substantial opportunities to research which governance model advances diversity most – those that target diversity advances or those that do not – and whether instrumental benefits result for these companies.

V. HYPOTHETICALS

This part of the report fits each factor with others in regard to instrumental benefits. These examples explore how companies may maximize diversity's utility. While stakeholders who benefit from diversity include the state and society, this assessment focuses on concrete company benefits such as profits or improved governance. Companies account for opportunity and risk in the near, medium, and long a "diversity dividend." This part provides practical hypothetical examples where different women might affect decision-making, leading to a potential instrumental benefit.

A. FACTOR ONE: IDENTITY VARIATION

Imagine one core variation between two hypothetical individuals: Anne and Barbara. Company A in Country A brings Anne to serve on their board. Anne's professional experience mirrors that of Company A's board members – she went to elite schools, served as an executive, and never took parental leave. At the same time, Barbara joins the board of Company A in Country A. Barbara's background followed a more traditionally female trajectory – she led the human resources department and took parental leave. Most companies would presume Anne brings the most value. But if we consider how diverse experience trumps identity in creating value, Barbara will prove the better choice. While both women may diversify the board, Barbara's perspective, if the rest of the board listens, will allow the board to use more analytical tools and consider more information than it previously did. Anne will add another mind similar to the minds already in the room.

Expertise and experience matter most. Work experience may come from within the industry of a specific company or in diverse industries. One may hold the same function in various industries, such as finance, law, or human resources. One may also have prior board work that enriches one's expertise. Having an industry-specific background may lend credibility to a board member's opinions. Other relevant factors include language, which may matter more in some companies than others, and personality, which most resembles and legitimizes the notion of fit. On boards where members relate in a freewheeling fashion, an assertive personality influences people. On other more civil or formal boards, a very assertive woman may come across as a "bitch," to use the term of one of the male board members I interviewed. In such a context, a less direct argument proves more persuasive; a pensive or introverted woman may hold more sway than a more direct one.

Women constitute a new minority within the company's board. Differences surface among individuals in a male majority and a female minority. Within the French context, even within a business context, male/female relations often involve more explicit gendered performance including traditional forms of chivalry and flirtation, both of which raise eyebrows as unprofessional in many United States company contexts.

B. FACTOR TWO: COMPANY VARIATION

To examine company differences further, consider two examples: Caroline and Delphine. Caroline built her own startup with two college classmates. Her background reflects elite credentials, but her international education and entrepreneurial experience differentiates her from many board members. Delphine's profile matches Caroline's, but she built a risk-averse reputation through work over the past five years on the boards of two United States companies, in both of which she served on the audit committee.

Companies B, C, and D have considered inviting Caroline to join their boards. Company B holds a well-established position in media markets and benefits a dispersed ownership with a strong board. Company C's position as a relatively new technology company means its concentrated ownership dominates a relatively passive board. Company D is an established and successful automobile manufacturer with a large market share and a formalized business model. It may be hard to say which company suits Caroline's skill set best. In one sense, her entrepreneurial experience adds something new to Company B, and her voice may influence company decision-making. On the other hand, Caroline, like Company C, understands new businesses' needs. However, other board members may also have similar experiences, and with a passive board, Caroline may have little impact there. In short, her experience may matter most where it brings a new perspective in a place where that perspective will matter.

If Delphine joins the board of Company C, her risk aversion might not have much effect. At Company B however, Delphine may prove more influential, given the company's more established industry. If conditions shift, such as financial challenges from threats in established markets, Delphine's influence may spike in either Company B or D. In such circumstances, the more closely her specific industry knowledge relates to that of the company on whose board she sits, the greater her influence. Such a profile may aid her effort to assert a more risk-averse profile on the company.

Caroline and Delphine may contribute differently to companies depending on their age. Since new companies typically resist a risk-averse strategy, Caroline might swim with the tide and Delphine against it. However, all companies change direction, and a new company with a very strong market position might seek a risk-averse strategy to maintain its dominant position. A board for a slow-growth company typically faces a reduced number of strategic decisions, unless the company faces extensive regulation or scrutiny.

Imagine if Company D were gaming emissions tests to report higher fuel efficiency, as Volkswagen did in 2015. Although it cannot serve as causal proof, the supervisory board lacked diversity and the management board was staffed entirely by men.[36] Ferdinand Piëch, grandson of Ferdinand Porsche, ran the supervisory board. In 2012, the board named his fourth wife, Ursula, former governess to Piëch's 12 children, to the board. In Ursula's place, a woman such as Delphine would challenge the executive, or might insist on a thorough process which could have revealed the deception before it damaged the company. Delphine would have used her extensive business background to protect the company more effectively from executive overreaching than the fourth Mrs. Piëch, a contrast that underscores the value of experience over identity. This situation suggests a potential cost of a lack of critical mass.

C. FACTOR THREE: NATIONAL VARIATION

For this factor, imagine hypothetical board member Elodie was educated in France and the United States and served as an executive in both countries in established luxury sector companies. Where will Elodie's contributions matter most? Being one woman on an otherwise all-male board may hamper full participation. Studies on critical mass reflect that below one-third, minorities may feel constrained by the reality or perception that the majority scrutinizes the minority board member. France's quota forces companies to include a critical mass of women, while many United States boards may have only one. A critical mass will improve Elodie's ability to share her views – particularly those involving experiential diversity – leading the company to benefit from the inclusion of a different voice on the board. Within a company like Wynn Resorts, for example, with only one woman board member, one can imagine she might have been self-conscious and that could have hampered her assertiveness about her experiential difference.

Given how common it is for companies to have only one woman on their board, the sidelining of such pioneers comes as no surprise. For example, Liz Dolan served on the board of Quiksilver, the sports clothing manufacturer, and resigned in 2015 after claiming bias from the male board members. She stated: ". . . I learned . . . that even when a woman earns a seat at the table, the men can put you in a soundproof booth."[37] Therefore, even if a woman brings a unique perspective, she might lack influence. On the other hand, some "pioneer" interviewees reported that, as outsiders, they received substantial respect from the boards on which they served.

Other jurisdiction-specific factors favor the inclusion or exclusion of stakeholder values, which some studies ascribe to women. Imagine a U.S. woman, Fanny, who does favor stakeholder interests, and place her within similar companies, but alter the national contexts. Say she serves on the boards of two competing companies similarly situated in their markets that operate out of different national contexts: German and British. As Mark Roe notes, companies in social democracies tend to adhere to the social contract for a variety of reasons, while companies in liberal democracies pursue choices that promote shareholder value.[38] Germany's social democratic context – which requires union representation on boards – may provide Fanny with a better environment to voice her concerns, while a British company may continue to direct the company toward shareholder value maximization.

Last, with regard to jurisdiction, this discussion focused on national differences, but we also should note that in federal contexts, wide variations may arise within one country. The federal overlay of legislation makes differences between one state and another within the United States relatively minor. Therefore, distinctions between states will only affect certain companies. Some states allow public benefit corporations or give more rights to close corporation shareholders. These distinctions affect how board members operate within a particular context.

These six hypothetical women present a variety of traits of individuals, companies, and jurisdictions to articulate the kinds of more precise questions one may pose about diversity's instrumentality.

Conclusion

Even deft market actors may find themselves maladroit in responding to diversity and inclusion demands. The utopic overreach of instrumental arguments does not help guide companies who require concrete data on the actual value of women on boards. Therefore, substantial context is necessary to assess how companies may realize diversity benefits. Three contextual factors will determine the existence and magnitude of the instrumental benefit. Factor One considers whether and how traits ascribed to women actually connect to women, who may not conform to stereotype. Factor Two shows how companies and board governance vary enormously. Factor Three places these elements of the individuals and the companies in the national and global contexts. Methodical study that accounts for these contexts would likely show that companies with strong board governance in countries whose regulations foster inclusion would gain the most benefits from diversity.

Further theoretical work links social science studies on sex difference to the specific context of corporate leadership where diversity must be analyzed beyond stereotypes. What kinds of experiential diversity contribute the most to improved decisionmaking?

For example, does women's more regular caretaking actually lead them to risk aversion and/or "stakeholderism?" Does the social science on caretakers and risk aversion extend to the boardroom? Does women's greater caretaking experience link to board decisions in favor of stakeholder values, like firing fewer staff? Does the "methodical" nature of women reflect something about women or is it related to their newness on the board as they try hard to succeed? Does their methodical approach produce a lasting increase in care on the board?

As more women join boards, quantitative and qualitative research can evaluate whether women's work on boards actually reflects these traits. Research can demonstrate if and how companies benefit from inclusion. Between the close contextualization urged in this report and the bias toward positive results, one may despair about the actual potential for reliable research in this area. One response is to emphasize normative arguments. Another is to insist that we not displace normative anxiety into a lack of methodological rigor.

As European countries along with California lead the world toward legislated inclusion of women on boards, contextually accurate work is more urgent than ever. In the wake of recent corporate sexual harassment scandals, companies can no longer deny the immediacy of diversity and inclusion imperatives. Across the public/private divide, leaders, legislators, and regulators, as well as industries and companies are deciding whether and how to act. Their crafting of remedies depends on rigorous studies of diversity's actual benefits.

This Director Notes report is adapted from "When Does Sex Diversity on Boards Benefit Firms?" by Darren Rosenblum, Pace University Law School, published in University of Pennsylvania Journal of Business Law, Vol. 20, No. 2, August 2018.

END NOTES

1 See generally Daan Van Knippenberg & S. Alexander Haslam, *Realizing the Diversity Dividend: Exploring the Subtle Interplay Between Identity, Ideology, and Reality*, in *Social Identity at Work: Developing Theory for Organizational Practice* 61 (2003) ("Diversity dividend is the positive monetary outcomes "associated with harnessing and leveraging the social identities and resources of diverse individuals and workgroups.")

2 Richard Dobbs et al., McKinsey Global Institute, "The Power of Parity: How Advancing Women's Equality Can Add $12 Trillion to Global Growth" (McKinsey & Company 2015), http://www.mckinsey.com/insights/growth/how_advancing_womens_equality_can_add_12_trillion_to_global_growth [https://perma.cc/4DJP-8ANX] [hereinafter Power of Parity].

3 The McKinsey Global Institute asserts that more diverse companies and institutions perform better. Vivian Hunt et al., McKinsey Global Institute, *Diversity Matters* (McKinsey & Company 2014), https://web.duke.edu/equity/toolkit/documents/DiversityMatters.pdf [https://perma.cc/3982-7TNA] [hereinafter Diversity Matters].

4 See generally Melissa Gira Grant, "The Unsexy Truth About Harassment," *NY Review of Books* (Dec. 8, 2017), www.nybooks.com/daily/2017/12/08/the-unsexy-truthabout-harassment/ [https://perma.cc/BNS4-TJL6].

5 Devon Carbado & Mitu Gulati, *Acting White? Rethinking Race in Post-Racial America*, Oxford Press Ed. (2013).

6 Ed Yong, "Psychology's Replication Crisis Can't Be Wished Away," *Atlantic* (Mar. 4, 2016), https://www.theatlantic.com/science/archive/2016/03/psychologys-replicationcrisis-cant-be-wished-away/472272/ [https://perma.cc/QPL4-33MW] ("There's publication bias – the tendency to only publish studies with positive results, while dismissing those with negative ones").

7 See Kenneth Ahern & Amy Dittmar, *The Changing of the Boards: The Impact on Firm Valuation of Mandated Female Board Representation*, 127 Q. J. ECON. 137 (2012).

8 This chart was drafted based on several sources. The left column represents several of the theories of value posited by legal and social science scholars on what benefits women bring. See infra Figure 2 in Part II. The second column sets forth a nonexclusive set of factors that affect diversity implementation.

9 17 C.F.R. § 229.407(c) (2014).

10 John M. Conley et al., *Narratives of Diversity in the Corporate Boardroom: What Corporate Insiders Say About Why Diversity Matters*, in Discourse Perspectives on Organizational Communication (Farleigh Dickinson Univ. Press, 2012).

11 For example, according to a study by Faccio, Marchica, and Mura, firms run by female CEOs have lower leverage, less volatile earnings, and a higher chance of survival than otherwise similar firms run by male CEOs. Mara Faccio et al., *CEO, Gender, Corporate Risk-Taking, and the Efficiency of Capital Allocation* (University of Manchester Library, Working Paper, 2015).

12 Firms often deploy the language of "fit" to describe whether an individual will succeed in a particular position. This subjective category reinforces extant social advantages for particular groups, and it subtly weeds out difference. See generally Scott E. Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (Princeton Univ. Press 2008).

13 There is a presumption of women, often serving as primary caretakers, as "risk-averse" since caretakers tend to refrain from risky endeavors that might endanger their caretaking function.

14 People with caretaking roles may take on less risky jobs. Tim Worstall, "Here's Your Gender Pay Gap Fatal Occupational Injuries," *Forbes* (Dec. 21, 2016), https://www.forbes.com/sites/timworstall/2016/12/21/heres-your-gender-pay-gap-fatal-occupational-injuries/#25557cbc6c3e [https://perma.cc/G9AY-W3XF].

15 Society increasingly presumes women behave more ethically than men. See e.g., Naomi Mezey & Cornelia "Nina" Pillard, *Against the New Maternalism*, 18 Mich. J. Gender & L. 229 (2012) (asserting that current culture intensively fosters the idea that mothers are the default parent, responsible for managing the "second shift"); Corporate board quotas mandate that women get descriptive representation on boards, even though women do not necessarily share common experiences.

16 The traits and benefits in this chart were compiled from various of sources, as well as from the author's personal experiences.

17 Interview with 1M, in Paris, France.

18 Devan Grossblatt, *Boarded In: Counteracting the Consequences of Board Insularity by Legitimizing Director Elections*, 20 Fordham J. Corp. & Fin. L. 553, 604 (2015).

19 David A. Matsa & Amalia R. Miller, *A Female Style in Corporate Leadership? Evidence From Quotas*, 5 AM. Econ. J.: Applied Econ. 136 (2013) [hereinafter "A Female Style in Corporate Leadership"].

20 Catalyst, *Women "Take Care," Men "Take Charge*:" *Stereotyping of U.S. Business Leaders Exposed*, 12 (2005).

21 Darren Rosenblum & Daria Roithmayr, *The Effect of Gender Diversity on Board Decision-Making: Interviews with Board Members and Stakeholders*, Conference Board (Jan. 2017), https://www.conference-board.org/publications/publicationdetail.cfm?publicationid=7407 [https://perma.cc/6GVF-E63Q].

22 Page, *supra* note 20, at 307.

23 Bruce F. Dravis, *The Role of Independent Directors in Corporate Governance* 60 (1st ed. 2010).

24 Page at 314.

25 *Id.* at 324-25. To test whether diversity helps problem solving, Page focused on one problem: "making the perfect cup of coffee," with two elements, the ideal level of cream and sugar for most people. Participants worked in groups "until no agent in the group could find a better cup of coffee." *Id.* at 135-36.

26 *Id.* at 324-25.

27 *Id.*

28 Jill E. Fisch, *Taking Boards Seriously*, 19 Cardozo L. Rev. 265 (1997).

29 Sheryl Sandberg, *Lean In: Women, Work, and the Will to Lead* (Alfred A. Knopf 2013).

30 *Corporate Governance in Global Capital Markets* 73-74 (Janis Sarra ed., 2003) (ebook).

31 Marleen A. O'Connor, *The Enron Board: The Perils of Groupthink*, 71 U. Cin. L. Rev. 1233, 1306-08 (2003).

32 Mark J. Roe, *Political Determinants of Corporate Governance: Political Context, Corporate Impact* 142–45 (2003).

33 Interview with 5M, supra note 68.

34 This chart appears in Darren Rosenblum & Daria Roithmayr, *The Effect of Gender Diversity on Board Decision-Making: Interviews with Board Members and Stakeholders*, The Conference Board (Jan. 2017), https://www.conference-board.org/publications/publicationdetail.cfm?publicationid=7407 [https://perma.cc/6GVF-E63Q].

35 Nicola Clark, "Getting Women Into Boardrooms, by Law," *NY Times*, Jan. 27, 2010, http://www.nytimes.com/2010/01/28/world/europe/28iht-quota.html [https://perma.cc/R66R-S3K8] (explaining that Norway adopted a quota in 2003).

36 Chris Bryant & Richard Milne, "Boardroom politics at heart of VW scandal," *Financial Times* (Oct. 4, 2015), https://www.ft.com/content/e816cf86-6815-11e5-a57f-21b88f7d973f [https://perma.cc/NZW6-ZN9Y].

37 Liz Dolan, "Gender Bias Forced Me to Quit Quiksilver's Board," *Fortune* (June 15, 2015).

38 See Roe, *supra* note 176, at 27-38.

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