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COMMENTARY: PUZZLES ABOUT CORPORATE BOARDS AND BOARD DIVERSITY*

DONALD C. LANGEVOORT**

INTRODUCTION

Those who seek greater gender or ethnic diversity on corporate boards of directors work under the self-imposed burden to show that board-level diversity adds value to the firm in some tangible way. In a perfect world, board diversity follows naturally from the fair distribution of talent and skill between the genders and among ethnicities when selection is based on merit. But our world is grossly imperfect, with residual bias (conscious and implicit), a long legacy of discrimination and inequality, and pervasive, artificial, and self-serving social construals of what merit-based selection means. In this imperfect world, sadly, the strategy of claiming and documenting the economic value of diversity seems to be strategic necessity.

Unfortunately, the value added by board diversity is hard to prove with any rigor, as the indeterminate findings in the extensive empirical literature on the subject—including some of the contributions to this conference—amply demonstrate.¹ To be sure, the intuitions seem persuasive enough. If one treats the corporate board as a work group, under the right circumstances having differing perspectives and differing backgrounds should prompt more creative problem-solving and blunt the tendencies toward “groupthink.”² And as stakeholder groups (employees, customers, suppliers, etc.) become more diverse, having board members who are especially attuned to their interests and values should be productive and also send a positive signal of firm sensitivity.

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1. For a review, see Deborah L. Rhode & Amanda K. Packel, *Diversity and Corporate Boards: How Much Difference Does Difference Make?* 4–8 (Rock Ctr. for Corporate Governance, Working Paper No. 89, 2010), available at <http://ssrn.com/abstract=1685615>.

2. See, e.g., Lisa M. Fairfax, *The Bottom Line on Board Diversity: A Cost-Benefit Analysis of the Business Rationales for Diversity on Corporate Boards*, 2005 WIS. L. REV. 795, 831–37.

So why is it so hard to find tangible evidence of added value? My commentary will focus on two of the conference contributions: the wonderfully interesting field study by Broome, Conley, and Krawiec (“BCK”), who asked board members to talk about their own observations of value added by having more diversity on corporate boards,³ and the intriguing empirical study by Dobbin and Jung (“DJ”), who try to explain troubling evidence that both share value and non-blockholding institutional ownership appear to drop when women are added to boards, even though there is no evidence that firm financial or accounting performance declines as a result.⁴ Before turning specifically to these, however, I want to explore briefly what may be a cause of the muddle—the fact that we have no coherent, consistent explanation for how boards themselves add value to the firm. Without knowing what boards really do in terms of economic value, it is hard to develop and test any useful hypothesis about their diversity.

I. WHAT EXACTLY DO BOARDS DO?

Legal scholars have long expressed frustration over the inversion between how the law says corporations are governed (absolute board primacy) and how they seem to be run in fact (managerial primacy).⁵ Business scholars, who carry less normative baggage, seek simply to explain what is observed in practice.⁶ The prevailing accounts suggest three realistic possibilities for what boards actually do, which are not mutually exclusive.⁷

The first account—the so-called monitoring board, whose roots are in financial economics—holds that the function of the board is to select, retain, and compensate the senior executive team, as agents on

3. Lissa L. Broome, John M. Conley & Kimberly D. Krawiec, *Dangerous Categories: Narratives of Corporate Board Diversity*, 89 N.C. L. REV. 759, 760 (2011).

4. Frank Dobbin & Jiwook Jung, *Corporate Board Gender Diversity and Stock Performance: The Competence Gap or Institutional Investor Bias?*, 89 N.C. L. REV. 809, 833–34 (2011).

5. See, e.g., MELVIN ARON EISENBERG, *THE STRUCTURE OF THE CORPORATION* 2–3 (1976).

6. For an excellent recent survey of the economics literature, see generally Renee Adams et al., *The Role of Boards of Directors in Corporate Governance: A Conceptual Framework & Survey*, 48 J. ECON. LIT. 58 (2010).

7. For more on these accounts, see Amy L. Hillman & Thomas Dalziel, *Boards of Directors and Firm Performance: Integrating Agency and Resource Dependence Perspectives*, 28 ACAD. MGMT. REV. 383, 384–88 (2003); Donald C. Langevoort, *The Human Nature of Corporate Boards: Law, Norms and the Unintended Consequences of Independence and Accountability*, 89 GEO. L.J. 797, 801–05 (2001).

behalf of the company's equity shareholders.⁸ When carried out faithfully, this means fairly careful oversight, as is the assumption in private equity arrangements where there is a single "owner" of the firm who selects expert monitoring directors. However, agency cost problems resulting from dispersed share ownership can result in managerial capture of the board, rendering it impotent and irrelevant as a monitor.⁹ Even where there is no capture (or incomplete capture), monitoring might be compromised by informational and resource deficiencies, and maybe behavioral biases as well.¹⁰ Moreover, intense monitoring might simply set in motion a more contested negotiation between management and the board, which in the end could be costly to the firm and its shareholders.¹¹

The second account—the resource-dependency model, with its roots in the sociological literature—claims that the board (or corporate governance generally) is mainly a mechanism for gaining for the firm the resources necessary for survival and success.¹² Board members are selected for their network connections with key constituencies.¹³ The best-known example here would be political connections: banks, defense contractors, and others who are highly dependent on government goodwill famously have former regulators, former members of Congress, and former generals and admirals on their boards.¹⁴ Where capital resources are important to the firm's strategic direction, directors with ties to the capital marketplace and the investor community will be valuable.

8. Langevoort, *supra* note 7, at 801–02.

9. For an example of this theme, see generally LUCIAN BEBCHUK & JESSE FRIED, *PAY WITHOUT PERFORMANCE: THE UNFULFILLED PROMISE OF EXECUTIVE COMPENSATION* (2004) (arguing that the lack of arm's length bargaining between directors and executives has led to an inability of directors to limit executive compensation).

10. See Langevoort, *supra* note 7, at 806–09.

11. See Benjamin Hermlin & Michael Weisbach, *Endogenously Chosen Boards of Directors and Their Monitoring of the CEO*, 88 AM. ECON. REV. 96, 96–97 (1998); James D. Westphal, *Board Games: How CEOs Adapt to Increases in Structural Board Independence from Management*, 43 ADMIN. SCI. Q. 511, 512–13 (1998); see also Donald C. Langevoort, *Resetting the Corporate Thermostat: Lessons from the Recent Financial Scandals About Self-Deception, Deceiving Others and the Design of Internal Controls*, 93 GEO. L.J. 285, 304–08 (2004) (discussing the possible negative implications of a corporate board's intensive monitoring of CEO performance).

12. See Hillman & Dalziel, *supra* note 7, at 386–88.

13. See *id.*

14. See generally Anup Agrawal & Charles Knoeber, *Do Some Outside Directors Play a Political Role?*, 44 J.L. & ECON. 179 (2001) (arguing that outside directors with political and legal backgrounds play important roles on boards of firms that must engage with government regulatory agencies).

The third account is the advisory board.¹⁵ Here, the main job of the board is to advise the CEO (and perhaps other senior managers) on the strategic direction of the firm, bringing a more objective, experienced perspective on the firm's challenges than what the insiders might believe.¹⁶ This is hard to account for theoretically, since the same function can be played by professional management consultants without encumbering the board with the responsibility. But survey data indicate that this is the function board members *think* they are performing most of the time.¹⁷

From this mix, one can appreciate the difficulty of discovering tangible value in board diversity. To be sure, there is the potential for value in terms of more creative group decision making under the monitoring model, or through network connections where key constituents of the firm are diverse. On the other hand, if there is a high degree of managerial capture, as so many fear, then the group decision making is of lesser significance in any event. And network connections under the resource dependency approach are not limited to board seats; a defense contractor might choose higher lobbying expenditures over adding a former admiral. Instead of an additional woman on the board, a firm might hire and feature a new woman vice president for marketing—or bring in a powerful woman as outside legal counsel. In other words, there are always close substitutes in the world of corporate governance. Board membership will never be the only or even the best reflection of how the firm might incorporate diversity into governance.

As to the advisory function (and perhaps an active monitoring board as well), the most plausible working hypothesis is especially muddled. There are downsides to diversity because diverse teams are less likely to reach consensus, and take more time to do so if they do.¹⁸ Interesting research by James Westphal suggests that the advisory function is most effective when the CEO feels relatively strong social connections to board members.¹⁹ To the extent that

15. See Langevoort, *supra* note 7, at 802–03.

16. *Id.*

17. See Adams et al., *supra* note 6, at 64–66.

18. For a discussion, see David Charny & G. Mitu Gulati, *Efficiency Wages, Tournaments, and Discrimination: A Theory of Employment Discrimination Law for "High-Level" Jobs*, 33 HARV. C.R.-C.L. L. REV. 57, 66–67 (1998).

19. See generally James Westphal, *Collaboration in the Boardroom: Behavioral and Performance Consequences of CEO-Board Social Ties*, 42 ACAD. MGMT. J. 7 (1999) (arguing that close personal ties between CEOs and board members encourage CEOs to actively seek advice from the board); James Westphal & Edward Zajac, *Who Shall Govern? CEO/Board Power, Demographic Similarity and New Director Selection*, 40

comfort comes from similarity, then diversity of various sorts—including extreme board independence—might lower the efficacy of the advice.

All this discussion assumes, artificially, that diversity and ethnic and gender differences are tightly coupled. But of course there is no guarantee that bringing a woman or person of color onto the board will offer anything of the sort. The traits, tendencies, and experiences that produce diversity are unevenly distributed within the genders and ethnicities—famously, there are women and people of color who will think and act in the most stereotypically white male fashion. Social pressure to diversify a board as against incumbent preference for board homogeneity (for whatever reason in light of the above discussion) might make such persons highly sought after, but they will bring no appreciable diversity impact on the quality of the board's work.²⁰

II. BROOME, CONLEY, AND KRAWIEC: DIVERSITY STORIES

BCK collect a fascinating set of stories told for the most part by board members themselves about the value of diversity. Their main finding is an almost universal assent to the value of diversity as an abstraction, but indirection, vagueness, and inconsistency when asked to provide specific concrete examples that tie a particularly valuable contribution to the gender or ethnicity of the particular board member.²¹

As the authors acknowledge by their title reference to “dangerous categories,” some of this comes from the political awkwardness of the question.²² It is unacceptable today in most socially elite circles to doubt the value of diversity, so an abstract, socially scripted answer is easy to give. But asking for concrete examples prompts the tension about color- and gender-blindness—board members are expected to be selected on merit, not *for* their diversity, and thus the tendency to try to steer the conversation to nonethnic or nongender explanations for the contributions. Where white males are doing the talking, they are naturally reluctant to admit that they might be less capable than women or people of color

ADMIN. SCI. Q. 60 (1995) (examining the effects of demographic similarity between CEOs and boards).

20. See, e.g., Devon Carbado & Mitu Gulati, *Race to the Top of the Corporate Ladder: What Minorities Do When They Get There*, 61 WASH. & LEE L. REV. 1645, 1660–62 (2004).

21. Broome et al., *supra* note 3, at 761.

22. *Id.*

by reference to a valuable insight or contribution that they could not have offered. When women or people of color were interviewed (a majority of the stories²³), there was probably a reluctance to challenge the white males by making such an insinuation with any specificity. The fear of tokenism is likely to prompt accounts that emphasize their contributions on equal terms with the white males, not on different standards or dimensions. The dominant mythology for any board is that those selected were the very best *people* available; if they bring diversity, so much the better, but that is not the test for selection. And to the extent that certain diverse board members got to where they are in the corporate world by mimicking the thoughts and behaviors of the dominant white males, they—by habit if not cognitive dissonance—are likely to have internalized non-diversity-based accounts of their own contributions to the board as a self-esteem maintenance device. There may be some lingering anxiety about that, but their minds try to deflect it.

But awkwardness alone is probably not the entire explanation. I found striking in these stories the portrayal of board activity almost entirely in terms of conversation that occurs in board meetings—recollections of a particularly astute comment or contribution that might have had something to do with diversity but really, the teller quickly adds, is about knowledge and expertise.²⁴ My strong suspicion is that regular board meetings are places where almost no real work of the board gets done except when the board is responding to an external threat—and none of the anecdotes recounted by BCK were crisis stories, or hinted the presence of serious power struggles. Instead, regular board meetings are almost always routine and ceremonial, consisting of seriatim presentations by senior managers with a few minutes set aside for questions and discussion by the board. These questions and discussions can be intelligent and interesting, but probably of no effect whatsoever in terms of changing anything about how management behaves after the meeting adjourns. If one is looking for the value of diversity in that kind of setting, it will not be found.

If we relate back to the various theories of board governance, we can see why. The monitoring board—even assuming the absence of capture—is likely to act fairly passively most of the time, indistinguishably from the ceremonial process just described, until some exogenous event (usually stock price performance, though

23. *See id.* at 769–70.

24. *See, e.g., id.* at 782.

perhaps pressures from the press or regulators) shocks them into action. Even then, much of the coalition building that leads the board to take control is done over the phone or over a meal among the key players on the board—what happens later at the formal meeting may announce the result, but certainly not determine it. In this kind of focused response to pressure, it is unlikely that board members will display much that can clearly be attributed to gender or ethnicity.

The resource-dependency function of the board is also likely to be hard to observe in the context of board meetings, because it does not take the form of collaborative group work. Though some examples of affirmative outreach to women or minority groups might be recounted, the main ways this function plays out is through signaling. Often, a director assumes the role of “hostage”: the director puts his or her high-status reputation with particular constituencies at risk if the firm takes action inconsistent with their interests and needs.²⁵ Understanding the reputational cost of defection to the director and the likely consequence of embarrassing that director, the firm is less likely to do so—and the constituencies so understand. Very little needs to happen inside the boardroom for this signal to work. We do see a few glimpses of this from BCK, as when one director mentions how another (minority) director wanted regular reports on progress in minority hiring at the company.²⁶ But that was an awkward observation because although the director’s interest might be construed as value-adding, it could easily as well generate resentment as pushing a social agenda in place of the normal corporate goals of profitability and growth. This takes us to another reason it is hard to identify concrete instances where diversity adds value in the boardroom: the culture of the boardroom privileges the *language* of accounting success and stock price performance, and it is wary of contributions that are not expressed in those terms. No doubt corporate law in many states reinforces this by asking board members—as the price of business judgment rule protection—to keep their eyes on long-term profitability.²⁷ Board members probably learn to edit themselves to keep to the legal model, and not wander conversationally into awkward “other constituency” territory.

We are left, then, with the advisory function, and most of what happens at regular board meetings (putting aside corporate formalities and committee work) is meant to advise the senior

25. See Langevoort, *supra* note 7, at 808.

26. Broome et al., *supra* note 3, at 796.

27. See ROBERT C. CLARK, CORPORATE LAW 123–24 (1986).

management team on on-going strategic issues. Most all the stories told to BCK were of that kind of contribution.²⁸ But as I suggested earlier, the real value of this as a formal board function is doubtful. To be sure, there will almost always be ingratiating nods, smiles, and compliments to board members for their helpful contributions, but the number of instances where board members' suggestions at a formal meeting really change the company's strategic direction is probably very small. After all, for board members to suggest some move of strategic significance implies that management has not already anticipated it, which is unwelcome criticism in most instances (and hence management is motivated to ignore it). There probably are very valuable forms of advice that come from particularly trusted directors on sensitive issues such as how the CEO should deal with threats from ambitious subordinates or negotiate the political minefields of some regulatory challenge. But this advice is likely to be expressed not in meetings themselves but in informal contacts. Directors who are not part of the trusted inner circle will never observe this at all—they simply take part in the formal routine of the board meeting itself.

A realistic mash-up of these theories—my impression of corporate governance in most firms—would be this: boards are dominated by an inner circle of directors with a preference for the status quo and close social and political ties to the CEO and the senior management team. Other directors are chosen for resource-based or signaling contributions, not to upset the political equilibrium, although certain constituencies—large institutional investors being the most potent—will sometimes be in a position to cause change. Absent some unusual sort of external pressure, board meetings are largely exercises in impression management by the senior management team, in which board members are expected to acquiesce by polite, intelligent, but not particularly challenging discussion.

In the context of these kinds of meetings, I am not the least bit surprised by the authors' findings that corporate directors have difficulty identifying specific instances or ways in which board-level diversity adds value.²⁹ Where it exists, the value of diversity is likely to be implicit and concealed from wide view; most of the time, however, the board is simply not doing enough work for diversity (or much else, for that matter) to be of observable value. In other words,

28. See Broome et al., *supra* note 3, at 786–92.

29. *Id.* at 803–04.

the stories BCK were told reflect ambivalence not only about the tangible value of diversity, but also about the observable output of corporate boards in the normal corporate routine.

III. DOBBIN AND JUNG: IMPLICIT DISCRIMINATION?

As is widely recognized in the academic literature on board diversity, linking statistically significant stock price or financial performance (accounting) effects to changes in board diversity with any consistency has been hard.³⁰ That mirrors the literature on corporate governance generally, where researchers struggle to find evidence that formal changes to board structure consistently affect performance.³¹ There are a variety of reasons for this—one, obviously enough, is that optimal board-level governance depends, among other things, on the motivation and skill of the directors, which cannot be gleaned simply from demographic variables or background information. The point is commonly made that best practices in terms of independence and board structure mean little if there has been deep capture of those serving on the board by the CEO and the senior managers.

The other main reason is substitutability. For every important feature of corporate governance, there are many ways to accomplish the goal. Board independence, incentive contracting, and many other possible governance strategies are part of a menu from which the best available tools can be chosen given the firm's particular needs and situation. So, too, with diversity. One can imagine a wholly white-male board overseeing a company that successfully invests in a variety of other strategies (e.g., executive hiring practices, management consultants, or advertising) to gain the perceived value of firm-level diversity. Conversely, for many of the reasons discussed earlier, what appears to be a notable board-level diversity initiative might generate little or no real value at all if there are no other firm-level initiatives, especially when board-level diversity means just one or two women or persons of color on a thirteen- or fifteen-person board.

That does not mean that diversity within the firm is not intrinsically valuable, just that board demography by itself—especially if measured in terms of small incremental changes in diversity—does not correlate particularly well with any useful metric

30. See Rhode & Packel, *supra* note 1, at 9–10.

31. See generally Sanjai Bhagat & Brian Bolton, *Corporate Governance and Firm Performance*, 14 J. CORP. FIN. 257 (2008) (examining the relationship between corporate governance and firm performance).

of such value. Nor does it mean that boards are unimportant to investors. The stock price does reflect the market's consensus view of the quality of the *bundle* of corporate governance strategies at any given firm to counter managerial opportunism and entrenchment. But most discussions of board diversity initiatives treat them as corporate social responsibility campaigns, the pursuit of social goals distinct from firm profitability or shareholder value—even though proponents work hard to claim positive economic effects.³²

DJ find a drop in firm value (measured by Tobin's q) after increases in the number of women on the board, even though there is no observable relationship between gender diversity changes and subsequent operating performance in the form of return on assets ("ROA") that can be gleaned from accounting data.³³ What could possibly explain that? The authors conclude that this must be gender discrimination on the part of investors, particularly in light of the fact that the abnormal selling occurs mainly on the part of non-blockholding investors, whose trading is largely outside of public view.³⁴ Investors with larger, more visible stakes, they hypothesize, are subject to social opprobrium if they sell in response to such a diversity initiative.³⁵

When I first read the paper, I was extremely skeptical of this bias-based explanation, for many different reasons. One is that that blockholders really do not face all that much risk of social opprobrium from reducing their holdings. In most cases, noncontrol blockholding investments can be reduced without any immediate disclosure obligation, and by the time there is any awareness of the reduction, there will be ample noise to obscure the reasons for the decision. And the fear-based story does not explain why there would be an *increase* in their holdings, which DJ find.³⁶ There is also a timing element to this. Diversity changes on the board are announced well in advance of the annual meeting—bundled together with lots of additional information—so any selling could occur before the election, not afterwards, and have many possible explanations (none

32. See, e.g., Paul Tkac, *One Proxy at a Time: Pursuing Social Change Through Shareholder Proposals*, 91 FED. RES. BANK ATLANTA ECON. REV., no. 3, 2006 at 1, 1–3.

33. Dobbin & Jung, *supra* note 4, at 833–34.

34. *Id.*

35. Similarly supportive are public pension funds even when they are not blockholders, presumably because they are often visible proponents of greater board diversity. See Rhode & Packel, *supra* note 1, at 23–24.

36. Dobbin & Jung, *supra* note 4, at 834.

of which the investor is obliged to give). That part of the accountability story just does not make sense to me.

Conversely, non-blockholding institutional investors (e.g., mutual funds and hedge funds) are typically under significant performance pressure, and quite focused on value. Dumping a stock in the portfolio, or even significantly reducing a major exposure, involves deliberation and often mutual agreement among more than one portfolio manager. Based on our earlier discussion, there is no reason whatsoever to consider the addition of just one or two board members—whether they are women, people of color or, frankly, pink elephants—sufficiently important by itself to trigger any investment revaluation. New board members are almost always chosen to perpetuate the status quo (which presumably has already been priced by the market),³⁷ and so their arrival is not all that salient an event. The lack of salience of the addition of a diverse board member or two is especially clear given the normalcy of minor degrees of gender diversity on corporate boards today.³⁸ We should expect a stock price reaction only in the relatively rare instance where there is an embedded signal connecting the new directors to a change in control or strategy at the firm.

But DJ's evidence of a reduction in firm valuation is there, and thus—assuming that this regularity is confirmed by other empirical studies—we have to try to explain it. One disturbing possibility is that adding women to the board actually is seen in the investment community as value-reducing on average, which might explain their observations for reasons having nothing to do with discrimination. The asymmetry in selling activity between blockholders and non-blockholders might then be the result of the superior informational advantage of the blockholders, who might thus have the ability to distinguish between new diverse board members as to their likely efficacy and prevent value-detractors from serving. DJ purport to rule this out by showing that there is no similar correlation between diversity changes and accounting performance,³⁹ but that may not be a particularly robust measure of intrinsic value. Their measure is reported ROA a year after the change,⁴⁰ which is not much of a time lag considering the historic nature of financial reporting, a look backwards at the previous fiscal period. Perhaps there is some longer-

37. See Rhode & Packel, *supra* note 1, at 16 (describing “in-group bias” as another barrier to diversity in the selection of corporate boards).

38. *Id.* at 1–2.

39. Dobbin & Jung, *supra* note 4, at 834–35.

40. *Id.* at 826.

term effect that does not necessarily show up in ROA the first year of increased gender diversity on the board.

In a study cited by DJ, Adams and Ferreira offer evidence consistent with this possibility, suggesting—counterintuitively—that the diminished Tobin's q may be the result of the tendency of women directors to *overmonitor* (i.e., do their jobs too aggressively).⁴¹ As noted earlier, there is reason to worry that aggressive monitoring by directors mainly prompts managers to work harder to conceal the current condition of the firm in order to hold onto the benefits of control, a protracted negotiation that is costly to the firm and its shareholders.⁴² That would be consistent with both DJ observations: a drop in value on average driven by the inferences of non-blockholders at the same time that there is no change in reported ROA.⁴³

That said, I remain skeptical of any claim that adding one or two new female directors is likely to change the monitoring dynamics of the board in either direction (though I might feel differently if we were talking about serious diversity, i.e., approaching a majority of the board, and without capture). So let us consider whether there might be something else going on. One alternative possibility strikes me as plausible. My sense is that there is significant fear in the investment community about the role of certain institutional investors—particularly public and union pension funds—vis-à-vis “value” investing. That is to say, the concern is that labor and government influence through blockholding investments may involve the substitution of a corporate social responsibility agenda for one focused intensely on shareholder value. If we were to assume that these kinds of blockholders try to increase their influence by promoting “their” candidates for the board and are more likely than normal to choose women candidates, then what appears on its face to be an increase in board diversity would instead be a signal of greater public or quasi-public influence, and thus a departure from the intense commitment to shareholder value. That perception, I suspect, might well cause non-blockholding value investors to sell, with a resulting stock price decrease. This would have nothing to do with

41. See Renee B. Adams & Daniel Ferreira, *Women in the Boardroom and Their Impact on Governance and Performance*, 94 J. FIN. ECON. 291, 304–07 (2009). Adams and Ferreira conclude that this type of monitoring interacts with other corporate governance strategies and does add value when corporate governance is otherwise weak. *Id.*

42. See Westphal, *supra* note 11, at 512–13.

43. Dobbin & Jung, *supra* note 4, at 828–29.

ethnic or gender bias but rather with fears of a noneconomic agenda on the part of either management or controlling blockholders.⁴⁴

This is an area that deserves more empirical study. The DJ hypothesis can be further tested by looking at substitute diversity-promoting mechanisms to see if they have comparable stock price effects.⁴⁵ If there is indeed prejudice among institutional investors, we should observe far greater stock price decreases when companies put women or people of color in major management positions (especially the CEO) or otherwise make credible commitments to enhanced diversity where it matters—the senior executive suite.⁴⁶ That strikes me as a much more powerful test of a taste for discrimination among investors. If we cannot find evidence of bias with respect to executive selection, which is very salient to investors, it is hard to see how one or two directors could possibly matter.

Another interesting line of inquiry brings us back to the basic question for the conference—whether there are traits or characteristics associated with gender or ethnicity that might lead to cognitive or behavioral differences in the boardroom. With respect to gender, we might wonder whether women directors might have more interest in the long-term value of the firm and more of a commitment to the established stakeholder relationships that have developed over time. Are female directors any less likely to agree to the short-term, value-maximizing steps (such as selling assets or distributing cash) advocated by aggressive hedge fund investors? Does the presence of female directors affect the likelihood of disabling structural defenses

44. In the version of the article published in this issue, DJ respond by pointing out that there is no significant difference in how institutional investors react to board diversity that is the product of a shareholder proposal compared to additions separate from the shareholder proposal process. If we assume that political or ideological agendas are channeled largely through the latter, this would seem to rule out the political pressure explanation. Their point is well taken, although I would not necessarily associate ideologically motivated board changes with the presence of a shareholder proposal (which are rare in any event, with only seventeen in 2010, all but one of which was withdrawn). See *2010 Proxy Season Watchlist of Key Shareholder Proposals*, RISKMETRICS GRP. (Apr. 8, 2010) (on file with the North Carolina Law Review). The point of the board diversity campaign is to pressure for change without the need to resort to the proposal process. If we assume the diffusion of diversity norms through social networks and other mimetic forces, “giving in” could be viewed negatively by value-driven investors regardless of any formal proposal.

45. Separately, a simple test for the robustness of the DJ finding would be whether stock price increases follow resignations by female directors—easily determinable by collecting resignation data filed on Form 8-K.

46. For such evidence, see Peggy M. Lee & Erika Hayes James, *She'-E-Os: Gender Effects and Investor Reactions to the Announcements of Top Executive Appointments*, 28 STRATEGIC MGMT. J. 227, 229 (2007).

and agreeing to a hostile takeover at a high premium? I am by no means suggesting that the answer to any of these is yes—I would expect, once again, no appreciable gender differences—but these are worth exploring.⁴⁷ If the answers turn out to be yes, then we might have a very interesting result. If the stock markets price and reward mainly short-term corporate performance, the value added by diversity in terms of promoting longer-term, sustainable performance might be ignored and the stock price adversely affected—arguably the result we observe in DJ.

That brings us full circle, to the possibility of stereotyping. Again without predicting what we would find, it would be interesting to use survey data to test whether investors of various sorts *perceive* the arrival of women or people of color as corporate directors as a signal that aims like stock price maximization or short-term profitability have weakened at the particular firm in question. This would not be simple prejudice but rather stereotyping women as a certain “kind” of director more willing than usual to care about employees, customers, and communities at the expense of extracting the last available dollar of profit. That association might be salient enough to generate a negative stock price effect. These kinds of questions deserve more attention, and DJ are to be commended for raising them.

47. There is interesting research, for example, on whether managerial decisions influenced by women have a greater “other-orientation” that might aid the firm during times of economic downturn, but not during “boom” markets. See generally Emily T. Amanatullah et al., *Risky Business . . . For Whom? Gender, Self- vs. Other-Oriented and Risk in Managerial Decision-Making* (Darden Bus. Sch., Working Paper No. 1633978, 2010), available at <http://ssrn.com/abstract=1633978> (examining how self- and other-orientation among male and female managers lead to different outcomes); David A. Matsa & Amalia R. Miller, *A Female Style of Leadership? Evidence from Quotas* (Nov. 30, 2010) (unpublished manuscript), <http://ssrn.com/abstract=1636047> (discussing Norway’s required quota system of female directors and resulting greater stakeholder orientation).