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RESPONSE

THE CULTURE OF CAPITAL: COMMENTS ON CONLEY & O'BARR

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In a recent, extraordinarily interesting essay published in this review,[1] John M. Conley and William O'Barr bring an anthropological perspective to bear on the phenomenon of institutional investment in the United States. These researchers report on field work at nine large pension funds, including three large state pension funds and six private pension funds.[2] The results of this research are intriguing, not only for the specific findings which the researchers make, but also for the fact that the professors conducted the research at all. Anthropological methods have often been used in studying the cultural systems of faraway peoples, but Conley and O'Barr truly expand the discipline by bringing this methodology to bear on an important segment of the American financial system. In this Response, I will discuss some of the strengths and weaknesses of the Conley-O'Barr methodology and suggest possible avenues for further research.

I.

Prior to the work of Conley and O'Barr, the actual decision-making processes at pension funds were more or less a "black box" for scholars: We could observe the outcomes of the processes in the portfolio and voting decisions of the funds themselves, but our knowledge of how those decisions were made has heretofore been rudimentary. This study is thus a major contribution to our knowledge about a vitally important aspect of our national economic system.

Conley and O'Barr provide particularly interesting evidence about investment philosophies at major pension funds. They find, for example, that public funds tend to index while private funds do not,[3] and that public funds tend to take a much more aggressive stance on the issue of

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1. John M. Conley & William M. O'Barr, *The Culture of Capital: An Anthropological Investigation of Institutional Investment*, 70 N.C. L. REV. 823 (1992).

2. *Id.* at 826.

3. *Id.* at 833-34.

influencing management than do the private funds, which more often adhere to the traditional Wall Street Rule of voting with management or selling out.[4] The researchers also draw a connection between the advent of indexing and the newly aggressive attitude toward management: Once a fund is indexed, it can no longer sell a stock when dissatisfied with management's performance; the incentive to influence management then becomes significantly greater.[5]

This study represents a pioneering effort to apply anthropological methodology to the study of the activity of important economic entities in American society; for that reason it holds an interest that transcends the information it supplies us about the decision-making process in pension funds. If the methodology successfully illuminates a subject that previously was obscure, then it holds promise for many other applications. Accordingly, there is considerable metatheoretical value in this work as well. Professors Conley and O'Barr should be commended for their bold venture into this uncharted area of research.

II.

That said, I want to consider more carefully the possible value of this kind of research. The important question here is not whether interviewing using the model of anthropological field work produces valuable results. Such interviews inevitably provide data about the subject under study. Just as one can never be too thin or too rich, one can never have too much data. Rather, the key question here is what and how much the data, once obtained through anthropological field methods, can actually tell us about the subject under study. All information is good, but some is better than others.

As professional anthropologists, Conley and O'Barr surely are aware that special problems may exist in the anthropological investigation of their own culture—especially with the anthropological investigation of a sophisticated and technically complex part of our culture such as institutional investors. A perennial problem in anthropology, as well as in other fields, is that the researcher may impose his or her own values on the evidence. This problem assumes a special dimension when one looks reflectively at one's own culture. This bias occurs because individuals grow up in a culture that possesses a set of attitudes about itself that is at once complex, powerful, and conflicting. No researcher socialized

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4. *Id.* at 842-46.

5. *Id.* at 844. This result can be seen as an application of Hirschman's idea about exit and voice: Once one relinquishes the exit option by indexing, one is increasingly likely to use voice. ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY 30-54 (1970).

in this culture can avoid exposure to these self-referential values; no educated person can avoid opting to a greater or lesser degree for one or another of the competing self-referential value structures that are available in the society. Accordingly, when one examines one's own culture, an inherent danger exists that the results will reflect too much of one's own pre-conceived values and too little of the evidence itself. As Part III of this essay discusses, Conley and O'Barr, as perhaps is inevitable when anthropologists seek to investigate their own cultures, sometimes insert their own value judgments in their analysis of the evidence.

A related, but somewhat different point concerns the limits on a researcher's vision imposed by the simple fact that a researcher is a member of, and therefore immersed in, a particular culture. Again, this problem of methodology pervades anthropology as well as other fields. It has a special dimension, however, when one examines one's own culture. Our high degree of familiarity with our own cultural setting makes us more likely to be aware of the things of which others in our culture are aware. Thus, the investigation of our own culture can, in theory at least, provide a relatively large amount of information relatively quickly. Conley and O'Barr, for example, spent less than thirty days doing this field research,[6] far less than the amount of time that would be required to do even a minimally adequate survey of a foreign culture. Given their prior familiarity with our language and cultural setting, this was sufficient time for them to obtain a large body of information about the milieu they studied. By the same token, however, the greater familiarity a researcher has with her own culture also creates the danger that the investigator will fail to recognize as important data for investigation the sorts of things to which others in our culture are blind. When we examine our own culture we have greater information and understanding, but lack the freshness of view that comes from bringing an alien perspective to bear on the material. One might wonder whether anthropologists from a nonindustrialized, economically unsophisticated culture (if such could be found) would highlight the same elements of their experience with pension funds that Conley and O'Barr do.[7]

Another problem with the study of one's own culture—and particularly with the analysis of a highly sophisticated part of one's culture—is

6. Conley & O'Barr, *supra* note 1, at 826.

7. I vividly recall being a summer associate at a prestigious Washington, D.C. law firm, and finding it remarkable that attorneys regularly put on their suit jackets when they went outside into the steaming heat and took their jackets off when they returned to their air-conditioned offices. I once mentioned to an attorney that the practice seemed strange and received the bland response, "That's the way it's done." Later, as an attorney in another Washington firm, I followed the practice without thinking twice.

that interviewees may not provide complete information to someone whom they know to be an insider. Interviewees talking to someone within their culture may have reason to fear that what they say will redound to their disadvantage. If they admit engaging in wrongful behavior they might be sued or prosecuted. Interviewees might be morally judged by someone whose judgment they fear; one fears condemnation for contravening the values of one's own culture far more than condemnation for violating the values of an alien culture. They may be embarrassed or ashamed before someone from their own culture in a way that they would not in conversation with an outsider. Perhaps not coincidentally, the interviews reported by Conley and O'Barr often seem to take the form of self-justification of the interviewee's own role and behavior. As the researchers note, fund managers "continually recreat[ed] the law in their own image and likeness to support the judgments they ma[de] on contentious issues."[8] The fact that these self-justifications arose repeatedly in conversations between the managers and a team of anthropologists from their own culture may be in part a result of the investigatory process itself.

Moreover, the fears that the interviewees may have entertained about being judged from within their own culture based on the information provided to the investigators cannot be viewed as irrational. Indeed, Conley and O'Barr are not loath to make such judgments. They imply that corporate executives who oppose dialogue with pension fund managers behave in an irrational and even potentially unprincipled fashion.[9] Admittedly, Conley and O'Barr do not direct this judgment at fund managers, except insofar as managers contribute to the hostility by failing to communicate their actual intentions and interests effectively; this remains, however, a judgment on important participants in the process that readers of the study could easily interpret as critical and negative. Other apparently negative judgments seep into the discussion. Conley and O'Barr suggest that pension funds may be "contributing to the short-term pressures on American business."[10] Later, the researchers opine that "[t]he problem is that the rhetoric of the short term, along with the thinking it reflects, has crowded out the alternatives."[11] Although they use a footnote to disavow any judgment on whether short-term economic pressures are good or bad for the economy,[12] the implication, at least to me, is that the pension funds may inadvertently be imposing undesirable

8. Conley & O'Barr, *supra* note 1, at 838.
9. *Id.* at 845.
10. *Id.* at 840.
11. *Id.* at 841.
12. *Id.* at 840 n.28.

investment strategies on corporate managers. In any event, regardless of whether Conley and O'Barr pass judgment, their Article, which rightly will receive attention from those who shape public opinion, can be used as support by persons who want to encourage a longer-range time horizon for business strategy in the United States.

There is another difficulty with the information flow between interviewees and researchers from the same culture. Interviewees speaking to someone they know to be from their culture may assume a level of knowledge and understanding on the part of the researcher that would not be present if they were speaking to someone whom they knew came from an alien culture. Thus, they may tend to focus on specifics and particulars without ever addressing basic questions, not because they consciously want to censor the basic information, but because they consciously or unconsciously assume that the researcher already knows the information. Of course, when examining his own culture, the researcher often *does* know the information; the point, however, is to draw the information out of the interviewee, not the researcher.

This phenomenon also may have been at work in the Conley-O'Barr study. Many interviewees appear to have assumed a high level of sophistication in financial matters on the part of the researchers. This assumption may well have been rational; Conley and O'Barr signalled their sophistication by garbing themselves in Brooks Brothers suits instead of their usual "seedy academic tweeds."[13] Perhaps not surprisingly, the interviewees, or many of them, appear to have treated Conley and O'Barr as insiders in their particular institutional culture. The aura of shared meanings and understandings is unmistakable even in Conley and O'Barr's brief quotations from pension fund analysts speaking in the specialized jargon of their profession.[14]

III.

I turn now to some more specific comments.

One of the noteworthy features about this study is that Conley and O'Barr appear to expect that people in our culture should be able to *explain* their behavior in rational terms, and, indeed, to theorize and *generalize* about their experiences. They find it "surprising" and "disturbing" that fund managers did not rise above their own personal perspectives and "articulate a corporate vision."[15] Dismayed that investment strategies were often shaped by "historical accidents, interpersonal conflicts,

13. *Id.* at 826.
14. *See id.* at 835.
15. *Id.* at 829.

and political battles,"[16] they are "repeatedly struck by the lack of interest in questioning or analyzing the structures and strategies that had evolved" in particular funds.[17] They find it remarkable that the perspective of fund managers was not the "bird's-eye view of the historian, management consultant, or financial analyst."[18]

Conley and O'Barr's collective amazement at the lack of reflection exhibited by these fund managers is itself perplexing. What did they expect? Their interviewees were not philosophers, or even management consultants. Their jobs do not reward deep reflection. Conley and O'Barr's own data suggest as much. Success in the fund management business depends, for example, on whether the stocks you picked perform well, or on whether you handle political relationships around the office with finesse and discretion. People who flourish in these settings do not rely on introspection. Why should we be shocked that such people fail to offer generalized visions of their professional lives? Yet Conley and O'Barr *are* apparently shocked, finding it remarkable, for example, that a fund manager would supply more detail about events that happened after his arrival at the fund than before,[19] or that he would recount the market crash of October, 1989, from the standpoint of his own personal experiences on that traumatic day.[20]

Equally mystifying is Conley and O'Barr's wonderful, but apparently unintentional, oxymoron that "the work of Adam Smith's invisible hand was rarely in evidence,"[21] which they characterize as "the most striking finding of the entire project."[22] What did they expect, that the invisible hand *would* be in evidence? The basis of the "invisible hand" concept is that people often behave in individually or collectively rational ways despite the fact that their individual decisions may not be conceived of or explained in rational terms. Individuals' own descriptions of their motives and rationales for action do not necessarily jibe with the theory of action that social scientists might apply looking solely at the results of behavior. It is hardly surprising that, as Conley and O'Barr note with apparent dismay, people in the pension fund world were "too busy living through an event to stop and analyze it."[23] What *would* be surprising is

16. *Id.* at 830.
17. *Id.* at 832.
18. *Id.* at 828.
19. *Id.*
20. *Id.* at 829.
21. *Id.* at 827.
22. *Id.*
23. *Id.* at 828.

if the findings were otherwise. Most people (other than academics in tweeds) are too busy living their lives to stop and analyze them.

Conley and O'Barr are coy about whether pension fund managers *actually* make decisions on the basis of non-economic factors or whether they merely *talk* more about the non-economic factors that go into their decisions. At one point the researchers caution that they do not mean "to say that [pension fund managers] do not *consider* economics, but only that they choose to *talk* about other things first and more often."[24] But they strongly suggest that economics plays a secondary rule in determining fund strategies.[25] The evidence clearly supports the first proposition; the latter is an inference based on the evidence but which itself requires further justification.

One rather simple explanation for the Conley-O'Barr results is consistent with an economic theory of behavior. Modern finance and portfolio theories suggest that a fund manager investing in efficient markets, such as the major stock exchanges, can achieve a high level of efficiency in her investment strategy merely by picking a sufficiently diversified portfolio, which does not actually require the holding of a very large number of stocks.[26] This means that it is not necessarily economically inefficient to consider apparently extraneous factors in determining which stock to pick, as long as the fund's overall portfolio displays sufficient diversification. There is a vast set of possible diversified portfolios, all of which would perform within a reasonable band of variance from the market as a whole. Moreover, if a fund manager is operating in an efficient market, the choice of any particular stock becomes a matter of some indifference, aside from its possible impact on the diversification of the portfolio, because the price at which the stock is bought will reflect all publicly available information about the stock's underlying value.[27] Thus, the apparent lack of explicitly economic reasoning about investments uncovered in the Conley-O'Barr study may reflect that the fund managers *themselves* are largely economically inefficient, or at least superfluous, a possibility at least partially substantiated by the increasing popularity of indexing in pension fund management strategies.

I also find somewhat mystifying Conley and O'Barr's surprise and dismay at not finding a "corporate vision" at the pension funds they vis-

24. *Id.* at 833 (emphasis added).

25. *Id.*

26. *See* Meir Statman, *How Many Stocks Make a Diversified Portfolio*, 22 J. FIN. & QUANTITATIVE ANALYSIS 353, 353-62 (1987).

27. *See* Ronald J. Gilson & Reinier H. Kraakman, *The Mechanisms of Market Efficiency*, 70 VA. L. REV. 549, 569-79 (1984).

ited.[28] They apparently approached the evidence with the presupposition that there *should* be a corporate vision. Why? So long as performance is adequate, who really cares if a fund has a "vision"? One of the virtues of pension funds may be that they *do not* have a unified vision, so that a form of competition among managers within the fund can be enhanced through the play of competing investment strategies.

Another oddity is Conley and O'Barr's description of the role of responsibility in the culture of pension fund management. They suggest that pension fund managers have a preoccupation with displacing responsibility, which they imply is a disquieting and problematic phenomenon.[29] Much of evidence in their paper itself, however, indicates that responsibility is allocated in at least some of the funds. Conley and O'Barr describe one fund manager who is "putting his personal imprint on the disposition of billions of dollars."[30] They describe another fund with a buy-and-hold philosophy as imposing heavy and easily traceable responsibility on its analysts.[31] This does not sound like a preoccupation with displacing responsibility.

Conley and O'Barr point to the growing importance of indexing as a fund management strategy.[32] Indexing, however, does not necessarily signal a loss of responsibility. Indexing is arguably an excellent investment strategy for responsible pension fund managers who wish to ensure that the fund beneficiaries receive a market rate of return without incurring large management fees. Moreover, even in funds adopting indexing strategies, the managers will be held accountable for deciding to use an indexing strategy, to use one index rather than another, to utilize or not to utilize hedging devices, and so on.

Consider also Conley and O'Barr's treatment of short- and long-term time horizons for investment. Virtually all of their interviewees denied having a short-term investment strategy.[33] This seems like a realistic assessment—who better, after all, to have a long-term investment horizon than a pension fund that is seeking accumulation of value over the long run? The researchers conclude that these comments are "credible."[34] However, it becomes clear that in using the term "credible" the researchers do not mean that the comments were necessarily *true* as a general description of pension fund strategies, only that they were sin-

28. Conley & O'Barr, *supra* note 1, at 829.
29. *Id.* at 834-39.
30. *Id.* at 830.
31. *Id.* at 835.
32. *Id.* at 836-37.
33. *Id.* at 840-41.
34. *Id.* at 840.

cere. In fact the researchers claim to discern under the surface the presence of powerful short-term influences.[35]

They hypothesize, for example, that they may have "inadvertently selected nine funds that do not contribute to the short-term pressures that corporate management finds so threatening."[36] Why use this word "inadvertent"? It implies that the researchers randomly drew a skewed sample of funds with long-term horizons out of a population in which many or even most funds were prey to short-term thinking. Why this would be a plausible hypothesis, given the improbability of drawing a sample of nine unusual cases out of a population in which the general characteristics are different, is difficult to imagine. Would it not be much more plausible to suppose that the sample was fair and that pension funds generally are not prey to short-term investment philosophies?

Consider also the researchers' revelation that the investment world looks at short-term results. They saw few five-year financial reports or ten-year business plans on the desks of pension fund analysts.[37] The researchers concede, of course, that it is necessary to look at short-term results—any investment analyst who did not examine a company's results over the short term would not be serving the best interests of the beneficiaries of the plan. But Conley and O'Barr go on to assert, without evidence, that all this focus on the short term has "crowded out" long-term thinking.[38] It would, they say, "go against the cultural grain"[39] for an analyst to focus on the long term—even though every interviewee reported that the cultural grain, in their firm at least, was focus on the long term.

The researchers follow this theory of crowding out of the long-term horizon with the speculation that indexing represents an attempt to overcome the cultural predisposition to short-term thinking by pre-committing to a long-term view.[40] But given the hypothesis of Conley and O'Barr that a corporate culture of short-term thinking exists, why should there be a turn to indexing? A complex theory of fund decision-making seems to be implied, in which funds want to focus on the long term but know that without the pre-commitment to indexing they will likely be swayed to considering only the short term. Would it not be more plausible, and parsimonious, to conclude that managers have turned to indexing because it is a readily available technique that has been shown over

35. *Id.*

36. *Id.*

37. *Id.* at 841.

38. *Id.*

39. *Id.*

40. *Id.*

time to be effective? Is it not arguable that the increased use of indexing substantiates the inference that short-term investment strategies are not, in fact, dominant at these institutions?

Finally, consider Conley and O'Barr's analysis of the relationship between pension fund managers and corporate executives on the matter of proxy voting. The researchers find it "difficult to understand" the vehemence of corporate executives' objections to active proxy voting by pension funds.[41] Why is this so difficult to understand? Pension fund monitoring represents an active threat to the personal interests of corporate executives. It is a form of shareholder monitoring with actual clout, unlike the traditional proxy voting situation in which managers had no fear of being ousted or even seriously challenged.[42] Pension fund proxy voting is a threat to many corporate executives' personal interests. They do not like it. What is so surprising?

Conley and O'Barr suggest that there is no valid reason for the tension between corporate executives and pension funds which pursue an active proxy voting policy. They paint a picture of a compromise in which corporate executives stand ready to engage in "dialogue," "conversation," and "relationships" with pension fund managers.[43] The quid pro quo on the part of pension fund managers would be to help corporate executives by, among other things, "thwarting takeover efforts."[44] Conley and O'Barr believe that pension fund managers would be satisfied by the opportunity to "state their position" even, apparently, if the position is rejected by corporate executives.[45]

The researchers' point here appears to be based on a theoretical disposition to emphasize the importance of talk and language in the resolution of social disputes. They are quite frank about the importance they attribute to the manner in which people talk about things.[46] This may be a valid and fruitful theoretical viewpoint, but if applied too rigidly it creates the possibility that the researcher will take people's "talk" at face value even when their actions speak otherwise. One of the advantages—as well, perhaps, as one of the shortcomings—of the economic approach to the analysis of behavior is that it usually looks at what people actually

41. *Id.* at 845.

42. *See* Bernard S. Black, *Agents Watching Agents: The Promise of Institutional Investor Voice*, 39 UCLA L. REV. 811, 820-30 (1992); Bernard S. Black, *The Value of Institutional Investor Monitoring: The Empirical Evidence*, 39 UCLA L. REV. 895, 927-31 (1992).

43. Conley & O'Barr, *supra* note 1, at 845.

44. *Id.* at 846.

45. *Id.*

46. *See id.* at 829 ("[W]e consider the ways in which people describe phenomena to be reflections of the way they think about them.").

do, not at what they say they do or would do. People put their money where their mouth is.

There is reason to suppose that Conley and O'Barr may sometimes fall into the trap of taking verbal expressions too literally in their analysis of the relations between pension fund managers and corporate executives. They assume that because pension fund managers report that they want to talk and engage in dialogue, the tension between corporate executives and fund managers would go away if that were done.[47] But the researchers' suggested compromise between fund managers and corporate executives seems implausible. The fund managers say they want "dialogue"; if that were all they wanted they would be satisfied by having a talk. But if all the fund managers wanted were to talk, then the compromise the researchers advocate would probably have been reached long ago. Talk is cheap.

The fact is, however, that fund managers with active proxy policies want more than dialogue—they want *influence*, and rightly so; they are fiduciaries for plan beneficiaries whose future income depends in part on the quality of the managers of the companies in which their plan invests. An inherent conflict of interest exists between conscientious fund managers, who want to engage in vigorous monitoring of corporate executives, and the corporate executives themselves, who want to keep the powers and perquisites of their jobs without pesky interference from shareholders. No amount of talk will alter that basic fact.

CONCLUSION

The critique of Conley and O'Barr's work expressed in this Response should not obscure the basic merits of their paper. Their application of anthropological field methods to the study of major economic enterprises in our culture is bold and thoroughly commendable. Conley and O'Barr's pioneering effort, moreover, likely will stimulate further useful work in this area.

In closing, I might suggest briefly one potentially fruitful direction that field work methods might take. Anthropological field methods might be especially effective at disclosing the incentives of actors within institutions which are currently rather difficult to view from the standpoint of other analytic methods. Several years ago, Jonathan Macey, Edward Rubin, David Litt, and I published a study of the governmental decision-making processes in the United States and Japan with respect to allowing banks to underwrite distributions of commercial paper.[48]

47. *See id.* at 846.

48. David G. Litt et al., *Politics, Bureaucracies, and Financial Markets: Bank Entry into*

Speaking with more than forty people closely involved in the decision-making process in both countries, we employed an interviewing technique quite similar to that undertaken by Conley and O'Barr. In analyzing the results, we attempted to use the information disclosed by these interviews as a means to tease out the underlying structure of incentives of the relevant decision-makers which contributed to the ultimate outcome. I do not mention this study as any kind of a model, necessarily, for future research, but it is useful to observe that, in our experience at least, the interview technique was effective at uncovering information about incentives which would not have been available by any other method.

It is to be hoped that Conley and O'Barr's study, with its much more sophisticated and scientific techniques, will both be influential in its own right and will stimulate further efforts along similar methodological lines in a variety of different fields.

Commercial Paper Underwriting in the United States and Japan, 139 U. PA. L. REV. 369 (1990).