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Gender Quotas for Corporate Boards: A Holistic Analysis

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Abstract

Gender quotas for corporate boards have risen in popularity ever since Norway implemented the first quota in 2003. Proponents point to economic arguments (i.e. enhanced return on assets and return on equity) as well as social good rationales (i.e. bolstered corporate social responsibility and reduced fraud) to validate their enactment. Advocates further gloss over a moral justification rooted in a broad notion of equality, although more heavily relying on empirical claims.

This article demonstrates how empirical rationales in support of gender quotas are unconvincing. Economic evidence is ultimately inconclusive, and the social good justifications alone do not serve as compelling policy objectives. With respect to equality, the article distinguishes between equality of outcome and equality of opportunity, explaining how gender quotas provide equal outcome but do not satisfy equal opportunity. Finally, the article points to two more robust objectives for all gender workplace advancement policies, namely, equal opportunity and autonomy.

Keywords

Gender quotas, corporate boards, women, equality

Disciplines

Business Law, Public Responsibility, and Ethics

Gender Quotas for Corporate Boards: A Holistic Analysis

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ABSTRACT

Gender quotas for corporate boards have risen in popularity ever since Norway implemented the first quota in 2003. Proponents point to economic arguments (i.e. enhanced return on assets and return on equity) as well as social good rationales (i.e. bolstered corporate social responsibility and reduced fraud) to validate their enactment. Advocates further gloss over a moral justification rooted in a broad notion of equality, although more heavily relying on empirical claims.

This article demonstrates how empirical rationales in support of gender quotas are unconvincing. Economic evidence is ultimately inconclusive, and the social good justifications alone do not serve as compelling policy objectives. With respect to equality, the article distinguishes between equality of outcome and equality of opportunity, explaining how gender quotas provide equal outcome but do not satisfy equal opportunity. Finally, the article points to two more robust objectives for all gender workplace advancement policies, namely, equal opportunity and autonomy.

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INTRODUCTION

The Feminine Mystique by Betty Friedan sparked a momentous movement advocating for workplace gender equality after its publishing in 1963. Denoting it as "the problem that has no name," Friedan captures the frustration and even despair of a generation of college-educated housewives who felt trapped and unfulfilled.[1] Friedan writes:

> The chains that bind [the suburban housewife] in her trap are chains in her own mind and spirit. They are chains made up of mistaken ideas and misinterpreted facts, of incomplete truths and unreal choices. They are not easily seen and shaken off.[2]

The Feminine Mystique transformed the attitudes of women in the 1960s, challenging the assumption that women should remain housewives and calling upon women to seek fulfillment in work outside the home.

Over the next 30 years, numerous strides were made toward equalizing gender roles at home as well as at work. Title VII of the 1964 Civil Rights Act barred workplace discrimination against females, the number of working women increased from roughly 32 percent in 1964 to 48 percent in 1992,[3] and the gender wage gap diminished by roughly twelve percentage points over the same time-period.[4]

However, progress toward advancing women in the workplace stalled in recent years. The gender wage gap has decreased only marginally over the past two decades.[5] Working

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[1] Friedan, Betty. 1963. *The feminine mystique*. New York: W.W. Norton & Company, Inc.

[2] *Id.* pg. 32

[3] http://www.theatlantic.com/sexes/archive/2012/11/converging-toward-equality-female-employment-from-1964-to-today/264625/

[4] Women went from earning roughly 59 percent of a man's dollar in 1964 to earning around 71 percent of a man's dollar in 1992. http://www.pay-equity.org/info-time.html

[5] Working women in the United States made 78 percent of what men earned in 2014, and 72 percent of every man's dollar two decades earlier in 1994.

women face a challenge to both advance their careers and fulfill the important societal role of bearing and raising children, as they are not guaranteed paid maternity leave in the United States.[6] Managers – both male and female – continue to favor men over equally qualified women in hiring, compensation, performance evaluation and promotion decisions due to entrenched gender biases against women in the workplace.[7]

As of 2015, women working at S&P 500 companies constituted 45 percent of the entry-level workforce, yet only nineteen percent were directors and a mere four percent were CEOs.[8] In 2009, the Securities and Exchange Commission attempted to bolster diversity in the workplace by mandating a diversity disclosure requirement on proxy statements of all public companies.[9] Yet evidence also shows that over half of the diversity disclosures among the Fortune 50 companies fail to fully comply with the rule's requirements.[10] Furthermore, firms are able to define the concept of "diversity" on their own, perhaps affording them too much discretion and giving them an 'out' to skirt the responsibility of empowering minorities – including women – in the workplace.[11]

It is therefore important to turn to countries aside from the United States and analyze how they are handling their own gender advancement workplace policies. In Western Europe, we see a stark increase in gender quotas for corporate boards.

Council of Economic Advisors. (2014). *Women's participation in education and the workforce.* The Office of the President of the United States.

[6] Coontz, Stephanie. 2013. Why gender equality stalled. *New York Times*, February 15, 2013, 2013, sec Sunday Review.

[7] A meta-analysis of gender stereotypes and bias in experimental simulations of employment decision making.Koch, Amanda J.; D'Mello, Susan D.; Sackett, Paul R.Journal of Applied Psychology, Vol 100(1), Jan 2015, 128-161. http://dx.doi.org/10.1037/a0036734

[8] Catalyst, http://www.catalyst.org/knowledge/women-sp-500-companies

[9] Based on 2012 data. Dhir, Aaron A., Homogeneous Corporate Governance Cultures (2014). Dhir, A. (2015). Homogeneous Corporate Governance Cultures. Chapter 1 in Challenging Boardroom Homogeneity: Corporate Law, Governance, and Diversity. New York: Cambridge University Press, Forthcoming; Osgoode Legal Studies Research Paper No. 64/2014; Yale Law School, Public Law Research Paper No. 521. Available at SSRN: http://ssrn.com/abstract=2487149

[10] Smallman, Tamara, The Glass Boardroom: The SEC's Role in Cracking the Door Open so Women May Enter (June 27, 2013). 2013 Colum. Bus. L. Rev. 801 (2013). Available at SSRN: http://ssrn.com/abstract=2286147

[11] *Id.*

The United States is not alone in its disproportional representation of women at the top of the corporate ladder relative to its active female labor force. Norway, France, Britain and numerous other developed economies have struggled to promote women in the workplace; emerging economies lag even further behind. In 2003, Norway attempted to address this issue by passing the first gender quota for corporate boards.[12] At the time, only nine percent of the country's corporate board members were women, and the new quota law required firms to increase their representation of female directors to 40 percent by 2009.[13] Norway soon reached its numerical goals, compelling other countries – including France, Italy, and Germany – to also instate gender quotas for corporate boards.[14]

Nevertheless, it is important to analyze whether gender quotas are compelling policy tools with respect to advancing women in the workplace. Proponents point to economic benefits, such as increased return on equity and operating performance for firms with gender diverse boards.[15] They further argue gender quotas advance the social good, as firms with more female directors are more likely to engage in corporate philanthropic giving and better adhere to rules and regulations.[16] Finally, gender quotas are morally validated through the notion of equality, which is often perceived as a fundamental right.[17]

Critics argue the costs of gender quotas outweigh the apparent benefits. Gender quotas create a fairness problem, where women are selected solely because of their gender rather than

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[12] Anne Sweigart, Women on Board for Change: The Norway Model of Boardroom Quotas As a Tool For Progress in the United States and Canada, 32 Nw. J. Int'l L. & Bus. 81A (2012). http://scholarlycommons.law.northwestern.edu/njilb/vol32/iss4/6

[13] *Id.*

[14] *National factsheet gender balance in boards: Italy.* 2013. European Commission, http://ec.europa.eu/justice/gender-equality/files/womenonboards/womenonboards-factsheet-it_en.pdf

[15] Women Matter, McKinsey & Company, 2007 (updated 2013)

[16] Bernardi, Richard A. and Threadgill, Veronica H., Women Directors and Corporate Social Responsibility (December 1, 2010). Electronic Journal of Business Ethics and Organizational Studies, Vol. 15, No. 2, pp. 15-21, 2010. Available at SSRN: http://ssrn.com/abstract=1752267

[17] Wheeler, Sally, Gender Diversity in the FTSE 100: The Business Case Claim Explored (July 6, 2011). Available at SSRN: http://ssrn.com/abstract=1880158 or http://dx.doi.org/10.2139/ssrn.1880158

considering more important factors such a competence or merit.[18] This potentially crowds out the appointment of men who have better qualifications and would be more effective corporate board members. Furthermore, there appears to be a pipeline issue, or lack of qualified female workers available for directorship positions. Because only a handful of women possess executive experience, gender quotas have given rise to what is pejoratively referred to as 'Golden Skirts' in Norway -- women who sit on multiple boards.[19]

Proponents and critics make convincing arguments on either side. Nevertheless, the opponents' concerns are too heavily focused on surface consequences rather than considering whether the policy objectives behind gender quotas are justified in the first place. It is therefore imperative to analyze whether gender quotas for corporate boards truly fulfill their stated policy objectives, and if so, whether those aims are compelling in the first place.

This article demonstrates how the current policy objectives underlying the implementation of gender quotas for corporate boards are either unconvincing or unmet. It then reconstructs two refined objectives behind the broader class of gender workplace advancement policies, namely, equality of opportunity and female autonomy. The article concludes that gender quotas for corporate boards undermine the two purposes underpinning gender workplace advancement policies, and therefore, the implementation of such quotas should be reconsidered.

The article first examines the history of gender quotas for corporate boards. It then analyzes each of the current proclaimed purposes for implementing gender quotas for corporate boards, discovering that they are all either unconvincing or unmet. Next, it identifies the ultimate objectives for any gender workplace advancement policy, which are equality of opportunity and autonomy. The article argues that gender quotas for corporate boards (one particular gender

[18] H.J. The spread of gender quotas for company boards. *The Economist*, March 25, 2014.
[19] *Id.*

workplace advancement policy tool) do not fulfill either overarching objective, and, in fact, hinder them by entrenching the focus on gender. It then considers potential objections. The article concludes by proposing recommendations for new gender workplace advancement policies that fulfill the salient equality of opportunity and autonomy objectives.

HISTORY & OVERVIEW OF GENDER QUOTAS FOR CORPORATE BOARDS

Norway was the first country to propose and pass a gender quota in 2003 requiring an increase in the number of women on corporate boards. [20] Referred to as the Gender Balance Law (GBL), the initial Norwegian quota was voluntary and only applied to public limited liability companies.[21] However, it soon became clear that the target of 40% female board membership by 2009 was not going to be met with a lax voluntary quota, thereby compelling the Norwegian government to make it mandatory in 2008. [22] The Norwegian government further expanded the quota requirement to apply to the boards of state-owned, municipality-owned and cooperative companies.[23] Non-complying firms face the penalty of liquidation. [24]

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[20] Anne Sweigart, Women on Board for Change: The Norway Model of Boardroom Quotas As a Tool For Progress in the United States and Canada, 32 Nw. J. Int'l L. & Bus. 81A (2012). http://scholarlycommons.law.northwestern.edu/njilb/vol32/iss4/6

[21] The Gender Balance Law is formally referred to as Section 6-11a of Norway's Companies Act, which reads:

> § 6–11a. Requirement regarding the representation of both sexes on the board of directors
>
> (1) On the board of directors of public . . . companies, both sexes shall be represented in the following manner:
>
> 1. If the board of directors has two or three members, both sexes shall be represented.
> 2. If the board of directors has four or five members, each sex shall be represented by at least two.
> 3. If the board of directors has six to eight members, each sex shall be represented by at least three.
> 4. If the board of directors has nine members, each sex shall be represented by at least four, and if the board of directors has more members, each sex shall be represented by at least 40 percent.
> 5. The rules in no. 1 to 4 apply correspondingly for elections of deputy directors.

Kristen Carroll, Norway's Companies Act: A 10-Year Look at Gender Equality, 26 Pace Int'l L. Rev. 68 (2014), http://digitalcommons.pace.edu/pilr/vol26/iss1/7

[22] Bøhren Øyvind, Staubo Siv. 2015. Mandatory gender balance & board independence. *European Financial Management,* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2543871

[23] Quota systems established in 2004 for state-owned companies; 2009 for municipal and cooperative companies. Teigen, Mari. 2012. Gemder quotas on corporate boards: On the diffusion of a distinct national policy reform. In *Firms, boards and gender quotas: Comparative perspectives.* Vol. 29, 115-146Emerald Group, http://www.gig.gu.se/digitalAssets/1443/1443377_csr-2012m_teigen1.pdf

[24] When GBL was passed, the average proportion of female directors in public companies was approximately 10%. During the next five years (until the end of the transition period in 2008), firms complying with the 40% quota replaced about one third of their male directors by females. The number of female directorships increased by 260% (from 165 to 592 seats), while the number of male directorships dropped by 38% (from 1,516 to 938 seats).

Since then, many countries have followed Norway's precedent, establishing variations of gender quota laws for corporate boards. The broad categories of gender quotas are as follows: binding quotas with sanctions, quotas without sanctions, and voluntary targets.[25] In addition, many countries have issued gender quotas for the boards of state-owned companies.[26]

Countries that have instituted binding gender quotas with sanctions include France, Italy, and Belgium.[27] In 2011, France ordained a mandatory quota that required a 20% minimum of corporate board seats to be filled by each gender by 2014 and 40% by 2017.[28] Non-complying firms faced the revocation of non-compliant nominations and the possibility of freezing board members' fees.[29]

Italy and Belgium also passed mandatory gender quotas for corporate boards in 2011. Italy required at least 33% of each gender on the boards of public and state-owned companies by 2015, instating a target of 20% during the four year transitional period.[30] Italy's sanctions in the event of noncompliance include a progressive warning system that would eventually lead to the board's dissolution.[31] Belgium's quota law requires a minimum of 33% percent of each gender

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Ahern, Kenneth R., and Amy Dittmar. 2012. "The Changing of the Boards: The Impact on Firm Valuation of Mandated Female Board Representation." Quaterly Journal of Economics no. 127 (1):137–197

[25] European Commission. 2012. *Women in economic decision-making in the EU: Progress report.* Luxembourg: European Union, http://ec.europa.eu/justice/gender-equality/files/women-on-boards_en.pdf

[26] *Id.* 13

[27] *Id.* 13

[28] Law 2011-103 (January 27, 2011) entitled "On the equal representation of men and women on boards of directors and supervisory boards and professional equality."
The law applies to boards of directors, supervisory boards of private companies or joint-stock companies of any size, listed and unlisted.
Rosenblum Darren. 2014. Equality regimes compared: France's political and corporate culture. *Robert Schuman Centre for Advanced Studies Research Paper*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2535216

[29] *Id.* 5

[30] At the time of passing, Italy had one of the lowest female corporate board member ratios in Europe, at around 6%. Zampano, Giada. 2012. Italy to push 'pink quotas'. *Wall Street Journal*, June 5, 2012, http://www.wsj.com/articles/SB10001424052702303395604577431832161133916

[31] *National factsheet gender balance in boards: Italy.* 2013. European Commission, http://ec.europa.eu/justice/gender-equality/files/womenonboards/womenonboards-factsheet-it_en.pdf

to be represented on the boards of public and state-owned companies by 2018.[32] Non-complying firms are fined.[33]

Gender quotas without sanctions have been enacted in Spain, Iceland, the Netherlands, Germany, Malaysia and India.[34] In 2007, Spain legally encouraged large publicly traded companies to reach a corporate board gender ratio of 40% women by 2015.[35] Iceland soon followed in 2010, recommending at least 40 percent of each gender to be represented on the boards of all publicly listed companies and companies with more than 50 employees by 2013.[36] As of 2011, the Netherlands has required both public and private firms with more than 250 employees to have at least 30% of each gender on their executive and supervisory boards, with a "comply or explain" mechanism for those who fail to reach the target.[37] Most recently in 2015, Germany set quota targets for the boards of large publicly traded companies.[38] The law requires that at least 30% of new board seats be reserved for women in 2016, pushing the ratio up to 50% by 2018.[39]

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[32] Belgium has had robust history of gender quotas in political institutions. Electoral quotas have been in Belgian politics since 1994; the 2002 Belgium Parity Law demands equal representation of men and women in political decision-making assemblies.
Teigen, Mari. 2012. Gender quotas on corporate boards: On the diffusion of a distinct national policy reform. In *Firms, boards and gender quotas: Comparative perspectives.* Vol. 29, 115-146Emerald Group, http://www.gig.gu.se/digitalAssets/1443/1443377_csr-2012m_teigen1.pdf

[33] *Id.* 129

[34] Catalyst. Legislative board diversity. 20142016, http://www.catalyst.org/legislative-board-diversity#footnote1_k692yzn

[35] Formally referred to as Article 75 of Spanish Organic Law. No sanctions are imposed on non-complying firms.
Giovinco, Angela. 2014. Gender diversity in the boardroom. context and spanish case. *Corporate Board: Role, Duties & Composition* 10 (3): 60-76, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2466982

[36] In 2008, prior to the adoption of the corporate board quota, there were only 7% women on the boards of listed companies.
Teigen, Mari. 2012. Gender quotas on corporate boards: On the diffusion of a distinct national policy reform. In *Firms, boards and gender quotas: Comparative perspectives.* Vol. 29, 115-146Emerald Group, http://www.gig.gu.se/digitalAssets/1443/1443377_csr-2012m_teigen1.pdf

[37] *Id.* 129

[38] Women occupied only 7% of executive board seats of DAX companies prior to the adoption of the legislation.
Zeldin, Wendy. Germany: Gender quotas for large companies and for federal bodies. in Library of Congress [database online]. 2015, http://www.loc.gov/law/foreign-news/article/germany-gender-quotas-for-large-companies-and-for-federal-bodies/

[39] *Id.*

In addition to the clear diffusion of gender quotas for corporate boards throughout Europe, [40] non-European countries have also adopted such policies. In 2011, the Malaysian government instituted a quota without sanctions targeting 30% women on the boards of publicly listed companies within five years.[41] India passed a 2013 mandate requiring the board of directors of nearly all publicly listed companies to have at least one female member.[42]

Voluntary targets for female representation on corporate boards have been adopted by the United Kingdom and Australia. The United Kingdom normatively stressed in a 2011 Lord Davies report that the boards of FTSE 100 companies should aim for a minimum 25% female representation by 2015.[43] Similarly, the Australian government has recently called for ASX 200 companies to voluntarily reach a target of 30% women on their boards by 2018.[44] The call for more women on corporate boards was initially verbalized by the Australian government in 2012 with the passing of the Gender Equality Act, which held that firms should adopt and publicly explain a diversity policy.[45]

[40] The corporate board gender quota trend in Europe partially picked up steam after the European Union proposed, albeit failed to pass, legislation calling for a mandatory quota with sanctions of 40% females for the boards of publicly traded EU companies.
Kanter, James. 2013. Push for gender balance on boards gains steam. *The New York Times*, Jan. 24, 2013, 2013, sec Global Business. http://www.nytimes.com/2013/01/25/business/global/measures-promoting-women-in-business-are-working-reding-says.html

[41] Scott, Mary E. 2014. Gender target aims to transform malaysian boards, but may take time. *Forbes*, July 21, 2014, 2014, sec Business, http://www.forbes.com/sites/forbesasia/2014/07/21/gender-target-aims-to-transform-malaysian-corporate-boards-but-may-take-time/#25fc57543e92

[42] Formally referred to as Section 172 of the Companies Act, the mandate contains a very minute non-compliance penalty provision that would only marginally influence decision-making, if at all. In particular, a non-complying firm would need to pay a fine of at least Rupees 50,000 (approximately $800) and up to Rupees 500,000 (approximately $8,000.)
Afsharipour, Afra. 2015. The one woman director mandate: History and trajectory. *Corporate Governance in India: Change and Continuity*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2686991

[43] With the help of a privately founded organization called the '30% Club,' the country reached surpassed the 25% target in 2016. See http://30percentclub.org/
In 2011, only 12.5% of FTSE 100 board members were women.
Lord Davies of Abersoch. 2011. *Women on boards*,
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31480/11-745-women-on-boards.pdf

[44] Khadem, Nassim. Australian institute of company directors wants 30% women on boards by 2018. *The Sydney Morning Herald*, April 10, 2015, http://www.smh.com.au/business/australian-institute-of-company-directors-wants-30-women-on-boards-by-2018-20150408-1mh0qt.html

[45] See https://www.legislation.gov.au/Details/C2012C00899

At the same time, a plethora of countries have issued gender quotas for the boards of state-owned enterprises, including Denmark, Finland, Greece, Austria, Slovenia,[46] Switzerland, Ireland, Israel, Kenya[47] and Brazil.[48]

Thus, the adoption of gender quotas for corporate boards has rapidly grown over the past decade, suggesting a common consensus among many nations' governments that gender quotas are a valid gender workplace advancement policy tool. To understand the extent to which this is true, we now analyze the various objectives gender quotas for corporate boards seek to fulfill and determine whether or not they are first, compelling policy goals and, second, actually satisfied.

ECONOMIC OBJECTIVES BEHIND GENDER QUOTAS

Governments have enacted gender quotas for corporate boards in response to a plethora of empirical research signaling a strong correlation between gender-diverse corporate boards and heightened corporate financial performance. However, the results of studies analyzing the relationship between gender diversity on corporate boards and economic profitability are not all positive. Some researchers argue no statistically significant relationship exists, while others demonstrate the converse effect – increasing the number of female corporate Board of Directors *decreases* firm financial performance.

In any case, as I describe in this Section, empirical analyses have failed to pinpoint a definitive relationship between gender diversity on corporate boards and corporate financial performance. The murky literature undermines economic or 'business case'[49] rationales in

[46] European Commission. 2012. *Women in economic decision-making in the EU: Progress report.* Luxembourg: European Union, http://ec.europa.eu/justice/gender-equality/files/women-on-boards_en.pdf

[47] Catalyst. Legislative board diversity. 20142016, http://www.catalyst.org/legislative-board-diversity#footnote1_k692yzn

[48] H.J. The spread of gender quotas for company boards. *The Economist*, March 25, 2014, http://www.economist.com/blogs/economist-explains/2014/03/economist-explains-14

[49] McCann, Mark and Wheeler, Sally, Gender Diversity in the FTSE 100: The Business Case Claim Explored (December 2011). Journal of Law and Society, Vol. 38, Issue 4, pp. 542-574, 2011. Available at SSRN: http://ssrn.com/abstract=1960411 or http://dx.doi.org/10.1111/j.1467-6478.2011.00558.x

support of gender quotas, and quotas therefore cannot be defended on efficiency or societal welfare grounds.

Positive Economic Impact

Advocates for gender quotas on corporate boards point to empirical studies finding a positive correlation between the number of women on corporate boards and company financial performance. In particular, boards with more female directors have a higher performance by market, as measured by stock price growth[50], Return on Equity[51] and Tobin's Q[52]. In addition, increasing the number of women on corporate boards yields more profitable accounting measures, such as Return on Assets[53] and EBIT[54][55]. Finally, boards with more female directors

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[50] Found that the 89 European-listed companies with the highest proportions of women in senior leadership positions and at least two women on their boards outperformed industry averages for the Stoxx Europe 600, with 10% higher return on equity, 48% higher EBIT (Earnings Before Interest and Taxes = Revenue – Operating Expenses) and 1.7 times the stock price growth. Women Matter, McKinsey & Company, 2007 (updated 2013)

[51] Based on an analysis of 2,360 companies between 2005 and 2011. Found that the average return on equity (ROE = Net Income / Shareholder's Equity) for companies with at least one woman on the board over the six year period was 16%, four percentage points higher than that of companies with no women on their boards, which was 12%.
Gender diversity and corporate performance, Credit Suisse Research Institute, August 2012.

[52] Uses data from over 2,000 US firms in 2013 and shows that gender diversity has a positive effect on the conditional mean of firm performance measured by Tobin's Q. (Q Ratio = Total Market Value of Firm / Total Asset Value.) Importantly, demonstrates that female directors have a significantly larger positive impact in high-performing firms relative to low-performing firms.
Conyon, M. J., & He, L.Firm performance and boardroom gender diversity: A quantile regression approach. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2748558

[53] The study used data from 3,876 public companies in 47 countries. Terjesen, Siri, Eduardo Barbosa Couto, and Paulo Morais Francisco. 2015. Does the presence of independent and female directors impact firm performance? A multi-country study of board diversity. *Journal of Management & Governance* 23 (2): 77.

[54] *Supra*, McKinsey & Company, 2007

[55] Studies conducted in Australia and India have also demonstrated improved market and accounting performance for firms with gender diverse corporate boards.
The Australian study uses data from the top 500 Australian Securities Exchange (ASX) listed firms for the period 2005-2010.
Vafaei, Alireza and Mather, Paul R. and Ahmed, Kamran, Board Gender Diversity and its Effect on Firm Financial Performance: A Panel Study of Top 500 ASX Listed Firms (March 26, 2012). 2012 Financial Markets & Corporate Governance Conference. Available at SSRN: http://ssrn.com/abstract=2029140 or http://dx.doi.org/10.2139/ssrn.2029140
The Indian study examines the relationship between diversity and firm value for 500 large listed Indian firms, with annual data from 2003-2013.
Haldar, Arunima and Shah, Reeta and Nageswara Rao, S.V.D., Board Room Diversity and Firm Value: Evidence from India (March 18, 2014). Available at SSRN: http://ssrn.com/abstract=2411382

tend to be more innovative,[56] and make better investment decisions, demonstrated by higher Return on Investment[57] and lower bid prices for mergers and acquisitions transactions[58].

Analyzing the Efficacy of Theoretical Frameworks Substantiating Positive Economic Findings

Qualitative rationales supporting the improved financial performance of firms with gender diverse boards are rooted in the agency theory, resource dependence theory, and upper echelons theory.[59]

Agency Theory

Agency theory addresses the potential principal-agent problem arising from the separation of ownership and control in modern public corporations. A latent moral hazard problem exists between principal (owners) and agent (management), necessitating various control mechanisms to mitigate CEOs from acting in their own self-interest.[60] Agency theory advocates for an independent board of directors to serve as one such monitoring mechanism.[61] Because inside directors tend to side with their CEO, outside directors can help the board

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[56] Conducted on a sample of 317 Norwegian firms. Results suggest that attaining critical mass – going from one or two women (a few tokens) to at least three women (consistent minority) –enhances the level of firm innovation. Innovation was measured by responses to a 6-8 page questionnaire, which posed 265 questions all measuring levels of innovation on a seven-point Likert-type scale.
Torchia, M., Calabro, A., & Huse, M. (2011). Women directors on corporate boards: From tokenism to critical mass. *Journal of Business Ethics, 102*(2), 299. doi:10.1007/s10551-011-0815-z. http://link.springer.com/article/10.1007%2Fs10551-011-0815-z

[57] The study draws from 1993 and 1998 financial performance data for 127 large US companies and their respective percentages of women and minorities on their boards of directors.
Erhardt, Niclas L., James D. Werbel, and Charles B. Shrader. 2003. Board of director diversity and firm financial performance. *Journal of Corporate Governance* 11 (2): 102.

[58] Study uses acquisition bids initiated by the S&P 1500 firms during 1997-2009. Shows that each 10% representation of female directors on a corporate board is associated with a 4.7% reduction in the number of a company's acquisition bids. In addition, find that each 10% of female directors on the bidder board is associated with a reduction in the bid premium by 13.3%. Concludes that women are less overconfident than men.
Levi, Maurice D. and Li, Kai and Zhang, Feng, Men are from Mars, Women are from Venus: Gender and Mergers and Acquisitions (March 14, 2011). Available at SSRN: http://ssrn.com/abstract=1785812 or http://dx.doi.org/10.2139/ssrn.1785812

[59] Ruigrok, W., Peck, S., Tacheva, S., Greve, P., & Hu, Y. (2006). The determinants and effects of board nomination committees. Journal of Management and Governance, 10(2), 119–148.

[60] Fama, E. F. (1980). Agency problems and the theory of the firm. Journal of Political Economy, 88(2), 288–307.

[61] Baysinger, B.D. and H.N. Butler: 1985, ''Corporate Governance and the Board of Directors: Performance Effects of Changes in Board Composition'', Journal of Law, Economics & Organization 1(1): 101–124.

implement higher-value projects if the CEO proposes an inferior project for private gain.[62] A more diverse board may better monitor managers because board diversity increases board independence.[63] In particular, researchers who have discovered a positive correlation between gender diversity and firm financial performance argue that increasing the number of female corporate board members results in heightened board independence, and consequently, corporate economic gains.

Nevertheless, the agency theory is not a foolproof explanation of the supposed improved financial performance of independent corporate boards. Requiring the addition of more outsiders to the board does not necessarily lead to a more independent board.[64] In fact, unless the new outside directors are able to directly influence the bargaining process, the board's independence remains the same.[65] Independent directors must constitute the majority of the board in order for the agency theory's effect to take hold.[66] In addition, the agency theory fails to address motives of human behavior aside from self-interest that may guide managerial decisions.[67] The theory also only focuses on one aspect of board work – monitoring management – and does not address the other, perhaps equally important, roles of corporate board members. [68] Thus, it is unclear whether the agency theory alone explains the strengthened profitability of firms with independent corporate boards.

[62] Raheja, C. G. (2005). Determinants of board size and composition: A theory of corporate boards. Journal of Financial and Quantitative Analysis, 40(2), 283–306.
[63] Carter, D., D'Souza, F., Simkins, B., & Simpson, G. (2010). The gender and ethnic diversity of US boards and board committees and firm financial performance. Corporate Governance: An International Review, 18, 396–414.
[64] Hermalin, B. E., & Weisbach, M. (1991). The effects of board composition and direct incentives on firm value. Financial Management, 20, 101–112.
[65] Zahra, S.A. and J.A. Pearce II: 1990, ''Determinants of Board Directors' Strategic Involvement'', European Management Journal 8(2): 164–173.
[66] Adams, R., Hermalin, B. E., & Weisbach, M. S. (2010). The role of boards of directors in corporate governance: A conceptual framework and survey. Journal of Economic Literature, 48, 58–107.
[67] Davis, J., F. Schoorman and L. Donaldson: 1997, ''Towards a Stewardship Theory of Management'', Academy of Management Review 22(2): 20–47.
[68] Hillman, A. J., & Dalziel, T. (2003). Boards of directors and firm performance: Integrating agency and resource dependence perspectives. Academy of Management Review, 28(3), 383–396.

Yet even if the agency theory's proposition indisputably holds, it is debatable whether gender diversity, irrespective of board independence, improves firm financial performance. Two academic studies have arrived at directly contradictory results. One broad multi-country study argues that independent directors do not improve firm financial performance unless the board is gender diversified.[69] They reason gender diversity may serve as a substitute for board independence, and the presence of outside directors does not necessarily yield an independent board.[70] At the same time, a study conducted in France after the 2011 implementation of their quota system discovers the opposite effect.[71] Adding women to a board impacts the decision-making process, not because of gender, but rather because women are more likely outsiders.[72] Women offer varied and innovative perspectives because they are "more likely to be junior, less likely to come from the *Grandes Ecoles* elite networks, more likely to be foreign, and more likely to have extensive experience in non-traditional areas like labor or the environment."[73] Hence, it appears that the factors that improve decision-making on gender-diverse boards are not specific to gender but instead result from factors that currently correlate with sex but are not permanent let alone essential traits of women.

Taken together, the two studies show that it is ambiguous whether female characteristics developed through socialization or the likelihood of women to be independent directors results in the improved financial performance of gender diverse corporate boards.

Resource Dependence Theory

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[69] The study used data from 3,876 public companies in 47 countries. Terjesen, Siri, Eduardo Barbosa Couto, and Paulo Morais Francisco. 2015. Does the presence of independent and female directors impact firm performance? A multi-country study of board diversity. *Journal of Management & Governance* 23 (2): 77.

[70] *Id.* 30

[71] The analysis is based on interviews of 24 current and former corporate board members in France.
Darren Rosenblum & Daria Roithmayr, More Than a Woman: Insights into Corporate Governance After the French Sex Quota, 48 Ind. L. Rev. 889 (2015), available at http://digitalcommons.pace.edu/lawfaculty/993/.

[72] *Id.* 918

[73] *Id.* 919

Resource dependence theory focuses on the relationship between a firm and its external environment. It perceives organizations as operating in an open system needing to exchange and acquire various resources to survive.[74] According to resource dependence theory, the role of directors is to act as resource providers, or boundary spanners, between firms and their environments.[75] Directors offer four types of 'external connector' benefits. [76] First, they provide well-rounded information and expertise.[77] Second, directors have access to important communication channels with external parties, which add value for the firm. [78] Third, board members garner support commitments for the company from other organizations or groups. [79] Last, directors create legitimacy for the firm within its environment. [80]

The presence of independent directors bolsters the effects of the resource dependence theory. Independent directors have access to valuable knowledge and relationship resources such as particular expertise, social networks, and legitimacy which can be leveraged in their roles on the board.[81] Their unique experiences garnered in other companies can be useful for high-level board decision-making.[82] Furthermore, independent directors are connected with important external resources, broadening the firms' boundaries.[83] Because increasing the number of female

[74] Daily, C. M., Dalton, D. R., & Cannella, A. A. (2003). Corporate governance: Decades of dialogue and data. Academy of management review, 28(3), 371-382.

[75] *Id.* p. 372

[76] Pfeffer, J. and G. R. Salancik (1978). The External Control of Organizations: A Resource Dependence Perspective. Harper & Row, New York.

[77] *Id.*

[78] *Id.*

[79] *Id.*

[80] *Id.*

[81] Hillman, A. J., Cannella, A. A., & Harris, I. C. (2002). Women and racial minorities in the boardroom: how do directors differ? Journal of Management, 28(6), 747–763.

[82] Finkelstein, S., Hambrick, D. C., & Cannella, A. A. (2009). Strategic leadership: Theory and research on executives, top management teams, and boards. New York, NY: Oxford University Press.

[83] Hillman, A. J., & Dalziel, T. (2003). Boards of directors and firm performance: Integrating agency and resource dependence perspectives. Academy of Management Review, 28(3), 383–396.

directors enhances board independence[84], the resource dependence theory serves as a reasonable justification for the positive correlation between gender diversity on corporate boards and firm financial performance.

Independence aside, it is unclear whether female directors due to their gender alone contribute to the resource dependence framework. Proponents argue female directors insert knowledge, skills and experiences to their boards that differ from those of their male counterparts.[85] Furthermore, women directors have the ability to create linkages to different parties than men, for example to different customers, suppliers, future employees or suppliers.[86] Finally, the appointment of female directors strengthens the legitimacy of the firm toward stakeholders[87] -- all upholding the four resource dependence roles of directors.

At the same time, multiple studies suggest that gender diversity on corporate boards does not contribute to the resource dependence theory. Male and female directors are pulled from the same recruiting pool and must meet equivalent selection requirements, thereby possessing roughly the same higher education and industry expertise profiles.[88] Female directors therefore do not necessarily have knowledge or industry skills distinct from those of their male counterparts, as the resource dependence theory proposes.[89] In addition, female directors do not

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[84] Terjesen, S., Couto, E. B., & Francisco, P. M. Does the presence of independent and female directors impact firm performance? A multi-country study of board diversity. Journal of Management & Governance, 1-37.

[85] *Id.* p. 6

[86] Hillman, A. J., Shropshire, C., & Cannella, A. A. (2007). Organizational predictors of women on corporate boards. Academy of Management Journal, 50(4), 941-952.
Biggins, J. V. (1999). Making board diversity work. Corporate Board, 20, 11–17.

[87] A study using data from 122 Dutch companies listed on the Amsterdam Stock Exchange argues that there is a stronger female presence on the boards of larger and more visible firms (both nationally and internationally). The authors conclude that this statistically significant correlation implies that women directors add to the perceived legitimacy of the firm. Lückerath-Rovers, Mijntje, Female Directors on Corporate Boards Provide Legitimacy to a Company: A Resource Dependency Perspective (May 2009). Management Online Review, pp. 1-13, June 2009. Available SSRN: http://ssrn.com/abstract=1411693

[88] Sample consists of all the 120 French companies that make up the SBF 120 index (largest companies in terms of market value and trading volume listed on *Euronext* Paris) *at* the end of the fiscal year 2010 (December.)
Dang, R., Bender, A. F., & Scotto, M. J. (2014). Women On French Corporate Board Of Directors: How Do They Differ From Their Male Counterparts?. Journal of Applied Business Research (JABR), 30(2), 489-508.

[89] *Id.*

forge unique stakeholder relationships with customers or employees.[90] No statistically significant relationship exists between the number of female directors and labor-intensive or consumer-oriented corporations, which theoretically would hold if boards were to holistically represent all stakeholders under the resource dependence framework.[91] Finally, more women on corporate boards does not clearly result in heightened firm legitimacy among stakeholders. Positive reputational effects could stem from lurking variables unrelated to a gender diversity on corporate boards.[92] In addition, the signal of a gender balanced board could be misleading, as it may over-represent gender diversity among executive management and/ or within the company as a whole.[93] Hence, the resource dependence theory does not cogently justify the perceived economic benefits of gender diverse corporate boards.

Upper Echelons Theory

Upper echelons theory offers yet another qualitative rationale for the bolstered financial performance of gender diverse corporate boards. According to the theory, executives' experiences, values, and personalities greatly influence their interpretations of the situations they face and, in turn, affect their choices.[94] Because women and men inherently have varied backgrounds, gender diversity improves strategic decision-making and board effectiveness, [95]

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[90] *Supra* Lückerath-Rovers, Mijntje p. 15

[91] *Id.*

[92] Broome, L. (2008). Signaling through board diversity: Is anyone listening? *University of Cincinnati Law Review*, *77*(2), 431.

[93] In 2009, the Securities and Exchange Commission required public U.S. companies to disclose their levels of corporate diversity within their proxy statements. However, firms are able to define the concept of "diversity" on their own, affording them too much discretion.
Dhir, Aaron A., Homogeneous Corporate Governance Cultures (2014). Dhir, A. (2015). Homogeneous Corporate Governance Cultures. Chapter 1 in Challenging Boardroom Homogeneity: Corporate Law, Governance, and Diversity. New York: Cambridge University Press, Forthcoming; Osgoode Legal Studies Research Paper No. 64/2014; Yale Law School, Public Law Research Paper No. 521. Available at SSRN: http://ssrn.com/abstract=2487149

[94] Hiebl, M. R. W. (2014). Upper echelons theory in management accounting and control research. *Journal of Management Control*, *24*(3), 223.

[95] Ruigrok, W., Peck, S., Tacheva, S., Greve, P., & Hu, Y. (2006). The determinants and effects of board nomination committees. *Journal of Management Governance, 10*, 119. doi:10.1007/s10997-006-0001-3

leading to a broader range of perspectives, skills and knowledge.[96] On average, gender diverse groups are more creative and innovative, and thus enhance boards' problem-solving abilities.[97] In addition, women tend to ask more questions and are often less combative than their male peers during board meetings,[98] reducing conflict and increasing board efficacy.[99] To proponents of gender quotas, the upper echelons theory serves as a compelling justification for the improved financial performance of gender diverse corporate boards.

Nonetheless, the upper echelons theory also faces competing evidence. Female directors do not necessarily have such varied educational backgrounds and industry experiences from their male counterparts so as to offer novel perspectives.[100] Furthermore, even if we assume the *substance* of decision-making does not change with more women on corporate boards, but the *process* of decision-making alters,[101] it is unclear whether the process improves or worsens. For instance, some researchers argue heterogeneity among board members may increase conflict,[102] thereby reducing board effectiveness and efficiency.[103] Finally, many researchers proclaim one woman on corporate boards, or 'tokenism', bears no influence.[104] They contend women must obtain a 'critical mass' in order for their voices to be heard, which is defined as "going from one

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[96] Milliken, F.J. and 1.L. Martins: 1996, ''Searching for Common Treads: Understanding the Multiple Effects of Diversity in Organizational Groups'', Academy of Management Journal 21: 402–433

[97] Jackson, S.E., A. Joshi and N.L. Erhardt: 2003, ''Recent Research on Team and Organizational Diversity: SWOT Analysis and Implications'', Journal of Management 29(6): 801–830.

[98] *Supra* Rosenblum & Roithmayr p. 927

[99] Nielsen, Sabina and Huse, Morten, The Contribution of Women on Boards of Directors: Going Beyond the Surface. Corporate Governance: An International Review, Vol. 18, Issue 2, pp. 136-148, March 2010. Available at SSRN: http://ssrn.com/abstract=1577969 or http://dx.doi.org/10.1111/j.1467-8683.2010.00784.x

[100] *Supra* Dang

[101] *Supra* Rosenblum & Roithmayr

[102] Blau, P. M., 1977, Inequality and Heterogeneity. New York: The Free Press.

[103] Goodstein, J., Gautam, K. and W. Boeker, 1994, "The Effects of Board Size and Diversity on Strategic Change," Strategic Management Journal, 15, 241-250.

[104] Uses a sample of 317 Norwegian firms from 2005/2006 and finds that strategic involvement increases when women on corporate boards attain a critical mass of at least 3 directors. Level of strategic involvement analyzed through a questionnaire and responses measured on a 7 point likert-type scale.
Torchia, Mariateresa and Calabrò, Andrea and Huse, Morten and Brogi, Marina, Critical Mass Theory and Women Directors' Contribution to Board Strategic Tasks (December 6, 2010). Corporate Board: Role, Duties & Composition, Vol. 6, Issue 3, 2010. Available at SSRN: http://ssrn.com/abstract=1861447 or http://dx.doi.org/10.2139/ssrn.1861447

or two women (a few tokens) to at least three women (a consistent minority)."[105] Nevertheless, the critical mass theory is not unerring, as research shows some women embrace the 'first and only' female director status; a critical mass of female directors does not necessarily produce different, and distinctly feminine, boardroom outcomes.[106] Thus, upper echelons theory – women on corporate boards provide diverse perspectives that improve strategic decision-making and board effectiveness – is not a forceful justification for the positive correlation between gender diverse corporate boards and firm financial performance.

Altogether, the agency theory, resource dependence theory and upper echelons theory are not foolproof rationales for the seemingly improved financial performance of firms with gender diverse boards. Each addresses a compelling and complimentary overarching role of directors – controlling/ monitoring, boundary spanner/ service provider, and strategy/ advice giver.[107] However, it is not clear that female directors – due to their gender alone – significantly enhance corporate boards' abilities to achieve these objectives and increase their bottom line.

A Note on Gender Diversity and Board Independence

Perhaps the seemingly improved financial performance of firms with gender diverse boards stems from the fact that women tend to be outsiders, or independent directors who are

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[105] Uses a sample of 317 Norwegian firms from 2005/2006 and finds that innovation increases when women on corporate boards attain a critical mass of at least 3 directors. Level of innovation analyzed through a questionnaire with 265 questions, and responses measured on a 7 point likert-type scale.
Torchia, Mariateresa and Calabrò, Andrea and Huse, Morten, Women Directors on Corporate Boards: From Tokenism to Critical Mass (February 25, 2011). Journal of Business Ethics, 102 (2), 299-317. Available at SSRN: http://ssrn.com/abstract=1858347

Uses a 2009 sample of 458 women on Norwegian corporate boards where the ratio of women directors among board members ranges from 11 to 100%. Finds, from a questionnaire, that women directors perceive they receive more information and engage in more informal social interaction when the ratio increases; perceived influence also increases when the ratio of women on the board increases.
Elstad, Beate and Ladegard, Gro, Women on Corporate Boards: Key Influencers or Tokens? (November 20, 2010). Journal of Management and Governance, November 2010. Available at SSRN: http://ssrn.com/abstract=1582368

[106] Broome, Lissa L. and Conley, John M. and Krawiec, Kimberly D., Does Critical Mass Matter? Views From the Boardroom (June 3, 2011). 34 Seattle University Law Review 1049-1080 (2011). Available at SSRN: http://ssrn.com/abstract=1781064

[107] *Supra* Ruigrok, Peck, Tacheva, Greve

unrelated to firm management. After Norway implemented their mandatory 40% gender quota, the number of independent directors increased from 46% to 67%.[108] Theoretically, independent directors – irrespective of gender – are better monitors of management and agents of stakeholders, offer beneficial relationships to the external business environment, and provide novel perspectives to enhance board decision-making.[109] Because female directors are much more often independent directors than males are and independent directors add value with respect to the agency theory, resource dependence theory and upper echelons theory, it is logical for firm financial performance to rise with the number of women on corporate boards.

However, directors who meet the regulatory requirements for independence are not necessarily 'independent' with respect to the true meaning of the word – one who exercises judgement separate from management to further the best interests of shareholders.[110] A significant rise in director tenure over the past decade has led to the rise of "new insiders" or hybrid board members who comply with current independence requirements, but possess many of the traits of corporate insiders.[111] Therefore, it is unclear whether directors who are independent in name demonstrate the beneficial characteristics of ideal independent directors. Consequently, it cannot be assumed that because female directors are often independent directors,[112] firm financial performance will increase.

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[108] Bøhren Øyvind, Staubo Siv. 2015. Mandatory gender balance & board independence. *European Financial Management*

[109] There has been a regulatory push for more independent directors on U.S. corporate boards as a result of the 2002 Sarbanes-Oxley Act (response to the Enron scandal) and 2010 Dodd Frank Act (response to the 2008 financial crisis.) While only a majority of the board in the U.S. is required to be independent in order to comply with regulatory requirements, independent directors, as currently defined, now make up 84% of all board members.
Nili, Yaron, The 'New Insiders': Rethinking Independent Directors' Tenure (August 10, 2015). Hastings Law Journal, Vol. 67, No. 6, 2016, Forthcoming. Available at SSRN: http://ssrn.com/abstract=2728413

[110] *Id.*

[111] *Id.*

[112] Singh, V., Terjesen, S., & Vinnicombe, S. (2008). Newly appointed directors in the boardroom:: How do women and men differ?. European Management Journal, 26(1), 48-58.

The uncertain theoretical support for the supposed positive correlation between the presence of women on corporate boards and corporate economic health is logical, given that the empirical findings behind the financial impact of women on corporate boards and firm financial performance are ultimately mixed.

Negative Economic Impact

Many researchers have identified a negative correlation between gender diverse corporate boards and firm financial performance. Studies conducted in emerging market economies, such as Indonesia and Sri Lanka, discovered that more female representation on corporate boards adversely impacts both accounting (Return on Assets) and market performance (Tobin's Q.)[113] Even researchers in developed economies argue adding a new woman director spurs a negative short-run market impact.[114] Investors perceive female directors as less competent than their male counterparts, thereby selling shares of the company's stock after female appointments.[115] Moreover, the presence of female directors tends to decrease workforce reductions, increasing labor costs and reducing short-term profits.[116]

[113] Indonesian sample includes data from 383 companies, or 92.4% of public firms listed on the Indonesia Stock Exchange (IDX), in the financial year of 2007. Results reveal that smaller firms, which tend to be family-controller, are more likely to have a higher proportion of female members on management boards. This implies that it is more difficult for women to hold seats on the board of larger firms.
Darmadi, Salim, Do Women in Top Management Affect Firm Performance? Evidence from Indonesia (December 19, 2010). Available at SSRN: http://ssrn.com/abstract=1728572 or http://dx.doi.org/10.2139/ssrn.1728572
Sri Lankan sample consists of data from 88 Local Public Companies listed on the Colombo Stock Exchange (CSE) during the period of 2006 to 2010.
Hewa Wellalage, Nirosha, Women on Board, Firm Financial Performance and Agency Costs (August 2, 2011). Available at SSRN: http://ssrn.com/abstract=1904072 or http://dx.doi.org/10.2139/ssrn.1904072

[114] Gregory, Alan and Jeanes, Emma L. and Tharyan, Rajesh and Tonks, Ian, Does the Stock Market Gender Stereotype Corporate Boards? Evidence from the Market's Reaction to Directors' Trades (June 2013). British Journal of Management, Vol. 24, Issue 2, pp. 174-190, 2013. Available at SSRN: http://ssrn.com/abstract=2259440 or http://dx.doi.org/10.1111/j.1467-8551.2011.00795.x

[115] Solal, Isabelle and Snellman, Kaisa, Women Don't Mean Business? Gender Penalty in Board Appointments (September 11, 2015). INSEAD Working Paper No. 2015/65/OBH. Available at SSRN: http://ssrn.com/abstract=2637433 or http://dx.doi.org/10.2139/ssrn.2637433

[116] Matsa, David A. and Miller, Amalia R., A Female Style in Corporate Leadership? Evidence from Quotas (December 13, 2012). American Economic Journal: Applied Economics, Forthcoming.

Finally, academics who have analyzed the Norwegian quota in particular have found adverse financial consequences. The constraint imposed by the quota caused a significant drop in stock prices at the announcement of the law and a large decline in market performance (Tobin's Q) over the following years. [117] In particular, the quota led to younger and less experienced boards, increasing leverage in acquisitions and deteriorating operating performance.[118] Furthermore, the abrupt increase in Norwegian board independence due to their mandatory gender quota caused small, young, profitable, non-listed firms to lose the most value, presumably because they need advice from dependent directors and monitoring by independent directors is less helpful to spur growth. [119] Last, after the Norwegian government announced a liquidation repercussion for not meeting the 40% female director requirement, half the firms (particularly small, successful non-listed companies) exited to an organizational form not exposed to the law.[120] The response suggests the costs of involuntary board restructuring are higher than abandoning the exposed organizational form.[121] Thus, mandatory gender quotas produce firms with either inefficient organizational forms or inefficient boards.[122]

All in all, the type of market analyzed (emerging v. developed), size of firms (small v. large), and manner of female director appointment (organic v. mandatory gender quota) cause variations in economic findings. The existence of both positive and negative correlations between gender diverse corporate boards and firm financial performance implies that the

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[117] Aphern, K. R., & Dittmar, A. K. (2012). The changing of the boards: The impact on firm valuation of mandated female board representation. *The Quarterly Journal of Economics, 127*(1), 137. doi:10.1093/qje/qjr049. http://qje.oxfordjournals.org/content/127/1/137.full

[118] *Id.*

[119] The mandatory gender quota shifted the average fraction of independent directors from 46% to 67%. Bøhren Øyvind, Staubo Siv. 2015. Mandatory gender balance & board independence. *European Financial Management,* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2543871

[120]Bøhren Øyvind, S. S. (2014). Does mandatory gender balance work? Changing organizational form to avoid board upheaval. *Journal of Corporate Finance, 28*, 152-168.

[121] *Id.*

[122] *Id.*

business case rationale for implementing gender quotas are not compelling. This is further demonstrated by the following studies demonstrating no statistically significant economic gain or loss by increasing the number of women on corporate boards.

Inconclusive Economic Impact

Ultimately, the effect of gender diverse corporate boards on firm financial performance is inconclusive. In addition to a positive and negative financial impact, scholars point to no statistical significance between female representation on corporate boards and firm financial performance.[123] Empirical results are highly dependent on methodology. The mixed outcomes reflect the different time periods, countries, economic environments, types of companies, and measures of diversity and financial performance. For instance, many analyses focused on the short-term market impact of gender diverse corporate boards, neglecting long-term market impact which is the "gold standard" measure of value for shareholders.[124] Furthermore, some researchers attribute the varied findings to the methodological shortcomings in many of the studies, including small sample size, short-term observations of performance, and the difficulty of controlling for reverse causation, endogeneity, and other omitted variables that may be affecting both board diversity and firm performance.[125]

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[123] Gregory-Smith, Ian and Main, Brian G. M. and O'Reilly III, Charles A., Appointments, Pay and Performance in UK Boardrooms by Gender (February 2014). The Economic Journal, Vol. 124, Issue 574, pp. F109-F128, 2014. Available at SSRN: http://ssrn.com/abstract=2400789 or http://dx.doi.org/10.1111/ecoj.12102
Gender quotas have no effect on stock market liquidity.
Loukil, Nadia and Raissa, Yerbanga Wend-kuuni and Yousfi, Ouidad, Gender Diversity on Board and Stock Market Liquidity: Empirical Evidence from the French Market (June 27, 2015). Available at SSRN:http://ssrn.com/abstract=2624013 or http://dx.doi.org/10.2139/ssrn.2624013

[124] One study analyzing the mandatory gender quota in Norway found no long-term market impact.
Noland, M., Moran, T., & Kotschwar, B. (2016). Is gender diversity profitable? evidence from a global survey. *Peterson Institute for International Economics.* http://www.iie.com/publications/wp/wp16-3.pdf
Eckbo, B. Espen and Nygaard, Knut and Thorburn, Karin S., Does Gender-Balancing the Board Reduce Firm Value? (March 2016). CEPR Discussion Paper No. DP11176. Available at SSRN: http://ssrn.com/abstract=2766471

[125] Yi Wang & Bob Clift, Is There a "Business Case" for Board Diversity?, 21 PAC. ACCT. REV. 88, 95-98 (2009)

The murky economic evidence may also stem from the varying contexts and board structures. [126]

For example, many studies didn't analyze the importance of attaining a critical mass of women. 'Trophy' board members with unconventional backgrounds may be subconsciously socialized to adopt the ideas of the majority, preventing the materialization of a potential performance effect.[127] In addition, the relationship between board characteristics, including diversity, and company performance may be "complex and indirect."[128] Because boards perform multiple and varied tasks, diversity may affect different functions in different ways,[129] making it difficult to establish any consistent relationship between board diversity and firm performance.[130]

Although empirical research has drawn much-needed attention to the underrepresentation of women and minorities on corporate boards, it has not convincingly established that board diversity – propelled by gender quotas – leads to improved financial performance.[131] Given the

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[126] Sample includes firms in the S&P 500 index for the five-year period 1998-2002.
Carter, David and D'Souza, Frank P. and Simkins, Betty J. and Simpson, W. Gary, The Gender and Ethnic Diversity of US Boards and Board Committees and Firm Financial Performance. Corporate Governance: An International Review, Vol. 18, No. 5, pp. 396-414, September 2010. Available at SSRN: http://ssrn.com/abstract=1677099 or http://dx.doi.org/10.1111/j.1467-8683.2010.00809.x
In Malaysia, the financial impact of gender diverse corporate boards can be positive or negative, depending on ownership of the firm and the structure of the board.
Abdullah, Shamsul and Ku Ismail, Ku Nor Izah and Nachum, Lilac, Does Having Women on Boards Create Value? The Impact of Societal Perceptions and Corporate Governance in Emerging Markets (December 15, 2014). Available at SSRN: http://ssrn.com/abstract=2538595 or http://dx.doi.org/10.2139/ssrn.2538595

[127] Uses data of Danish firms from the period of 1998-2001 and finds no link between female board representation and Tobin's Q.
Rose, Caspar, Does Female Board Representation Influence Firm Performance? The Danish Evidence. Corporate Governance: An International Review, Vol. 15, No. 2, pp. 404-413, March 2007. Available at SSRN: http://ssrn.com/abstract=972533 or http://dx.doi.org/10.1111/j.1467-8683.2007.00570.x

[128] Daniel P. Forbes & Frances J. Milliken, Cognition and Corporate Governance: Understanding Boards of Directors as Strategic Decision-Making Groups, 24 ACAD. MGMT. REV. 489, 490 (1999).

[129] Work psychology and organizational behavior of various corporate boards should be considered when analyzing their effectiveness – gender diversity alone having an impact illogical.
Stiglbauer, Markus and Velte, Patrick, The Economic versus Moral Perspective of Board Diversity: A Time for Regulation after the Financial Crisis? (November 9, 2012). The International Journal of Organizational Diversity 12 (2012), 71-77 . Available at SSRN: http://ssrn.com/abstract=2521058

[130] Sabina Nielsen & Morten Huse, The Contribution of Women on Boards of Directors: Going Beyond the Surface, 18 CORP. GOVERNANCE: AN INT'L REV. 136, 137 (2010).

[131] Steven Brammer et al., Gender and Ethnic Diversity Among UK Corporate Boards, 15 CORP. GOVERNANCE: AN INT'L REV. 393, 394-96 (2007).

limitations of these studies, many commentators believe that the "business case for diversity" rests on other grounds, particularly its effects on corporate reputation and governance capacities,[132] as seen with the following 'social good' arguments for corporate board gender quotas.

SOCIAL GOOD OBJECTIVES BEHIND GENDER QUOTAS

Social good benefits of increased female board representation have also compelled politicians to enact gender quotas for corporate boards. As I describe in this part, the presence of women directors improves corporate social responsibility, reduces earnings management and fraud, and gives rise to a role model effect which encourages younger women to climb through the corporate ranks. Nevertheless, it is not clear that social good objectives alone are compelling enough to warrant the implementation of gender quotas for corporate boards.

Increasing the number of women on corporate boards bolsters corporate social behavior, such as charitable giving, community involvement and outside recognition of employee benefits.[133] Corporate philanthropy particularly rises within the realms of the environment,[134] community service, and the arts.[135] An influential qualitative rationale for heightened corporate social behavior is rooted in within the social role theory. This suggests that men and women behave according to stereotypes and beliefs, associated with the social role they occupy. Women are thought to be more 'communal' and men more 'agentic.'[136] Internationally, women are

[132] Lissa Lamkin Broome & Kimberly D. Krawiec, Signaling Through Board Diversity: Is Anyone Listening?, 77 U. CIN. L. REV. 431, 446-47 (2008)

[133]Bernardi, Richard A. and Threadgill, Veronica H., Women Directors and Corporate Social Responsibility (December 1, 2010). Electronic Journal of Business Ethics and Organizational Studies, Vol. 15, No. 2, pp. 15-21, 2010. Available at SSRN: http://ssrn.com/abstract=1752267

[134]Kimball, Amanda and Palmer, Donald and Marquis, Christopher, The Impact of Women Top Managers and Directors on Corporate Environmental Performance (October 4, 2012). Available at SSRN: http://ssrn.com/abstract=2211826 or http://dx.doi.org/10.2139/ssrn.2211826

[135] Sample includes U.S. Fortune 500 companies.
Williams, R. J. (2003). Women on corporate boards of directors and their influence on corporate philanthropy. Journal of Business Ethics, 42, 1.

[136] Bakan, D. (1966). The duality of human existence: Isolation and communion in western man. Boston: Beacon Press.

strongly associated with traits such as empathy, caring, great concern for others and being interested in actualizing values in relationships of great importance to community.[137] It is consequently no surprise that gender balanced corporate boards are more likely to be listed on Ethisphere Magazine's 'World's Most Ethical Companies' list.[138]

Women are also more likely to adhere to rules and regulations. Empirical evidence suggests the presence of women on corporate boards reduces earnings management and improves overall accounting quality.[139] Moreover, securities fraud is mitigated on average with gender diverse boards, as women tend to be more financially risk-averse than men.[140] Politicians have therefore speculated whether women's increased participation in corporate financial decision making could have helped to curb tendencies that caused the most recent financial crisis.[141] A widely discussed panel at a World Economic Forum in Davos posed the question: "Would the world be in this financial mess if it had been Lehman Sisters?"[142] Many Davos participants believed that the answer was no, and cited evidence suggesting that women were "more prudent" and less "ego driven" than men in financial management contexts.[143]

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[137] Boulouta, I. (2012). Hidden connections: The link between board gender diversity and corporate social performance. Journal of Business Ethics, 113, 185. doi:10.1007/s10551-012-1293-7

[138] Bernardi, Richard A. and Bosco, Susan M. and Columb, Veronica L., Does Female Representation on Boards of Directors Associate with the 'Most Ethical Companies' List? (2009). Corporate Reputation Review, Vol. 25, No. 3, pp. 270-280, 2009. Available at SSRN: http://ssrn.com/abstract=1761367
Larkin, Meredith B. and Bernardi, Richard A. and Bosco, Susan M., Corporate Reputation, Board Gender Diversity and Market Performance (2012). International Journal of Banking and Finance, 100, 9 (1): 1-26, 2012. Available at SSRN: http://ssrn.com/abstract=2248380

[139] García Lara, Juan M. and Garcia Osma, Beatriz and Mora, Araceli and Scapin, Mariano P., Gender Discrimination and the Monitoring Role of Female Directors Over Accounting Quality (February 15, 2016). Available at SSRN: http://ssrn.com/abstract=2732588 or http://dx.doi.org/10.2139/ssrn.2732588
Aribi, Zakaria Ali, Female Directors and Earnings Management: Evidence from UK Companies (January 1, 2015). International Review of Financial Analysis, 2015. Available at SSRN: http://ssrn.com/abstract=2593342

[140] Mateos de Cabo, R., Gimeno, R., & Nieto, M. J. (2012). Gender diversity on european banks' board of directors. Journal of Business Ethics, 109, 145. doi:10.1007/s10551-011-1112-6

[141] Nicholas D. Kristof, Mistresses of the Universe, N.Y. TIMES, Feb. 8, 2009

[142] Katrin Bennhold, Where Would We Be If Women Ran Wall Street?, N.Y. TIMES, Feb. 1, 2009, archived at http://perma.cc/G3PR-3H7C

[143] *Id.*

Finally, increased female representation on corporate boards helps spur the role model effect.[144] Aspiring women garner motivation by witnessing members of their gender class reach the upper echelons of corporations.[145] Women directors are also more likely to serve as mentors for other females in their company or industry, and the receipt of mentorship is critical for attaining additional board appointments.[146] Gender quotas therefore utilize a demand-side approach for removing the 'Glass Ceiling' by mandating the presence of women on corporate boards who will hopefully in turn help remove barriers for aspiring young women.[147]

Two highly contentious assumptions are embedded within the demand-side approach of gender quotas. First, it is presumed that female directors *care* to remove gender-specific corporate barriers burdening lower ranking women. Evidence suggests some female directors embrace their first and only status, exhibiting a certain pride in their "outsider" status.[148] They need no additional reassurance or support from the presence of members of their own demographic group, and therefore do not have an incentive to expend energy helping their peers rise through the corporate ranks.[149] Second, it is assumed that female directors are *capable* of removing gender-specific corporate barriers burdening lower-ranking women. Empirical research analyzing the mandatory gender quota in Norway found evidence the reform improved the representation of female employees at the very top of the earnings distribution – the top five highest earners.[150] However, they observed no statistically significant change in the gender wage

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[144] Matsa, D. A., & Miller, A. R. (2011). Chipping away at the glass ceiling: Gender spillovers in corporate leadership.

[145] *Id.*

[146] Michael L. McDonald & James D. Westphal, Access Denied: Low Mentoring of Women and Minority First-Time Directors and Its Negative Effects on Appointments to Additional Boards, 56 ACAD. MGMT. J. 1169, 1175-84 (2013).

[147] *Supra* Note 126 Matsa & Miller

[148] *Supra* Note 88 Broome, Conley and Krawiec

[149] *Id. P. 1079*

[150] Bertrand, Marianne and Black, Sandra E. and Jensen, Sissel and Lleras-Muney, Adriana, Breaking the Glass Ceiling (March 2015). CEPR Discussion Paper No. DP10467. Available at SSRN: http://ssrn.com/abstract=2575771

gap in Norway.[151] This suggests that the newly elected female directors either did not want to or could not implement programs to improve workforce equity for lower ranking women. Furthermore, the reform did not influence the decisions of women more generally – there was no change in female enrollment in business education programs which is contrary to the implications of the role model effect.[152] Hence, it is not clear that increased female representation on corporate boards ignites a role model effect or initiates programs which encourage equality of opportunity for lower-ranking women in the workforce.

Even if augmenting the number of women on corporate boards leads to heightened corporate social responsibility as well as stronger adherence to corporate rules and regulations, such seemingly compelling social good justifications for implementing gender quotas are undermined by a potential pipeline issue. The pipeline issue points to the lack of qualified women available to be appointed to corporate boards.[153] Because there are far fewer female executives than male CEOs, the pool of women meeting the requirements of a qualified board member are small.[154] In Norway in particular, the pipeline issue has led to the rise of 'Golden Skirts' – women who sit on multiple boards.[155] A recent analysis of Norwegian female directors after the implementation of the gender quota found that women directors are slightly busier than men.[156] Consequently, gender quotas may lead to less effective boards because of the lack of women who have upper-level management experience as well as the potential of qualified female directors to become overworked given their high demand.[157] It is critical for board

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[151] *Id.*

[152] *Id.*

[153] Smith, N. (2014). Gender quotas on boards of directors. *IZA World of Labor*, doi:10.15185/izawol.7, http://wol.iza.org/articles/gender-quotas-on-boards-of-directors.pdf

[154] *Id.*

[155] 2013. NY Times. To Meet Norway's Quotas, a Crash Course in Board Business http://dealbook.nytimes.com/2013/04/01/to-meet-norways-quotas-a-crash-course-in-board-business/?_r=0

[156] Staubo, S. (2010). Do female directors increase board independence? See http://www.hha.dk/nat/valde/CEO/Staubo.pdf

[157] *Supra* Note 102 Bøhren Øyvind, S. S. (2014). Does mandatory gender balance work?

members to fulfill primary roles as advice-givers and monitors.[158] If they are unable to effectively do so as a result of mandatory gender quotas, any social good benefits stemming from the presence of women on corporate boards would be irrelevant.[159] In sum, advancing the 'social good' with the potential for increased corporate philanthropy and reduced fraud are not persuasive enough objectives for governments to validate the implementation of gender quotas.

EQUALITY OBJECTIVES BEHIND GENDER QUOTAS

Proponents of gender quotas for corporate boards normatively justify the policy tool with a broad notion of equality.[160] There are two types of equality gender quotas aim to address – equality of outcome and equality of opportunity.

Equality of Outcome

Gender quotas for corporate boards fulfill their equality of outcome objective. Mandating that a sizeable proportion of directors be female attempts to equalize gender representation on corporate boards. The rationale for equality of outcome is rooted in the notion of justice.[161] Women have faced systematic workplace and societal oppression for centuries and therefore deserve a form of remediation, namely, the assurance that a decent number of board seats – the end result of climbing the corporate ladder – are reserved for women.[162]

However, the equality of outcome justification simply places a Band-Aid on a bullet wound. Gender quotas for corporate boards do not address the root cause of the problem, which are the systematic barriers hindering women's abilities to navigate through the corporate

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[158] Kamalnath, A. (2015). The value of board gender diveristy vis-a-vis the role of the board in the modern company. *Thompson Reuters*

[159] *Id.*

[160] Wheeler, Sally, Gender Diversity in the FTSE 100: The Business Case Claim Explored (July 6, 2011). Available at SSRN: http://ssrn.com/abstract=1880158 or http://dx.doi.org/10.2139/ssrn.1880158

[161] Polden, D. J. (2005). Forty years after title VII: Creating an atmosphere conducive to diversity in the corporate boardroom. *University of Memphis Law Review, 36*, 67.

[162] *Id.* p. 77

echelons. Rather, gender quotas mitigate the symptoms of deep-seated workplace obstacles by artificially adjusting the proportion of female versus male corporate board members. The consequences of doing so are best demonstrated through the following track & field metaphor.

Imagine a track race where women and men begin at the same starting point.[163] When the gunshot is fired and women and men begin running the race, everything appears to be equal among the two parties. However, with time, women begin to see hurdles in their lanes, while their male counterparts' lanes remain clear of any obstacles.[164] Although most women successfully jump over the first hurdle, they begin to see two, three, four, etc. hurdles manifest before them.[165] Some women decide to continue to run the race, accepting inevitable defeat due to their slower pace relative to male counterparts with hurdle-less lanes. An extremely small minority of super-speed women are able to jump over all of their hurdles and still stay on par with men, every so often surpass a few men. Nevertheless, the vast majority of women become exhausted and decide to opt out of the race, not wanting to deal with the negative potentialities of tripping and falling over the hurdles in their lanes.

Now imagine a group of audience members complain to the referees that the race is unfair. In response, the referees enact a new policy. Every so often, a referee drives next to the running competitors in a golf cart, picks up a few women who are still in the process of completing the race, places them in the passenger's seat, and drives them to the finish line. The

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[163] There are approximately an equal number of male and female college graduates; women and men enter the workforce in roughly equal numbers (45% of entry-level S&P 500 jobs in 2015 were with women.)
Catalyst, http://www.catalyst.org/knowledge/women-sp-500-companies
Council of Economic Advisors. (2014). *Women's participation in education and the workforce.* The Office of the President of the United States.

[164] Not all male lanes are free of hurdles. Men of different races, sexual orientations, disabilities, etc. may face varying degrees of hurdles in their track lanes as well. Similarly, the number of hurdles already in the female lanes due to their gender are compounded with varying amounts of additional hurdles if the female is of a certain race, sexual orientation, possess a disability, etc.

[165] The hurdles for women in the corporate world include the gender pay gap, biased familial responsibilities, bearing children, ingrained corporate stereotypes or discriminatory practices against women, etc.

referees all agree that this is the best and most efficient policy to ensure fairness in the race, because now roughly an equal number of men and women reach the finish line in time for an award.

However, new negative repercussions ensue. The men who would normally win an award without the golf cart policy feel cheated because a group of women who did not even run the full race reached the finish line before them. Furthermore, the men who did win an award are skeptical of and look down upon the abilities of *all* the female award winners. The male winners distrust the female winners because they perceive the female runners as cheaters who did not even run the full race, despite the fact that only a handful of women benefited from the golf cart policy. Finally, the golf cart policy fails to fix the real issue leading to unfairness in the race, namely, the removing of the hurdles in women's lanes. It simply places women at the finish line, thereby entrenching the focus on gender rather than ensuring that the track & field abilities of both men and women are equally measured in the race.

Gender quotas for corporate boards are akin to the golf cart policy in the track & field analogy. Both ensure equality of outcome. However, gender quotas potentially crowd out more qualified men in the pipeline from being appointed to corporate boards. In addition, they spark ability skepticism toward female board members, as long-standing male board members question whether their new female peers attained their board seat due to aptitude or gender alone. Finally, gender quotas for corporate boards fail to address the real fairness problem – the hurdles in female workers' lanes. Significant hurdles for working women include the lingering gender pay gap, biased expectations for familial responsibilities, childbirth, and ingrained corporate gender stereotypes or discriminatory practices against women. Thus, although gender quotas for corporate boards satisfy the normative rationale of equality of outcome, the objective itself is not compelling.

Equality of Opportunity

Advocates for gender quotas for corporate boards argue the policy achieves equality of opportunity.[166] However, their assertion has no base. Gender quotas do not meet the criteria inherent in equality of opportunity because they do not tackle the systematic barriers that are unjustly preventing working women from rising through the ranks.

With respect to the track & field analogy, equality of opportunity would manifest in any proposal to remove the hurdles in the lanes of female runners. Once the hurdles are eradicated and women are free to run in clear lanes, the relative athletic abilities of men and women would be measured fairly. Unfortunately, gender quotas do not address the removal of the hurdles in the lanes. Furthermore, as discussed earlier, one cannot assume that women who reach the finish line in a timely manner (with or without the assistance of golf carts) want to or are able to remove the hurdles for other women still running the race.

Similarly, within the corporate world, focusing on policies that eradicate systematic barriers for working women is critical to ensuring a fair rewards system. Embedded obstacles punish women for an ascriptive characteristic that is beyond their control, rather than encouraging women to remain in the workforce and compensating them equally with men for excellence. Indeed, abolishing systematic barriers does not mean everything should be equal in a strictly formal understanding of the word. Men and women are innately different biologically,

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[166] Bertrand, Marianne and Black, Sandra E. and Jensen, Sissel and Lleras-Muney, Adriana, Breaking the Glass Ceiling? The Effect of Board Quotas on Female Labor Market Outcomes in Norway. (August 12, 2014). NHH Dept. of Economics Discussion Paper No. 28/2014. Pg. 4 Available at SSRN: http://ssrn.com/abstract=2488955 or http://dx.doi.org/10.2139/ssrn.2488955

possess different personality traits through socialization, and play varying roles in society.[167] Removing systematic barriers would therefore entail mitigating the impact of biological discrepancies (e.g., childbirth for women), lessening entrenched gender discrimination, and encouraging equalized parental roles between men and women so both have balanced work-life responsibilities.[168]

In sum, gender quotas for corporate boards do not satisfy the criteria necessary to fulfill their policy objective of equality of opportunity.[169] Because the other arguments in support of gender quotas – economic, social good, and equality of outcome – have proven to be unconvincing, it is important to look to a new model for gender workplace advancement policies as a whole.

SALIENT OBJECTIVES BEHIND GENDER WORKPLACE ADVANCEMENT POLICIES

The policy objectives behind gender quotas for corporate boards are either unpersuasive or unmet, undermining the use of gender quotas as a valid gender workplace advancement policy tool. It is therefore imperative to uncover the salient purposes behind any gender workplace advancement policy, which I argue are equality of opportunity and autonomy.

Equality of Opportunity, Revisited

Equality of opportunity serves as a robust justification for gender workplace advancement policies. It ensures the removal of systematic barriers – or hurdles – so women have the opportunity to rise through the corporate ranks without the presence of undue burdens stemming from their ascriptive characteristic of sex.

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[167] Georges Desvaux and others, Women Matter: Gender Diversity, A Corporate Performance Driver (McKinsey and Co 2007).

[168] *Id.*

[169] Choudhury, B. (2014). New rationales for women on boards. *Oxford Journal of Legal Studies,* 1. doi:10.1093/ojls/gqt035

Equality of opportunity is embedded within a Rawlsian conception of justice. Rawls' second principle of justice states that "social and economic inequalities are to be arranged so that they are both to the greatest benefit of the least advantaged […] and attached to offices and positions open to all under conditions of fair equality of opportunity."[170] Rawls requires that the offices and positions are distributed on the basis of merit to ensure that everyone has a fair chance to attain those positions.[171] Furthermore, he believes all should have a reasonable opportunity to acquire skills on the basis of which merit is assessed.[172] Applying the Rawlsian framework of justice to issues of corporate gender equalities, we can see how equality of opportunity signifies a compelling rationale as it ensures the promotion of a more equal, and therefore, just society.[173]

Furthermore, equality of opportunity is a much more robust rationale than empirical claims given its roots in social justice and moral legitimacy. Gender equality is perceived as a basic human right, and it therefore withstands numerous contexts and applications. Equality of opportunity consequently serves as a powerful guiding force for governments, and they should strive to enact gender workplace advancement policies which uphold a Rawlsian conception justice and advocate for female workplace rights.

Autonomy

The second salient objective behind gender workplace advancement policies is discovered by posing the following question: what were we trying to achieve by allowing women to enter the workplace in the first place?

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[170] John Rawls, A Theory of Justice (rev edn, Harvard University Press 1999) 4, 10.
[171] *Id.*
[172] *Id.*
[173] *Supra* Choudhury, B. p. 11

There are numerous answers, yet I believe the most compelling is female autonomy. Women should have the freedom to define their careers however they wish without having to navigate unnecessary constraints imposed on them simply due to their sex – a characteristic they did not choose and cannot reasonably be asked to change. They should have the liberty to explore and define their authentic selves within the working world, seamlessly being able to move betwen industries or climb the corporate ladder if they wish. Women should be rewarded to the same degree as their male peers if they possess exactly the same levels of work ethic, interpersonal skills, intelligence, knowledge, and integrity, to name a few. Hence, women's rights to truly determine the course their lives in the working world without unfair constraints is so fundamental to the purpose behind allowing women to enter the workplace in the first place that autonomy should be considered as one of the two primary policy objectives behind all gender workplace advancement policies.

BENEFITS OF EQUAL OPPORTUNITY AND AUTONOMY AS A MODEL FOR GENDER WORKPLACE ADVANCEMENT POLICIES

By focusing on equal of opportunity and autonomy as the primary justifications for gender workplace advancement policies, the economic, social good and equality of outcome objectives sought by gender quotas will organically follow. Equality of opportunity and autonomy emphasize removing systematic barriers for women in the workplace and encouraging women to freely define their careers. These rationales eradicate the hurdles in the metaphorical lanes of working women, permitting them to run as fast as they wish on their career paths. This newfound augmented competition between women and men would likely boost economic productivity and enhance corporate bottom lines. In addition, women would be encouraged to stay in the race and compete longer, culminating in a more equitable gender distribution among corporate board members and executive managers; this would in turn produce the respective corporate social good benefits of increased corporate social responsibility and reduced fraud. In sum, gender workplace advancement policies focused on promoting equality of opportunity and autonomy seek to mend the bullet-hole wound of systematic gender barriers. By doing so, the apparent symptoms of the wound –economic unproductivity, dearth of social good initiatives, inequality of outcome – will heal on their own with time.

Furthermore, in the United States, policy objectives rooted in equal opportunity and autonomy would serve as a powerful complement to Title VII of the 1964 Civil Rights Act. Title VII bars intentional discrimination in the workplace, as well as "practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex."[174] An example of intentional discrimination would be a workplace manager outwardly berating and cursing only her male employees. Title VII protects the male employees from their manager's discriminatory acts, as they were clearly intended to target the male gender class. However, Title VII largely fails to address or remedy unintentional discriminatory workplace practices – those which are systemically embedded within the corporate fabric. An example of unintentional workplace discrimination is lack of both paid maternity and paternity leave, where women are socially expected to manage both their household affairs and careers even if they do not have the support of their husbands. Because men are not socially encouraged to slow down or take time off work to help raise children, they are able to navigate their careers with much more fluidity than their female coworkers who have to juggle two often conflicting sets of responsibilities (those of work and home). Policy objectives focused on encouraging equality of opportunity and autonomy, however, would immediately address unintentional discriminatory practices such as the lack of paid maternity and paternity leave because it is a clear hurdle

[174] The U.S. Equal Employment Opportunity Commission, *Federal Equal Employment Opportunity (EEO) Laws*, https://www.eeoc.gov/facts/qanda.html

restraining women from rising through the corporate ranks as seamlessly as their male coworkers. Hence, the introduction of gender workplace advancement policies promoting equal opportunity and autonomy, coupled with the presence of Title VII, would result in the holistic coverage of *all* types of discrimination against women – both intentional and unintentional.

Finally, workplace policies advocating for equal opportunity and autonomy do not have to be limited to women alone. The policy model could be adopted to apply to racial minorities, individuals of various sexual orientations, etc. The fluidity and universality of the model adds to its appeal, as equality of opportunity and autonomy will likely remain robust policy objectives across many classes of individuals, political contexts and time periods.

POTENTIAL OBJECTIONS

Two areas of possible contention need to be addressed. First, a proponent of quotas might wonder whether it wouldn't be better to implement gender quotas for corporate boards than to have no policy at all. Norway now has 40% women on their corporate boards, which is twice as high as the United States' 19.2% as of 2015.[175] By mandating a gender quota, Norway was clearly able to progress further than the United States, which simply has an open-ended diversity disclosure rule.[176]

In response, I seek to clarify the definition of progress. If progress is perceived as increasing the proportion of women on corporate boards, the Norwegian gender quota has been an effective policy. However, if progress is denoted as encouraging equal opportunity and

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[175] The percentage of women on corporate boards of S&P 500 companies. Catalyst, http://www.catalyst.org/knowledge/women-sp-500-companies

[176] In 2009, the Securities and Exchange Commission required public U.S. companies to disclose their levels of corporate diversity within their proxy statements. However, firms are able to define the concept of "diversity" on their own, affording them too much discretion.
Dhir, Aaron A., Homogeneous Corporate Governance Cultures (2014). Dhir, A. (2015). Homogeneous Corporate Governance Cultures. Chapter 1 in Challenging Boardroom Homogeneity: Corporate Law, Governance, and Diversity. New York: Cambridge University Press, Forthcoming; Osgoode Legal Studies Research Paper No. 64/2014; Yale Law School, Public Law Research Paper No. 521. Available at SSRN: http://ssrn.com/abstract=2487149

autonomy – the two salient normative objectives in my model for gender workplace advancement policies – then Norwegian gender quotas have yielded inconclusive results in the realm of progress. Evidence has shown that the implementation of the mandatory quota in Norway has led to no change in the gender wage gap, which is an important measure of equality of opportunity.[177] Because improvement has not been made with respect to equality of opportunity and autonomy in Norway, it is not clear that salient progress has taken place. As a result, the implementation of the Norwegian gender quota is not necessarily any better than no gender quota at all – both are essentially interchangeable in terms of progress.

The second possible point of contention addresses affirmative action programs as a whole. Given that gender quotas for corporate boards are a type of workplace affirmative action policy, and the broad class of affirmative action does not conduce to the objectives of equality of opportunity or autonomy, are all workplace affirmative action policies therefore unconvincing? Do the arguments here entail that even college affirmative action policies are unpersuasive?

In response, I concede that not *all* gender workplace advancement policies need to meet the standards of equal of opportunity and autonomy to justify their existence. Equal opportunity an autonomy should simply be regarded as sufficient justifications. For example, the Supreme Court's majority opinion in *Johnson v. Transportation Agency, Santa Clara County* (1987) has a compelling justification in support of the agency's affirmative gender affirmative action program that promoted Diane Joyce over Paul Johnson after factoring her gender in the decision-making process.[178] In his majority opinion, Justice Brennan emphasized that women have been underrepresented in the job dispatcher category, and the transportation agency's affirmative

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[177] *Supra* Note 132. Bertrand, Marianne and Black, et. al Breaking the Glass Ceiling

[178] *Johnson v. Transportation Agency, Santa Clara*, 480 U.S. 616 (1987)

action program did not explicitly set quotas.[179] Diane Joyce was a qualified applicant, and using gender as one of the many factors to be considered was reasonable in order to remedy past discrimination.[180] Justice Sandra Day O'Connor agreed, saying that if we were really going to overcome a long history of gender discrimination, these kinds of measures were needed.[181] Hence, although the gender workplace affirmative action program in *Johnson* does not explicitly advance the goals of equal opportunity and autonomy, its existence as a light stepping stone toward the removal of systematic barriers against women in the workplace is justified.

Moreover, with regard to college affirmative action programs, I believe affirmative action in higher education and workplace affirmative action are inherently two different policies and should be analyzed separately. Despite the lack of U.S. Supreme Court precedent in support of this view, education should be viewed as a fundamental right in today's society. With this assumption in mind, college affirmative action programs therefore provide a means to ensure that classes of traditionally oppressed individuals have the ability to educate themselves and attain a better life. Furthermore, the systematic barriers preventing minorities from engaging in higher education programs are so complex that the most effective mechanism in that particular context would be managing the outcome of higher education enrollment on the basis of ascriptive characteristics.[182] Workplace affirmative action programs, on the other hand, often serve as a distraction discouraging governments from addressing the root causes of widely skewed outcome discrepancies, which can feasibly be tackled and mitigated with a concerted effort. For instance, politicians *are capable* of implementing legislation mandating paid maternity and paternity

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[179] *Id.*
[180] *Id.*
[181] *Id.*
[182] *Regents of the Univeristy of California v. Bakke* 438 U.S. 265 (1978) upheld using race as a factor in determining college admissions, identifying diversity in the classroom as a compelling government interest.

leave, for instance, but they persistently fail to do so. Because there are numerous practical solutions to remedy the inherent systematic barriers (against women and minorities) ingrained in the workplace, politicians therefore have a duty to focus on removing the hurdles rather than placing individuals at the finish line.

RECOMMENDATIONS

To promote the salient policy objectives of equal opportunity and autonomy, politicians should consider implementing the following initiatives to remove entrenched systematic barriers against working women. The first issue to be addressed should be equal pay for equal work. As of 2014, working women in the United States made 78 percent of what men earned.[183] In 1994, women earned 72 percent of every man's dollar, demonstrating a mere 6 percent decline in the gender wage gap over 20 years.[184] Indeed, the lack of equal pay for equal work in the United States, and across the world, disincentivizes women from remaining in the workforce.[185] Furthermore, the minimal progress addressing this issue over the past two decades suggests a need for equal opportunity and autonomy policy objectives, which would immediately seek to remedy the gender wage gap to ensure a fair hurdle-less race.

Moreover, the lack of mandated paid maternity *and* paternity leave creates an undue societal expectation for women to both manage their careers and home affairs.[186] Women should not be penalized in the working world just because they biologically bear children, and the social expectation should be that both men and women work as a team to raise children. In addition, paid leave has been shown to increase the probability that women continue in their job after

[183] Council of Economic Advisors. (2014). *Women's participation in education and the workforce.* The Office of the President of the United States.

[184] *Id.*

[185] Nopo, Hugo, Nancy Daza, and Johanna Ramos. 2011. Gender earnings gaps in the world. *IZA World of Labor*.

[186] Coontz, Stephanie. 2013. Why gender equality stalled. *New York Times*, February 15, 2013, 2013, sec Sunday Review.

having a child, rather than quitting permanently, saving employers the expense of recruiting and training additional employees.[187] Thus, not only would paid maternity and paternity leave equalize gender responsibilities in the home, it would also incentivize women to remain in the workforce without sacrificing long-run company profits.[188] Equal opportunity and autonomy would encourage the implementation of such legislation.

Finally, negative gender stereotypes embedded within corporate culture need to be tackled, and policies focused on equal opportunity autonomy would be best suited to do so. For instance, women often lack the presumption of competence enjoyed by men, needing work harder to achieve the same results.[189] Male achievements are more likely to be ascribed to individual capabilities such as intelligence, commitment, and drive, while female achievements are more often attributed to external factors such as chance or special treatment.[190] Furthermore, characteristics that are assertive in a man may seem abrasive in a woman.[191] Men are more readily credited with leadership ability and accepted as leaders, while female leaders persistently risk seeming too feminine or not feminine enough.[192] Clearly, ingrained gender biases hamper women's abilities to rise through the corporate ranks. Policies focused on advocating for equal opportunity and autonomy would best address such negative stereotypes, as they are capable of tackling the elusive issue of unintentional discrimination within corporate cultures.

CONCLUSION

[187] Council of Economic Advisors. 2014. *The economics of paid and unpaid leave.*

[188] *Id.*

[189] Eli Wald, *Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Law Firms*, 78 FORDHAM L. REV. 2245, 2256 (2010)

[190] Janet K. Swim & Lawrence J. Sanna, *He's Skilled, She's Lucky: A Meta-Analysis of Observers' Attributions for Women's and Men's Successes and Failures,* 22 Personality & Soc. Psychol. Bull. 507, 507 (1996)

[191] Alice H. Eagly & Steven J. Karau, *Role Congruity Theory of Prejudice Toward Female Leaders*, 109 Psychol. Rev. 573, 578 (2002).

[192] Laurie A. Rudman & Stephen E. Kilianski, *Implicit and Explicit Attitudes Toward Female Authority,* 26 Personality & Soc. Psychol. Bull. 1315, 1315, 1325 (2000)

In sum, gender quotas for corporate boards do not satisfy compelling policy objectives. Economic justifications for gender quotas hinge upon inconclusive empirical results, undermining the efficacy of quotas' 'business case' rationales. Social good benefits of gender quotas, such as improved corporate social responsibility and reduced fraud, are not persuasive policy objectives alone because their benefits fail to outweigh the underlying pipeline and fairness issues resulting from gender quotas. Finally, equality rationales validating the implementation of gender quotas fail to truly distinguish between equality of outcome and equality of opportunity. By artificially supervising the number of women directors, gender quotas uphold equal outcome, but perhaps at the expense of equal opportunity because it entrenches the focus on gender.

Two salient gender workplace advancement policy objectives emerge after analyzing the rationales behind gender quotas for corporate boards – equality of opportunity and autonomy. Equality of opportunity is embedded within a Rawlsian framework of justice. It seeks to remove the systemic barriers preventing women from climbing the corporate ladder. Autonomy advocates for women to freely be able to define their careers, and in extension their identities, without unnecessary restrictions placed on them because their sex – a characteristic they did not choose and cannot reasonably be asked to change. Together, equality of opportunity and autonomy create a robust policy framework which can ignite the implementation of legislation that would break down the 'glass ceiling' once and for all.

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