

## SOME REFLECTIONS ON THE DIVERSITY OF CORPORATE BOARDS: WOMEN, PEOPLE OF COLOR, AND THE UNIQUE ISSUES ASSOCIATED WITH WOMEN OF COLOR

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### INTRODUCTION

As one might expect, there are many similarities between the circumstances of women directors and directors of color, which include African Americans, Latinos, and Asian Americans.<sup>1</sup> Indeed, both groups began appearing on corporate boards in significant numbers during the same period—right after the Civil Rights Movement—pursuant to which the push for racial equality throughout society precipitated efforts to achieve greater representation of people of color, as well as women, on corporate boards.<sup>2</sup> Moreover, while women and people of color have experienced some increase in board representation over the last few decades, both groups also have encountered significant barriers to their success on corporate boards.<sup>3</sup> However, people of color appear to have experienced more significant barriers than women, while women of color appear to be experiencing the most formidable of such barriers.<sup>4</sup> By analyzing the empirical

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<sup>1</sup> This Article uses the term “director of color” or “people of color” to refer to African Americans, Asian Americans, and Latinos as a group because the bulk of studies regarding racial and ethnic diversity focus on those three groups. It should be noted that often the empirical evidence regarding these groups is not entirely accurate because of multiple race categorization. *See infra* note 9 (explaining discrepancies in statistics).

<sup>2</sup> *See Who Are the Women in the Board Rooms?*, 16 BUS. & SOC'Y REV. 5, 5 (1975). According to the study, there were 237 companies with women directors in 1975. *Id.*

<sup>3</sup> *See infra* Parts I, II.

<sup>4</sup> *See infra* Part III.

data on women and people of color as directors, this Article compares and contrasts the experiences of women and people of color on corporate boards and discusses how the differences in those experiences might impact their ultimate success in achieving greater representation on corporate boards.

Part I and Part II demonstrate the striking similarities between women and people of color both with regard to their relative success in gaining directorships since the 1970s, as well as in relation to the continued impediments to their advancement. These Parts also reveal not only that women have experienced some greater success in securing a representative number of board seats, but also suggest that women may obtain more complete representation at a faster pace. This appears true both with respect to directors of color as a collective group, and with regard to each individual racial or ethnic group, none of which have achieved a level of board representation close to those achieved by women.

Part III focuses on women of color. This Part illustrates the manner in which women of color appear to have experienced more significant impediments to their success on corporate boards than either white women or men of color. This Part then suggests that this phenomenon may significantly undermine African Americans' board progress, and perhaps even the progress of all groups of color since African Americans represent the largest portion of people of color serving on corporate boards,<sup>5</sup> not only because African American women significantly outnumber African American men within the student population, but also because African American women have come to outnumber their male counterparts within the labor force more generally. This pattern distinguishes African Americans from whites and all other racial groups in areas in which men continue to outnumber women.<sup>6</sup> This Part concludes that, in light of the greater difficulty women of color experience in obtaining board positions, these statistical patterns pose special challenges for advancing diversity in the boardroom. Ultimately, this Article

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<sup>5</sup> See *infra* notes 10 and 54 and accompanying text (noting that more than 70% of the women of color directors are African American women and that African Americans account for almost half of the directors of color).

<sup>6</sup> See *infra* notes 68–69 and accompanying text (explaining that while women comprise a greater portion of the student population among all groups, with the exception of African American men, men continue to account for the majority of the labor force and continue to receive the bulk of all conferred degrees).

warns that the disproportionate number of African American women in the workforce and student population may make achieving more representative percentages of racial and ethnic diversity on the board significantly more difficult because such achievement may require dismantling the dual barriers of race and gender that women of color encounter.

#### I. A STORY OF PROGRESS: BOARD REPRESENTATION BASED UPON PERCENTAGE OF COMPANIES WITH DIVERSE DIRECTORS

The vast majority of public corporations have a least one woman or person of color on their board. In 2004, 82% of *Fortune* 1000 companies had at least one woman on the board.<sup>7</sup> Women's board representation is universal at the top corporations. Hence, in 2003, every *Fortune* 100 company had at least one woman on its board.<sup>8</sup> Similarly, a 2004 study revealed that 76% of *Fortune* 1000 companies had at least one member of an ethnic minority on their board.<sup>9</sup> This percentage includes 47% African Americans, 18% Latinos, and 11% Asian Americans.<sup>10</sup> These figures reveal that virtually all *Fortune* 1000 companies have either ethnic or gender diversity on their board of directors.

Then too, there appears to have been considerable progress with regard to such diversity over the last thirty years. One study revealed that in 1975, eleven companies currently in the

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<sup>7</sup> See KORN/FERRY INT'L, 31ST ANNUAL BOARD OF DIRECTORS STUDY 12 (2004) [hereinafter KORN/FERRY STUDY]. Korn/Ferry's demographic statistics reflect data collected from 904 companies. See *id.* at 9.

<sup>8</sup> See CATALYST, 2003 CATALYST CENSUS OF WOMEN BOARD DIRECTORS (2003), <http://www.catalystwomen.org/bookstore/files/fact/WBD03factsheetfinal.pdf> [hereinafter WOMEN BOARD DIRECTORS].

<sup>9</sup> See KORN/FERRY STUDY, *supra* note 7, at 11. In contrast to women, the racial and ethnic composition of board members is not always publicly available, nor visibly apparent from public documents, and hence any data collected regarding such directors stems from companies willing to provide it. See WOMEN BOARD DIRECTORS, *supra* note 8; see also Lisa M. Fairfax, *The Bottom Line on Board Diversity: A Cost-Benefit Analysis of the Business Rationales for Diversity on Corporate Boards*, 2005 WIS. L. REV. 795, 799 n.16, 800-01 n.21 (discussing discrepancies with data on racial and ethnic board diversity); *infra* note 28 (discussing difficulty with collecting data related to African American directors). This suggests some inherent unreliability with all statistics related to directors of color.

<sup>10</sup> KORN/FERRY STUDY, *supra* note 7, at 12. The progress of minority representation on corporate boards over the past ten years is evident by comparing the 1994 and 2004 statistics. In 1994 African Americans accounted for 31%, Latinos for 9%, and Asian Americans for 4%. *Id.*

*Fortune* 100 had at least one woman director.<sup>11</sup> That study suggested that, in the past thirty years, the number of top corporations with women board members increased almost ten-fold from 11% to 100% in 2003.<sup>12</sup> Moreover, the number of *Fortune* 1000 companies with at least one woman on their boards has risen nearly 20% over the last ten years, going from 63% in 1994 to 82% in 2004.<sup>13</sup> Like with women, the last thirty years have seen a considerable increase in the percentage of companies with people of color serving on their boards. In 1973, only 7% of *Fortune* 1000 companies had boards containing at least one ethnic minority.<sup>14</sup> Hence, the 2004 figure of 76% represents a near 70% increase over the last thirty years. The current percentage of directors of color at *Fortune* 1000 corporations reflects a 32% increase from ten years ago.<sup>15</sup> These figures reflect that corporations have steadily increased their board diversity in terms of gender as well as racial and ethnic diversity.

While women appeared to have fared slightly better than people of color overall, some ethnic groups have made significant headway within the last decade. Indeed, people of color have experienced dramatic increases in board representation within the last decade, and their gains during this period have outpaced that of women.<sup>16</sup> For example, Latinos have doubled their board

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<sup>11</sup> See *Who Are the Women in the Board Rooms?*, *supra* note 2, at 5. Those companies were American Telephone and Telegraph, DuPont, International Business Machines Corp., J.C. Penny, Merck & Co., Metropolitan Life Insurance Co., New York Life Insurance Co., Sears Roebuck, Walt Disney Prod., and Wells Fargo.

<sup>12</sup> See WOMEN BOARD DIRECTORS, *supra* note 8 (demonstrating that all *Fortune* 100 companies had at least one woman director in 2003).

<sup>13</sup> See KORN/FERRY STUDY, *supra* note 7, at 11. With some caveats, women's board representation has steadily increased. According to the Korn/Ferry Study, there has been a slow, but steady increase of women board members at these companies. Thus, in 1999 74% of *Fortune* 1000 companies had at least one woman director, 74% in 2000, 78% in 2001, 79% in 2002, and 80% in 2003. *Id.* at 12.

<sup>14</sup> See *New Korn/Ferry International Study Points to Dramatic Changes in America's Corporate Boardrooms Over Past 25 Years*, BUS. WIRE, Apr. 22, 1998, <http://www.businesswire.com>.

<sup>15</sup> See KORN/FERRY STUDY, *supra* note 7, at 11 (noting that in 1994 only 44% of *Fortune* 1000 companies had at least one or more ethnic minority on their board). According to the study, 47% of companies had one or more ethnic minorities in 1995, as compared to 65% in 1999, 65% in 2000, 68% in 2001, and 71% in 2002. *See id.* at 12.

<sup>16</sup> Women's percentages increased 19% over the last ten years. *See* KORN/FERRY STUDY, *supra* note 7, at 11. In comparison, the number of companies with at least one ethnic minority on their board has risen 32%—from 44% in 1994 to 76% in 2004. *See id.*

representation, while Asian Americans have tripled their figures over the last decade.<sup>17</sup> However, women appear to be better represented on corporate boards than all people of color combined, as well as each racial or ethnic group individually. Thus, there are 6% more *Fortune* 1000 companies with at least one women director than those with at least one person of color.<sup>18</sup> Then too, there are 35% more companies with at least one woman director than companies with at least one African American board member, the racial group with the largest board representation.<sup>19</sup> The fact that women may have fared better than people of color may be deemed ironic given that women's ascension into board ranks was precipitated in part by the struggles of people of color during the Civil Rights Movement.<sup>20</sup> Regardless of this observation, both groups appear to have made significant strides since the 1970s.

What do these patterns reveal regarding the future of gender or ethnic diversity on corporate boards? The number of women directors at *Fortune* 500 companies appears to have increased by at least 1% over the last five years.<sup>21</sup> If these patterns persist, then within the next twenty years, virtually all *Fortune* 500 companies, and perhaps even most all *Fortune* 1000 companies, may have at least one woman on their boards. Studies also demonstrate a steady increase in the percentage of directors of color within the last five years.<sup>22</sup> However, it may be more difficult to predict the impact of these studies on future trends. Indeed, the fact that the percentages related to people of color encompass a variety of different groups makes it more difficult to ascertain a clear pattern. In fact, in some years, some groups experienced dramatic increases while other groups increased at a much slower rate.<sup>23</sup> Then too, some groups, like Asian Americans, comprise a relatively small percentage of the total directors of colors, and hence better representation for those groups may involve significantly more time. Moreover, directors

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<sup>17</sup> Latinos' percentages went from 9% in 1994 to 18% in 2004, while Asian Americans rose from 4% in 1994 to 11% in 2004. *See id.*

<sup>18</sup> *See id.*

<sup>19</sup> 82% of companies have at least one woman director, while only 47% of companies have at least one African American. *See id.* at 12.

<sup>20</sup> *See Who Are the Women in the Board Rooms?*, *supra* note 2, at 5.

<sup>21</sup> *See WOMEN BOARD DIRECTORS*, *supra* note 8, at 1.

<sup>22</sup> *See supra* notes 14–15 and accompanying text.

<sup>23</sup> *See supra* notes 9–10, 17 and accompanying text.

of color lag behind women, despite the fact that both groups experienced the first significant increase of directors at the same time in history.<sup>24</sup> This lag may be attributed to the fact that women comprise a greater percentage of the population than people of color.<sup>25</sup> At the very least, because of this lag, it may take people of color longer to obtain complete board representation at most *Fortune* 500 or *Fortune* 1000 companies.

## II. MILES TO GO: REPRESENTATION BASED UPON AVAILABLE BOARD SEATS

Despite the progress women and people of color have made over the last thirty years, the total number of board seats held by women and people of color is relatively small. In 2003, women held 13.6% of available board seats at *Fortune* 500 companies.<sup>26</sup> In 2003 and 2004, people of color held roughly 10% of board seats at *Fortune* 500 companies.<sup>27</sup> More specifically, African Americans held 8.1% of such seats in 2004,<sup>28</sup> while Latinos held roughly 1.6% in 2003,<sup>29</sup> and Asian Americans held 1% in 2003.<sup>30</sup>

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<sup>24</sup> See *supra* notes 19–20 and accompanying text.

<sup>25</sup> See CATALYST, QUICK TAKES: U.S. LABOR FORCE, POPULATION, & EDUCATION 3 (2005), <http://www.catalyst.org/files/quicktakes/Quick%20Takes%20-%20Labor%20Force,%20Population%20and%20Education.pdf> [hereinafter LABOR FORCE QUICK TAKES] (demonstrating population differences).

<sup>26</sup> WOMEN BOARD DIRECTORS, *supra* note 8, at 1.

<sup>27</sup> This figure is based on a collection of studies regarding the board representation of African Americans, Latinos, and Asian Americans. See *infra* notes 28–30 and accompanying text. A 2002 study found that people of color held only 6.9% of the more than 11,000 board seats available within *Fortune* 1000 companies. See Gary Strauss, *Good Old Boys' Network Still Rules Corporate Boards*, USA TODAY, Nov. 1, 2002, at 1B. The study found that 492 people of color held 798 of 11,500 board seats. See *id.* That study found that African Americans held 388 or roughly 3.3% of board seats, Asian Americans held 223 or nearly 1.9% of such seats, while Latinos held 186 or approximately 1.6% of the board seats of *Fortune* 1000 companies. See *id.*

<sup>28</sup> EXECUTIVE LEADERSHIP COUNCIL, 2004 CENSUS OF AFRICAN AMERICANS ON BOARDS OF DIRECTORS OF FORTUNE 500 COMPANIES 6 (2004), available at <http://www.elcinfo.com/census/2004Census.pdf> [hereinafter AFRICAN AMERICAN BOARD STUDY]. The study found that African Americans held 449 out of 5572 board seats. *Id.* Like Catalyst, the study emphasized the difficulty with gathering data related to directors of color since such information is not publicly available, and hence researchers must rely on responses from corporations. See *id.* at 5.

<sup>29</sup> See *The Honored Few*, HISPANIC BUS., Jan./Feb. 2004, at 48 (finding that Hispanics held 96 board seats at *Fortune* 500 companies, representing 1.6% of available board seats at such companies).

<sup>30</sup> COMMITTEE OF 100, THE COMMITTEE OF 100'S ASIAN PACIFIC AMERICAN (APA) CORPORATE BOARD REPORT CARD 9–10 (2004) (reporting that in 2003 Asians

These figures reveal that women and people of color occupy only a small portion of available corporate board seats.

Moreover, these figures appear relatively low when compared to the number of women and people of color in the labor force and school population. In 2004, women comprised roughly 46% of the U.S. labor force, and held more than 50% of all managerial and professional positions.<sup>31</sup> Then too, in 2002, women earned 57.4% of all bachelor's degrees in the U.S., 58.7% of all master's degrees, 46.3% of all doctorate degrees, and 48% of all law degrees.<sup>32</sup> Women also earned 35% of all MBA Degrees from 2002 to 2003.<sup>33</sup> When viewed in context of these figures, women appear to be under-represented in the corporate board room.

People of color appear to be experiencing similar patterns of under-representation. Indeed, in 2003, people of color accounted for almost 30% of the labor force.<sup>34</sup> In 2004, African Americans comprised 11.3% of the labor force,<sup>35</sup> Latinos accounted for 13.1% of the labor force,<sup>36</sup> and Asian Americans accounted for 4.3% of the labor force.<sup>37</sup> In 2002, people of color received nearly 22% of all bachelor's degrees, 18% of all master's degrees, and 15% of all doctoral degrees.<sup>38</sup> When viewed against their percentages in the

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held 60 out of 5875 *Fortune* 500 board seats, totaling 1% of such seats).

<sup>31</sup> CATALYST, QUICK TAKES: STATISTICAL OVERVIEW OF WOMEN IN THE WORKPLACE 1 (2005), <http://www.catalyst.org/files/quicktakes/Quick%20Takes%20-%20Statistical%20Overview.pdf> [hereinafter WOMEN IN THE WORKPLACE].

<sup>32</sup> LABOR FORCE QUICK TAKES, *supra* note 25, at 4.

<sup>33</sup> WOMEN IN THE WORKPLACE, *supra* note 31, at 1.

<sup>34</sup> LABOR FORCE QUICK TAKES, *supra* note 25, at 1 (indicating that people of color comprise 29.6% of the labor force).

<sup>35</sup> CATALYST, QUICK TAKES: AFRICAN-AMERICANS 1 (2005), <http://www.catalyst.org/files/quicktakes/Quick%20Takes%20-%20AfricanAmericans.pdf> [hereinafter AFRICAN AMERICAN QUICK TAKES].

<sup>36</sup> CATALYST, QUICK TAKES: LATINOS/LATINAS 1 (2005), <http://www.catalyst.org/files/quicktakes/Quick%20Takes%20-%20Latinos%20and%20Latinas.pdf> [hereinafter LATINOS QUICK TAKES].

<sup>37</sup> CATALYST, QUICK TAKES: ASIAN-AMERICANS 1 (2005), <http://www.catalyst.org/files/quicktakes/Quick%20Takes%20-%20Asian-Americans.pdf> [hereinafter ASIAN AMERICAN QUICK TAKES]. Catalyst notes that the numbers do not add up completely due to rounding and multiple race categorization. See LABOR FORCE QUICK TAKES, *supra* note 25, at 2.

<sup>38</sup> Data reported by various Catalyst studies reveals that in 2002, African Americans received 9% of bachelor's degrees, 8.4% of master's degrees, and 5.4% of doctoral degrees. See AFRICAN AMERICAN QUICK TAKES, *supra* note 35, at 1. That same year, Latinos received 6.4% of bachelor's degrees, 4.6% of master's degrees, and 3.2% of doctoral degrees. See LATINOS QUICK TAKES, *supra* note 36, at 1. Asian Americans received 6.4% of bachelor's degrees in 2002, 5.3% of master's degrees, and

labor force and among degree candidates, people of color appear to be under-represented at the corporate board level, though not to the same extent as women based on their portion of the labor force and school population.

While there may be a variety of explanations for this lack of adequate representation, one factor appears to be that corporate boards draw their members from the corporate executive ranks where women and people of color occupy relatively few positions. Studies suggest that the most common occupation of board members is executive or retired executive.<sup>39</sup> Women hold a relatively small percentage of such positions. Thus, in 2002, 15.7% of corporate officers in *Fortune* 500 companies were women.<sup>40</sup> Then too, there are currently only about 1.8% of women CEOs of *Fortune* 500 companies.<sup>41</sup>

People of color hold even fewer of these top-level positions than women. Thus, in 2002, people of color held only 15.2% of official and management positions within the entire private sector.<sup>42</sup> Because this figure encompasses many more entities than *Fortune* 500 companies, it indicates that people of color hold comparatively fewer positions in those companies than women. Also, there are currently only eighteen African American CEOs at *Fortune* 1000 companies,<sup>43</sup> and there appears to be no Latinos,

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5.2% of doctoral degrees. See ASIAN AMERICAN QUICK TAKES, *supra* note 37, at 1.

<sup>39</sup> See KORN/FERRY STUDY, *supra* note 7, at 12 (noting that 95% of *Fortune* 1000 companies have a retired executive on their board, while 82% of such companies have a current executive on their board).

<sup>40</sup> See CATALYST, 2002 CATALYST CENSUS OF WOMEN CORPORATE OFFICERS AND TOP EARNERS IN THE FORTUNE 500, at 1 (2002), [http://www.catalyst.org/files/fact/COTE\\_Factsheet\\_2002updated.pdf](http://www.catalyst.org/files/fact/COTE_Factsheet_2002updated.pdf) [hereinafter CATALYST CENSUS OF WOMEN OFFICERS]. According to the study, women held only 7.9% of the highest titles within these corporations. *Id.*

<sup>41</sup> The 2002 study lists six women CEOs. See *id.* In 2005, there were nine women CEOs of *Fortune* 500 companies. See *The Fortune 500, Women CEOs*, FORTUNE, Apr. 18, 2005, <http://www.fortune.com/fortune/subs/fortune500/womenceos>.

<sup>42</sup> See U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM'N, OCCUPATIONAL EMPLOYMENT IN PRIVATE INDUSTRY BY RACE/ETHNIC GROUP/SEX, AND BY INDUSTRY, UNITED STATES (2002), <http://www.eeoc.gov/stats/jobpat/2002/us.html>.

<sup>43</sup> See Kenneth Meeks, *The 75 Most Powerful African Americans in Corporate America*, BLACK ENTERPRISE, Feb. 2005, at 104, 106. Five of the most successful African American CEOs of *Fortune* 500 companies are Kenneth I. Chenault of American Express, E. Stanley O'Neal of Merrill, Lynch & Co., Richard D. Parsons of Time Warner, and newcomers Alwyn Lewis of Sears Holding Corp. and Clarence Otis of Darden Restaurants. *Id.*



and only one Asian American (who is also a woman).<sup>44</sup>

On a positive note, these figures suggest that once women and people of color achieve the highest positions within the corporation, they have little trouble transitioning into corporate board positions. Indeed, the number of women corporate officers is fairly consistent with the number of women board members.<sup>45</sup> Then too, the percentage of managers of color appears more consistent with the portion of people of color serving as directors at *Fortune* 500 companies than the portion of such people in the labor force more generally.

Unfortunately, these figures also suggest that such groups are experiencing difficulties moving from the labor force to the highest levels within corporate America, and that such difficulties have an impact on board representation. Indeed, this is supported by the fact that women account for close to half of the labor force, but only about 15% of corporate officers.<sup>46</sup> Similar difficulties are reflected in the gap between people of color in the labor force and the relatively small percentage of those who ascend into the highest levels within the corporation. The disconnect between the number of people of color and women within the labor force and the number who hold top level corporate positions indicates that such groups are experiencing barriers to their advancement. Studies indicate various reasons for these barriers from discrimination and stereotyping to lack of appropriate mentors and networking opportunities.<sup>47</sup>

Regardless of the reasons, such barriers have repercussions for board diversity because corporate boards rely heavily on executive ranks for their members. Certainly, corporations do

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<sup>44</sup> See *The Fortune 500, Women CEOs*, *supra* note 41 (identifying Andrea Jung as CEO of Avon).

<sup>45</sup> The U.S. Department of Labor defines managerial positions to include both executive and administrative positions. See Edward S. Adams, *Using Evaluations to Break Down the Male Corporate Hierarchy: A Full Circle Approach*, 73 U. COLO. L. REV. 117, 147–48 (2002). As a result, both the 50% figure for women and the 15% figure for people of color encompass positions broader than corporate executives, and thus do not accurately reflect the number of such people holding top-level positions within corporations. Therefore, it is more accurate to use the percentage of women corporate officers as a point of comparison.

<sup>46</sup> Compare WOMEN IN THE WORKPLACE, *supra* note 31 (noting that women made up 46.4% of the total workforce in 2004), with CATALYST CENSUS OF WOMEN OFFICERS, *supra* note 40 (noting that in 2002 only 15.7% of corporate officers in the *Fortune* 500 were women).

<sup>47</sup> See, e.g., CATALYST, FACTS ABOUT WORKING WOMEN 6, 8 (2004), <http://www.catalyst.org/files/tid/tidbits04.pdf> [hereinafter WORKING WOMEN].

not depend exclusively on current or former executives to fill board seats. Hence, studies reveal that corporations choose directors from other backgrounds including former government officials, academics, and even attorneys.<sup>48</sup> However, women and people of color also have experienced difficulties with attaining top positions within these professions.<sup>49</sup> More importantly, despite some variety in director backgrounds, executives tend to dominate many corporate boards, with such executive directors comprising 80% and sometimes 90% of a corporation's entire board.<sup>50</sup> This over-reliance on executives has a disproportionately negative impact on people of color and women because those groups do not have a significant presence within the executive ranks.

This Part reveals that women and people of color are under-represented on corporate boards when viewed in light of the portion of available board seats they hold, and the percentages they occupy in the labor force and among degree holders. One key reason for this lack of appropriate representation may be that corporations rely heavily on current or former executives to fill their board seats. Many women and people of color have experienced difficulties with ascending to the executive ranks. This difficulty, therefore, negatively impacts efforts to achieve greater board diversity. From this perspective, corporations seeking to achieve that diversity must either expand their search to include people other than those with executive experience, which corporations appear to do more frequently for directors of color,<sup>51</sup> or affirmatively alleviate barriers to gaining that executive experience.

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<sup>48</sup> See KORN/FERRY STUDY, *supra* note 7, at 12.

<sup>49</sup> See Fairfax, *supra* note 9, at 819 n.105 (discussing numbers of people of color in various occupations); see also CATALYST, QUICK TAKES: WOMEN IN GOVERNMENT 1 (2005), <http://www.catalyst.org/files/quicktakes/Quick%20Takes%20-%20Women%20in%20Government.pdf> (noting that women comprise 14% of senators and 15.4% of the members of the House of Representatives in the 109th Congress); CATALYST, QUICK TAKES: WOMEN IN LAW 1 (2005), <http://www.catalyst.org/files/quicktakes/Quick%20Takes%20-%20Women%20in%20Law.pdf> (noting that women account for 48% of law school students, but only 29.4% of all lawyers and 17.1% of all partners).

<sup>50</sup> See Fairfax, *supra* note 9, at 818–19 (revealing that the vast majority of board members at top corporations are executives or former executives).

<sup>51</sup> See Fairfax, *supra* note 9, at 809–10 (noting that directors of color tend to have more varied backgrounds than their white counterparts).

## III. WOMEN OF COLOR: A CAUSE FOR PARTICULAR CONCERN

As a subset of both women and people of color, women of color occupy a unique position within the corporate board structure. Like these other groups, the empirical evidence reveals that women hold a small portion of the total board seats, particularly as measured against their percentages within the labor force and student population. Then too, women of color hold a comparatively smaller percentage of board seats compared to both white women and men of color. Additionally, as this Part illuminates, the empirical evidence highlights problems unique to African Americans that have important repercussions for the potential to increase the number of people of color holding corporate board seats.

Women of color occupy a small percentage of the total available board seats. Thus, in 2003, women of color accounted for only 3% of the total available board seats at *Fortune* 500 companies.<sup>52</sup> This represents an increase of only half a percentage point since 1999.<sup>53</sup> African American women held 72% or the vast majority of such board seats.<sup>54</sup> Latinas held about 20% of the seats occupied by women of color, while Asian American women held about 8% of such seats.<sup>55</sup>

Then too, women of color appear to be faring worse than both of their counterparts; the empirical evidence suggests that the vast majority of women directors are white, while the bulk of directors of color are men. Thus, in 2003, women of color held roughly 20% of the board seats held by women at *Fortune* 500 companies.<sup>56</sup> In this same vein, African American men constitute a majority of African American directors at such companies, outnumbering women at a rate of three to one.<sup>57</sup> Indeed, in 2004, African American men held 6.2% of *Fortune* 500 board seats as

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<sup>52</sup> See WOMEN BOARD DIRECTORS, *supra* note 8, at 2. This figure represents data from 415 *Fortune* 500 companies. *Id.* At those companies, women of color held 145 of 4774 available board seats. *Id.*

<sup>53</sup> See *id.*

<sup>54</sup> See *id.* (noting that African American women held 104 of the 145 board seats occupied by women of color).

<sup>55</sup> See *id.* (noting that Latinas held 29 of such seats, while Asian Americans hold 12 board seats).

<sup>56</sup> See *id.* (noting that women of color held 145 of the 655 board seats held by women at 415 companies).

<sup>57</sup> See AFRICAN AMERICAN BOARD STUDY, *supra* note 28, at 9.

contrasted with the 1.9% held by African American women.<sup>58</sup> Since the vast majority of women directors of color are African American, this pattern suggests that Latinos and Asian men also outnumber their female counterparts on corporate boards.

The number of women directors of color appears low in comparison to their percentages in the workforce and school population. Women of color constituted 13.4% of the labor force in 2002.<sup>59</sup> In 2004, women of color comprised about 10% of people in management and professional positions: African American women accounted for 5% of such positions, Asian American women accounted for 2.5% of such positions, while Latinas made up 3.3% of persons in such occupations.<sup>60</sup> Thus, similar to other groups, women of color appear to be under-represented on corporate boards.

Moreover, women of color have found ascension to the highest levels of corporate America particularly difficult. Indeed, while such women comprised more than 13% of the labor force in 2002 and held 10% of management positions, they accounted for only 1.1% of corporate officers in 2003.<sup>61</sup> Women of color describe barriers to their success as a “concrete” ceiling, as opposed to the “glass” ceiling experienced by white women, because of their double outsider status.<sup>62</sup>

Given the link between executive ranks and board membership, this phenomenon may prove particularly problematic for women of color's opportunities to achieve greater board representation. From this perspective, one would expect that a relatively low number of women of color executives would translate into a relatively small number of women of color directors. Ironically, this perspective suggests that women of color may be over-represented on corporate boards because they

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<sup>58</sup> See *id.*

<sup>59</sup> See WORKING WOMEN, *supra* note 47, at 8.

<sup>60</sup> See WOMEN IN THE WORKPLACE, *supra* note 31.

<sup>61</sup> See CATALYST, CATALYST REPORT OUTLINES UNIQUE CHALLENGES FACED BY AFRICAN-AMERICAN WOMEN IN BUSINESS (2004), <http://www.catalyst.org/files/pr/WOC%20African-American.pdf> [hereinafter UNIQUE CHALLENGES]; WORKING WOMEN, *supra* note 47, at 8. A 2002 study found that women of color made up 1.6% of corporate officers at the 429 companies that participated in the study. CATALYST CENSUS OF WOMEN OFFICERS, *supra* note 40, at 2. This reflected 106 African Americans, 30 Asian Americans, 25 Latinas, and 2 who identify as “other.” See *id.*

<sup>62</sup> See Cynthia Grant Bowman, Bibliographical Essay, *Women and the Legal Profession*, 7 AM. U. J. GENDER SOC. POL'Y & L. 149, 163 (1998–1999); see also UNIQUE CHALLENGES, *supra* note 61, at 1.

comprise 3% of that membership and only about 1% of corporate officers. This over-representation may be attributed to one of two factors. First, corporations may rely less on executive ranks when choosing women of color as directors. Second, women of color directors may hold more multiple board seats than other directors. In fact, there is evidence to support both of these trends.<sup>63</sup> Indeed, one of the five directors serving on six or more corporate boards is an African American woman.<sup>64</sup> This suggests that, women of color hold more board seats than their presence within corporate executives suites would support. Nevertheless, such women remain a comparatively small portion of total board seats as well as of those seats occupied by women and other people of color.

Then too, the statistical data reveals that African Americans face unique challenges that may hamper the group's potential for success within the corporate boardroom. That data indicates that African American women outnumber African American men in the labor force. Thus, in 2003, African American men comprised 5.1% of the labor force, while African American women accounted for 5.8% of the labor force.<sup>65</sup> This trend is expected to continue so that by 2010, African American men are projected to make up 5.6% of the labor force, while African American women will constitute 6.9% of the labor force.<sup>66</sup> African American women accounted for nearly two-thirds of the total number of African American students enrolled in colleges and universities in 2000.<sup>67</sup> Although women across all racial and ethnic groups tend to outnumber men in the college population, the percentage of African American women at colleges reflects a higher portion of female enrollment relative to all other racial and ethnic groups.<sup>68</sup> Then too, among whites, men receive a greater portion of all degrees (bachelor's, master's, and doctoral) than women.<sup>69</sup>

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<sup>63</sup> See Fairfax, *supra* note 9, at 802, 809–10.

<sup>64</sup> See *id.* at 802; Dan Ackman, *Black Directors: Diversity Without Diversity*, FORBES, Aug. 8, 2002, available at <http://www.forbes.com/2002/08/08/0808blackdirectors.html>.

<sup>65</sup> See LABOR FORCE QUICK TAKES, *supra* note 25, at 2.

<sup>66</sup> See *id.*

<sup>67</sup> See NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., STATUS AND TRENDS IN BLACK EDUCATION 95 (2003), available at <http://nces.ed.gov/pubs2003/2003034.pdf>.

<sup>68</sup> See *id.* (illustrating that most other women outnumber men at a rate of a little over half).

<sup>69</sup> See *id.* at 96.

The exact opposite, however, is true for African American men who receive a smaller percentage of all such degrees relative to African American women.<sup>70</sup>

While this trend is disturbing for a multitude of reasons, some of which are far more significant than board representation,<sup>71</sup> it nevertheless poses important challenges for board diversity. The fact that African American women outnumber men in the workforce and that women of color appear to experience the most significant barriers to advancement has both individual and group-based repercussions. This Part demonstrates that the current pool of African American women executives, and indeed of women of color executives in general, is relatively small. This phenomenon may only be exacerbated if African American women, the largest segment of women of color, outnumber men in the workforce. The greater barriers they appear to face suggest that such women may achieve success within the corporation with less frequency than their male counterparts would have. If this occurs, the pool of available women of color corporate executives may remain relatively stagnant. Indeed, the past few years illustrate the comparatively small progress women of color have made in advancing to the executive suites, gaining only a half of a percentage point in the course of four years.<sup>72</sup> This means that those women of color who are serving on corporate boards may become stretched too thin. Indeed, corporations appear to compensate for this pool problem in part by calling on the same African American women to hold multiple directorships.<sup>73</sup> If the pool does not change—and the pool of African American men dries up—then this trend will continue. This works to the detriment of those individuals serving on multiple boards, particularly since board service requires increasingly greater attention and time.<sup>74</sup> In this

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<sup>70</sup> *See id.*

<sup>71</sup> Indeed, this trend appears consistent with the increase of African Americans in the prison population, as well as the greater likelihood of such men being the victims of criminal violence. In this regard, it reflects troubling issues regarding the plight of the African American male. Moreover, given that women continue to make less money than their male counterparts, these trends have important repercussions for the economic stability of the African American family, and the African American community as a whole.

<sup>72</sup> *See* WOMEN BOARD DIRECTORS, *supra* note 8, at 2 (noting that women of color on corporate boards progressed from 2.5% in 1999 to 3% in 2003).

<sup>73</sup> *See supra* note 64.

<sup>74</sup> *See* KORN/FERRY STUDY, *supra* note 7, at 14–15 (noting the increased time

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regard, the disparate number of African American women in the labor force and student ranks may generate additional pressure on those individual women directors requested to serve on boards.

Then too, if women of color experience more formidable barriers to successfully becoming executives and hence directors, then it may take longer for people of color to achieve more representative board diversity. The empirical evidence suggests that greater racial and ethnic diversity may depend in part on the ability of African American women to gain better board representation since African American men may have increasingly less of a presence in the labor force and student population. However, because women of color tend to confront more severe obstacles to their progress, the over-dependence on such women may prove detrimental to efforts at increased board diversity. Indeed, advancing women of color into the ranks of corporate boards appears to require corporations to attack the twin impact of race and gender within the corporate promotion structure. Since corporations appeared to have experienced difficulties grappling with these issues individually, one may be even less confident in their ability to attack both concurrently. This lack of confidence seems warranted by the current statistics regarding women of color as well as such women's accounts of their experiences with barriers to their success. In this regard, in revealing the disproportionate presence of women of color in certain sectors of society, the empirical evidence highlights a serious stumbling block for advocates and corporations seeking to obtain increased racial and ethnic board diversity.

#### CONCLUSION

Without question, corporations have achieved better representation of women and people of color within their boardrooms. This is underscored by the fact that such groups have some presence on most corporate boards. Then too, if the historical patterns related to these groups' increase continue, we may expect that virtually every major corporation will have at least one woman or person of color on their board within the next two decades. While this projected timeline may be longer than

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commitments by board members and particular committee members caused by various reforms related to corporate governance).

diversity advocates would like, it does suggest that all corporations will eventually, and perhaps inevitably, achieve some measure of board diversity.

However, women and people of color continue to be under-represented, suggesting that they face barriers preventing them from translating their thirty percent and near fifty percent status in the labor force into similar numbers at the corporate board level. Part of those barriers stems from the difficulties women and people of color experience with advancing into executive positions at major corporations. Because corporations rely heavily on people who have held such positions, these difficulties have a negative impact on efforts to increase diversity on corporate boards.

Of particular concern may be the plight of women of color. First, such women's board representation lags behind that of both white women and men of color, suggesting that they are the most disadvantaged of these disadvantaged groups in the context of directorships. Second, the fact that African American women are over-represented, or perhaps more accurately, the fact that African American men may be under-represented in the labor force and among the student population, raises important concerns for the ability of that racial group to achieve better board representation. Indeed, studies suggest that women of color have achieved the least amount of success with regard to board representation, and that women of color experience the most significant barriers with regard to achieving success within corporate America. From this perspective, the apparent decline in the presence of African American men in certain sectors of society also may decrease the likelihood that African Americans as a group, and even people of color more broadly, can obtain more representative numbers on corporate boards. While this issue may ultimately be a relatively insignificant consequence of the declining presence of African American men within the labor force and student population, it nevertheless must be addressed if we expect to make strides toward improving the number of board seats held by people of color generally and African Americans in particular.