WOMEN EXECUTIVES IN GLADIATOR CORPORATE CULTURES: THE BEHAVIORAL DYNAMICS OF GENDER, EGO, AND POWER

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Table of Contents

465

INTRODUCTION

Although women have fifty percent of the managerial positions in large corporations in the United States,[1] the number of women CEOs and directors is low and progress is stalled.[2] Many scholars maintain that we should promote women executives so they will acquire experience, not because they will transform corporate decisionmaking. Under this view, one should not classify a corporate actor as a woman, but as a manager who happens to be a woman. Alternatively, some researchers assert that women's "outsider" status increases corporate accountability because they bring distinct moral perspectives to business decisions. This Article seeks to bridge efforts to advance women to upper-level management and attempts to foster more ethical corporate cultures.[3] Traditionally, corporate law scholars have not examined issues involving gender. Social psychology, however, has produced many studies that use gender as a lens to analyze organiza-

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1. CATALYST INC., 2002 CATALYST CENSUS OF WOMEN CORPORATE OFFICERS AND TOP EARNERS OF THE FORTUNE 500, at 16 fig.11 (2002).

2. *Id.* at 3 figs.1, 2; CATALYST INC., 2003 CATALYST CENSUS OF WOMEN BOARD DIRECTORS 5 (2003) [hereinafter 2003 CATALYST CENSUS].

3. This Article follows the lead of Susan Sturm's approach to connecting conversations about race, class, and gender to broader inquiries about the law in general. Specifically, Sturm seeks to eliminate "second generation," or more subtle forms of discrimination against women by analyzing norms in corporate cultures. *See, e.g.,* Susan P. Sturm, *From Gladiators to Problem-Solvers: Connecting Conversations About Women, the Academy, and the Legal Profession,* 4 DUKE J. GENDER L. & POL'Y 119 (1997); Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach,* 101 COLUM. L. REV. 458 (2001) [hereinafter Sturm, *Employment Discrimination*]. This Article also builds on the foundation established by Donald Langevoort in examining how corporate cultures foster behavioral biases that lead to unethical behaviors in corporations. *See infra* Part III.A.2.

tional behavior.[4] This Article examines how societal norms restrict both men and women to avoid a one-sided analysis that limits the use of gender as an analytical tool.[5]

We need to acknowledge, at the outset, several limitations of this inquiry. Most importantly, social psychology often uses broad language to talk about gender differences, but these generalizations do not characterize many men and women. Therefore, we should use caution in interpreting these findings in a manner that perpetuates stereotypes. In addition, this research field relies upon laboratory experiments that may not simulate real-world settings—especially the high-pressure environment of the marketplace. The results of gender testing in social psychology have produced a contentious debate—with few hard facts. With these distinctions in mind, as corporate law scholars, we can gain insights from social psychology to develop theories concerning gender and corporate governance.

This Article questions the view of many theorists that women have a "different voice" that involves an "ethic of care"—a moral authority not possessed by men.[6] Under this notion, since women are not one of the "good ole boys," they may have a greater tendency to detect wrongdoing and speak out when necessary.[7] In contrast, some scholars assert that businesswomen can cross unethical boundaries alongside men. The evidence, however, is mixed as to whether men and women differ in terms of their underlying approaches to questionable decisions.

Researchers posit that corporate cultures may influence business integrity through promotion tournaments whereby employees battle in attempts to defeat each other in order to rise to higher levels of management. Some of these tournaments foster "gladiator" environments whereby some of the winners, labeled "superstars," may have an over-optimism bias that can lead to excessive risk-taking and even fraudulent conduct.[8] Researchers assert that these executives are narcissistic individuals with "big egos."

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4. For a discussion of social psychology in general, see *infra* text accompanying notes 133-134 and 161-175. Several corporate scholars have used social psychology to study corporate law. *See infra* Part II.A.

5. *See infra* note 66 and accompanying text.

6. Marleen A. O'Connor, *The Enron Board: The Perils of Groupthink*, 71 U. CIN. L. REV. 1233, 1307-08 (2003).

7. *Id.* at 1307.

8. *See infra* Part III.A.3.a. For an overview of issues pertaining to corporate morality, see Donald C. Langevoort, *Ego, Human Behavior, and Law*, 81 VA. L. REV. 853 (1995) [hereinafter Langevoort, *Ego*] and Donald C. Langevoort, *Organized Illusions: A Behavioral Theory of Why Corporations Mislead Stock Market Investors (and Cause Other Social Harms)*, 146 U. PA. L. REV. 101 (1997) [hereinafter Langevoort, *Organized Illusions*].

This Article maintains that, while women executives' behavioral traits may foster honesty in the workplace, it is more important to emphasize how these cognitive differences also impede women's progress in climbing the corporate ladder. In general, businesswomen must master a high-wire act that maneuvers around the "double bind"—a woman executive cannot be too masculine or feminine. This Article explores three difficulties of this gender performance that may hinder women's executive elevation in tournament structures.[9] First, studies show that many women are inclined to lack self-confidence and the propensity to take risks, especially for those activities strongly identified with men—such as business careers. Second, while many men are apt to engage in direct conflict, women tend to use covert forms of hostility. Finally, whereas men often receive rewards for boasting about their successes, women frequently downplay their talents because they may face penalties for touting their achievements.

Part I reviews the current status of women directors and high-level executives. This Part rejects the most common reason given by CEOs for the lack of women directors—there are not enough women in the "pipeline." Next, this Part questions the effectiveness of strategies that emphasize that women in senior management will improve firm profitability. Although the business case is one way to debate these issues, the adoption of this market approach has several disadvantages that should be recognized. Specifically, the findings to support the business case are inconclusive and opponents can make several arguments to refute this theory.

Part II examines the ongoing debate between supporters and critics of the ethic of care theory. This Part examines the impact of gender-based behavioral dynamics—stereotypes, leadership styles, as well as differing male and female attitudes toward direct conflict—on women's advancement opportunities. This Part focuses on new research maintaining that aspects concerning women's ethic of care may, indeed, hinder their accomplishments. Specifically, women may have (1) the proclivity not to ask for raises and promotions and (2) the tendency to show aggression in hidden ways.

Part III examines how gender dynamics influence corporate governance concerns about tournaments and boardroom cultures. This Part concludes that several factors indicate that women may be even less likely than men to prevent corrupt conduct.

This Article questions the strategy that seeks to encourage women executives by emphasizing that this will bring an ethic of care to cor-

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9. *See infra* Part III.A.3.a.

porate governance. Rather, we need to analyze in more detail the underlying reasons why women do not fare well in narcissistic workplaces. This Article asserts that we should eliminate barriers to women executives' achievement regardless of whether these efforts improve firm profitability or ethical corporate cultures. Specifically, women's ascension to senior management is in and of itself a legitimacy issue for the corporation's role in society.

I. WOMEN EXECUTIVES: THE PIPELINE ARGUMENT AND THE BUSINESS CASE

This Part examines data about women directors in more detail and analyzes the argument that there are not enough women in the pipeline to invite to corporate boards. Next, this Part considers the business case which espouses that diversity increases shareholder value.

A. Status of Women Managers on Corporate Boards

Corporate boards of the largest companies consist mostly of white males, in their mid-fifties, who are predominately Protestant and Republican.[10] Catalyst, a nonprofit research firm, reports that women hold approximately 13.6% of Fortune 500 board seats.[11] In addition, Catalyst reveals that 10.8% of the Fortune 500 have no women directors and 41.6% of these firms have only one female director.[12] For these leading companies, only two boards had a majority of women.[13]

In addition, Catalyst acknowledges that the percentage of women on Fortune 500 boards reached the 10% milestone in 1996, although nearly 20% still had no women on their boards.[14] In the last four

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10. James D. Cox & Harry L. Munsinger, *Bias in the Boardroom: Psychological Foundations and Legal Implications of Corporate Cohesion*, 48 LAW & CONTEMP. PROBS. 83, 106 (1985); *see also* James D. Wesphal & Edward J. Zajac, *Who Shall Govern? CEO/Board Power, Demographic Similarity, and New Directors Selection*, 40 ADMIN. SCI. Q. 60 (1995) (discussing corporate directors and CEOs' preference for selecting individuals of similar demographics).

11. 2003 CATALYST CENSUS, *supra* note 2, at 5; *see also* Kimberly Weisul, *Make Way for Madame Director: Corporate Reform Is Creating Unexpected Openings for Women in the Boardroom*, BUS. WK., Dec. 22, 2003, at 57 (noting women's presence in 13.6% of board seats).

12. 2003 CATALYST CENSUS, *supra* note 2, at 6 fig.2; *see also* Patricia M. Flynn & Susan M. Adams, *Changes Will Bring More Women to Boards*, 20 FIN. EXECUTIVE, Mar.-Apr. 2004, at 34 tbl.2 (stating that 10.8% of Fortune 500 firms have zero female directors).

13. 2003 CATALYST CENSUS, *supra* note 2, at app. 1 (Avon Prods., Inc. & Golden W. Fin. Corp.); *see also* Patricia Kitchen, *Corporate Boards Still Lack Women*, NEWSDAY, Dec. 4, 2003, at A7 (noting that among New York-based companies, only Avon had a board made up of a majority of women).

14. Judith H. Dobrzynski, *Women Pass Milestone in the Board Room*, N.Y. TIMES, Dec. 12, 1996, at D4.

years, the number of women directors has only increased 2.4%.[15] At this rate of progress, women will not achieve parity with men on Fortune 500 boards until the year 2064.[16] These figures are not limited to the United States; in all parts of the world, the percentages of female senior executives, especially female CEOs, are low for large corporations.[17]

Women directors are not as likely as men to serve on the important committees of boards such as auditing, nominating, and compensation committees.[18] Women directors, however, are more likely to serve on corporate social responsibility committees.[19] An interesting question arises as to whether this results from women directors being associated with committees that have the feminine characteristics of care.[20]

Variances between men and women directors exist depending on whether they are inside or outside directors. With respect to inside directors, compared to men, women have similar qualifications.[21] Yet, these women hold less powerful corporate titles and earn considerably less.[22] With respect to outside directors, more women than men hold these positions.[23] These women are more likely to have nonbusiness backgrounds and to hold advanced degrees.[24] These women sit on as many boards as independent directors who are men and are selected to subsequent boards at a faster pace.[25]

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15. 2003 CATALYST CENSUS, *supra* note 2, at 5 tbl.1.

16. Margaret Steen, How Soon Will Women Gain More Corporate Directorships, and Will It Make a Difference?, FAST TRACK, Aug. 25, 2004, http://www.infoworld.com/cgi-bin/displayStat.nl?/pageone/news/features/fastrack/99ft.bo.

17. Judith G. Oakley, *Gender-Based Barriers to Senior Management Positions: Understanding the Scarcity of Female CEOs*, 27 J. BUS. ETHICS 321, 321 (2000).

18. Diana Bilimoria & Sandy Kristin Piderit, *Board Committee Membership: Effects of Sex-Based Bias*, 37 ACAD. MGMT. J. 1453, 1469 (1994).

19. CAROLYN KAY BRANCATO & D. JEANNE PATTERSON, The Conference Bd., Board Diversity in U.S. Corporations: Best Practices for Broadening the Profile of Corporate Boards 30 (1999).

20. In addition, these committees do not promote women's careers as much because they are less likely to enhance ability to network with "higher status" colleagues. *Id.* at 31.

21. Deborah Dahlen Zelechowski & Diana Bilimoria, *Characteristics of Women and Men Corporate Inside Directors in the US*, 12 CORP. GOVERNANCE: INT'L REV. 337, 337 (2004).

22. Oakley, *supra* note 17, at 324 (noting that for Fortune 500 senior officers, the average cash compensation is $765,000 for men, and $518,596 for women; thus women senior officers earn sixty-eight cents for every dollar earned by men).

23. *See* Susan L. Williams, Investor Responsibility Research Ctr., *Diversity on Corporate Boards*, June 2004 (on file with author) (observing that eighty-six percent of female directors were independent).

24. Amy J. Hillman et al., *Women and Racial Minorities in the Boardroom: How Do Directors Differ?*, 28 J. MGMT. 747, 758 (2002).

25. *Id.* at 759.

The status of women directors differs depending on regional and market considerations. As far as regional considerations, in the second tier of the Fortune 1000, each region had a "significant drop in the share of women board members"—more than twenty-five percent have no women.[26] As far as different markets, public utilities, financial services, and insurance industries tend to be among the sectors with the highest percentage of companies having women directors.[27] "In contrast, the technology and manufacturing/industrial sectors have many companies with no women directors."[28] Further, only eighteen percent of dot-com companies have at least one woman director and just three percent of directors of these Internet companies are women.[29] Surprisingly, companies with few or no women directors operate in markets where women are the major customers and employees.[30]

B. The Pipeline Debate over Women's Access to Boards

One of the most common reasons given by CEOs for the lack of women directors is that there are not enough women in the "pipeline."[31] Specifically, in a Catalyst survey of Fortune 1000 CEOs, sixty-eight percent of male CEOs stated that lack of experience holds women back.[32] Many directors of companies are CEOs of other companies, but this limits the number of women in the pipeline, since only eight of the Fortune 500 CEOs are female.[33]

Specifically, CEOs generally state that they have a hard time identifying female candidates.[34] Women executives, however, complain that the insider mentality of the corporate world leads to limited advertising about board vacancies. When positions become open, however, nominating committees may picture the number of eligible women as low because many have not had board seats, and those that do tend to serve on several boards. In this light, the belief that there are enough qualified women to appoint has some validity. In contrast to this view, the Conference Board, a research center, suggests that

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26. Flynn & Adams, *supra* note 12, at 34 & tbl.2.
27. *Id.* at 34-35.
28. *Id.* at 35.
29. INTERNET BD. INDEX, A REPORT ON 200 PUBLICLY TRADED COMPANIES 7 (2000).
30. Flynn & Adams, *supra* note 12, at 35.
31. *See, e.g.,* Diana Bilimoria, *Women Directors: The Quiet Discrimination,* 16 CORP. BOARD, July-Aug. 1995, at 10, 11.
32. CATALYST INC., WOMEN IN U.S. CORPORATE LEADERSHIP: 2003, at 24-25 (2003).
33. Bruce Meyerson, *All Business: Can't Find 'Qualified' Directors? Look Harder,* COLUMBIAN (Wash.), July 21, 2004, at E2.
34. Bilimoria, *supra* note 31, at 11.

nominating committees need to use a broader lens in choosing directors.[35] That is, many qualified women are "in the pipeline" for board service because they have experience as chief financial officers, chief operating officers, general counsels, and heads of corporate divisions.[36] In this way, the traditional "ole boys' network" may give way to searching beyond the power elite to include others with different views.

As the demands upon directors increase, the pool of candidates decreases because members may perceive the time commitments and legal risks of board service as too demanding.[37] Specifically, "[w]here board members used to devote about 150 hours a year to the job of being a director, the average has risen to 250 hours per year . . . ."[38] In addition to new duties, the increased legal liabilities faced by directors may decrease the existing pool. Specifically, legal liability has risen because shareholders are bringing suit for directors' lack of "good faith." Historically, in times of a shortage of independent directors, women's chances of obtaining board seats improve. Since the Sarbanes-Oxley Act demands more "independent thinkers," the hope is that nominating committees will search for a more diverse group of candidates.[39]

In a 1996 study, Catalyst reported that senior women executives and men CEOs differed over the question why so few women are ascending to senior leadership positions. When asked if there had been great improvements over the previous five years, forty-nine percent of the men, versus twenty-three percent of the women responded affirm-

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35. BRANCATO & PATTERSON, *supra* note 19, at 21.

36. Press Release, Catalyst Inc., Catalyst Census Marks Gains in Numbers of Women Corporate Officers in America's Largest 500 Companies (Nov. 19, 2002), *available at* http://www.catalyst.org/pressroom/press_releases/2002_cote.htm; *see* Rob Norton, *Where to Find New Directors*, CORP. BOARD MEMBER MAG., May-June 2003, *available at* http://www.board member.com/network/index.pl?section=1019&article_id=&show=article (noting that individuals in these positions are being increasingly considered for directorships).

37. *See* Susan Stellin, *Executive Life; Directors Ponder New, Tougher Roles*, N.Y. TIMES, June 30, 2002, § 3, at 16; *see also The Fading Appeal of the Boardroom*, ECONOMIST, Feb. 10, 2001, at 67; Meyerson, *supra* note 33, at E2 (noting the common complaint that the supply of qualified applicants is too small to satisfy the demands of directors in light of the concerns over legal risks and recommending that more consideration be given to women applicants to fill this demand).

38. Meyerson, *supra* note 33, at E2.

39. *E.g.*, Kitchen, *supra* note 13, at A7; Meyerson, *supra* note 33, at E2; Kelly Pate, *Corporate Woes Spell Opportunity for Women*, DENVER POST, Aug. 2, 2002, at C1; Stellin, *supra* note 37, at 16; Mary Williams Walsh, *Preparing a Corps of Women for Corporate Responsibility*, N.Y. TIMES, Aug. 13, 2002, at C1.

atively.[40] When questioned about these barriers, the study revealed that more women executives suggested that male stereotyping (fifty-two percent women and twenty-five percent men)[41] and exclusion from informal networks (forty-nine percent women and fifteen percent men)[42] were the reasons why women had not risen higher in the corporate ranks. Interestingly, while male senior executives and women both perceived the need for organizations to change to include women (sixty-eight percent women and eighty percent men),[43] more women than men thought they also needed to share responsibility in adapting to corporate cultures (seventy-three percent women and sixty-one percent men).[44]

C. The Business Case for Promoting Women Executives

1. Presenting the Business Case.—Given the demands of a market-driven culture, proponents seeking to improve the status of women executives often turn to the rhetoric of economics—the so-called business case for promoting women.[45] Under this view, increasing the number of women in senior management is not just a moral imperative, it makes good business sense. Ultimately, advancing women to upper management will increase shareholder value. Many of these studies show that firms can increase profitability by maximizing the returns invested in women's human capital by reducing hiring costs and turnover.[46] Other surveys emphasize that women score higher than men in many indices of top leadership, including those related to profitability.[47] Specifically, women managers performed better than men on giving feedback, rewarding and motivating individuals and teams, and acting with integrity.[48] Women also scored higher than men on maintaining productivity, producing quality work, meet-

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40. CATALYST INC., WOMEN IN CORPORATE LEADERSHIP: PROGRESS AND PROSPECTS 76 (1996).

41. *Id.* at 37 tbl.4.

42. *Id.*

43. *Id.* at 62.

44. *Id.*

45. Steven A. Ramirez, *Diversity and the Boardroom*, 6 STAN. J.L. BUS. & FIN. 85, 90-109 (2000). For an in-depth critique of the dangers of shareholder value maximization, see LAWRENCE E. MITCHELL, CORPORATE IRRESPONSIBILITY (2001).

46. *E.g.*, Ramirez, *supra* note 45, at 96.

47. Deborah M. Merrill-Sands & Deborah M. Kolb, *Women as Leaders: The Paradox of Success*, CGO INSIGHTS, April 2001, at 1, *available at* http://www.simmons.edu/som/docs/centers/insights_9.pdf.

48. *Id.* at 1-2.

ing project deadlines, generating new ideas, and moving projects forward.[49]

Other theorists emphasize that the additional experience and knowledge bases brought by women managers will increase the bottom line.[50] To support this view, some studies show that more women executives than men have the interpersonal skills commonly associated with feminine styles of management—relational approaches, rather than confrontational tactics—that are important in organizations which stress customer service.

Efforts to promote women to higher corporate levels use two other bottom-line considerations. Some corporations consider the notion of "market reciprocity," if women make up half of the consumer base of a corporation, then top management should have proportional representation.[51] Second, some firms place women on their boards for a less virtuous reason: as a method to mitigate against discrimination litigation as well as criticism by unions, politicians, and the media.[52]

To support the business case, Catalyst emphasizes findings that "companies with a higher percentage of women in senior-level positions have better returns."[53] In addition, the Conference Board finds it noteworthy that the Fortune 10 companies ranked highest in profitability all have a woman on their boards, and seven out of these ten have more than one woman on their boards.[54]

   2. *Refuting the Business Case.*—Three arguments can be made against the business case. First, given the increasing pressure from markets, caring dimensions of management will be marginalized by considerations of efficiency. That is, emotional considerations are not part of the corporate experience because the culture needs to be ad-

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   49. *Id.*

   50. BRANCATO & PATTERSON, *supra* note 19, at 7-8; *see also* Steen, *supra* note 16 (noting that having women on a board will not substantially change boards; however, it does make a difference for women directors because they get the experience that comes with being a board member).

   51. BRANCATTO & PATTERSON, *supra* note 19, at 8; O'Connor, *supra* note 6, at 1308.

   52. BRANCATTO & PATTERSON, *supra* note 19, at 9. *See generally* Ira Millstein, *Tough Corporate Reforms Are Still Being Dodged,* FIN. TIMES, July 6, 2004, at 19.

   53. Andrea L. Stape, *Chairwoman of Deloitte & Touche's U.S. Board Says Diversity Is Key,* KNIGHT RIDDER/TRIB. BUS. NEWS, Mar. 18, 2004. Companies with the highest representation of women in executive-level positions have a twenty-four percent higher total shareholder return. *Id.*

   54. J. Veronica Biggins, *Making Board Diversity Work,* CORP. BOARD, July-Aug. 1999, at 11.

versarial and opportunistic to meet competitive demands.[55] In a similar view, even if women have higher moral tendencies when they join corporations, they will not last because occupational experiences will override socialized gender roles.[56] This view emphasizes that women assimilate to the prevailing norms and requirements of organizational life. To succeed, women may experience changes in their psychological makeups by going through socially institutionalized rites of passage.[57] In the end, rather than women changing corporations, one can argue that corporations are more likely to change women. Related to this position, if women executives spend time doing emotional work for team building, they are unlikely to receive credit because promotions are based upon bottom-line results. That is, these behind-the-scenes helpers do not become leaders.

Second, even if businesses are making a move away from adversarial to cooperative management styles, this may be a response to demands in the marketplace, rather than to women's influence upon corporate cultures. If this is the case, one can reject the notion that women's feminine characteristics predispose women to this leadership style. Additionally, if these market conditions give women with caring values an edge in the tournament, men will quickly learn these behaviors to beat the competition to proceed to the next round.

Finally, corporate law scholars maintain that firms that engage in gender discrimination may nevertheless succeed in the marketplace. Specifically, these firms may not face market penalties if other firms also employ similar practices.[58]

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55. *See generally* E. Sharon Mason & Peter E. Mudrack, *Gender and Ethical Orientation: A Test of Gender and Occupational Socialization Theories*, 15 J. Bus. ETHICS 599 (1996) (demonstrating that women become more ethical than men once they enter the workforce but not before).

56. Robbin Derry, *An Empirical Study of Moral Reasoning Among Managers*, 8 J. Bus. ETHICS 855, 860 (1989).

57. Hilary Sommerlad, *Can Women Lawyer Differently? A Perspective from the UK*, in WOMEN IN THE WORLD'S LEGAL PROFESSIONS 191, 197 (Ulrike Schultz & Gisela Shaw eds., 2003).

58. *See generally* Donald C. Langevoort, *Overcoming Resistance to Diversity in the Executive Suite: Grease, Grit, and the Corporate Promotion Tournament*, 61 WASH. & LEE L. REV. 1615, 1622-23 (2004) [hereinafter *Grease and Grit*] (discussing how discriminating firms can continue to be competitive in the marketplace); David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 493, 496 (1996) (discussing the lack of black lawyers in corporate law firms and how those firms' recruiting practices prevent them from facing competitive disadvantages). *Cf.* David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581, 1581-91 (1998) (discussing the promotional model of elite law firms); Meyerson, *supra* note 33, at E2 (noting the significant pool of women corporate officers who have been largely ignored by Fortune 500 companies when selecting board members).

Although the business case is one way to debate these issues, the adoption of this market approach has several disadvantages that should be recognized. Conservative members of management may not be persuaded by arguments to promote women in the absence of solid data that this policy will increase stock prices.[59] Thus, the business case is unlikely to bring about changes because it is empirically fragile. In addition, if women executives are viewed as costly to maintain or regarded as interfering with cultures, the rationale for the business case does not stand.

D.   Shareholder Proposals Recommending Diversity

To satisfy their fiduciary duties to their beneficiaries, large institutional investors have been strong proponents of the business case in their efforts to promote women managers in large corporations.[60] In the past, activists who filed shareholder resolutions for diversity were limited to groups formed for the purpose of increasing corporate social responsibility. Recently, institutional shareholders who traditionally restricted their reform efforts to more conventional corporate governance concerns—such as board independence and executive compensation—have joined these efforts to promote diversity.[61] Shareholder resolutions recommending diversity on boards receive high levels of approval among the social policy resolutions—on average twenty percent.[62]

II.   Examining Women's "Outsider" Voice in
Corporate Governance

This Part provides an overview of the argument that women have an ethic of care that leads to a higher moral sense. With this back-

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59. *Grease and Grit, supra* note 58, at 1634.

60. *See* William Baue, *Connecticut Initiative Promotes a Better Bottom Line Through Diverse Boards*, SOCIALFUNDS.COM, Nov. 5, 2002, http://www.socialfunds.com/news/article.cgi/article959.html (discussing the Connecticut Board Diversity initiative and its belief that adding diversity to the boardroom impacts the "bottom line").

61. The convergence of these two groups focuses on common concerns involving several "cross over" issues that view corporate social responsibility as means to improve corporate governance practices. Carolyn Brancato suggests that institutional shareholders are entering a new stage of activism to consider issues previously thought of as promoting corporate social responsibility. CAROLYN KAY BRANCATO, INSTITUTIONAL INVESTORS AND CORPORATE GOVERNANCE 87 (1997). For example, CalPERS recently pulled its investments from several Asian countries based on their failure to meet CalPERS's standards for labor practices. James McRitchie, Editor, The Corporate Governance.Net, Address at the Forum on Corporate Governance in Asia (May 11, 2002), http://www.corpgov.net/forums/commentary/post-enron.html.

62. Williams, *supra* note 23.

ground, this Part seeks to contribute to corporate law scholarship by examining gender based behavioral dynamics for men and women concerning (1) business ethics, (2) competitive attitudes in negotiations, (3) leadership styles, and (4) aggressive tendencies. Although the literature posits that women may have lower egos that lead to less risk-taking, the reasons underlying these tendencies must be examined before we can conclude that they may make a difference in corporate governance.[63]

A. Overview of Gender Analysis

This Article maintains that corporate scholars should analyze gender issues because understanding the nature of human beings is essential in setting research agendas and informing research methods.[64] Given everyday opinions about gender issues, corporate scholars need

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63. The scope of this Article does not allow for discussion of many views concerning the most appropriate way to look at gender. See, e.g., Kellye Y. Testy, *Linking Progressive Corporate Law with Progressive Social Movements*, 76 TUL. L. REV. 1227 (2002). While this Article focuses on gender, it hopes to continue a conversation that will lead to considerations of race, class, sexual orientation, and disability. These different perspectives should be evaluated separately as distinct categories, as well as together. Analysis of the common ground shared by these different considerations—intersectionality—is needed to gain a fuller perspective on how many "outsider" voices influence corporate governance matters.

Corporate scholars are beginning to explore these issues in more detail. In addition to the other articles in this Symposium on *Women and the "New" Corporate Governance*, see Symposium, *People of Color, Women, and the Public Corporation*, 79 ST. JOHN'S L. REV. 887 (2005). This Article builds on several articles by corporate governance scholars using race and gender. See, e.g., Terry O'Neill, *The Patriarchal Meaning of Contract: Feminist Reflections on the Corporate Governance Debate*, in PERSPECTIVES ON COMPANY LAW 2, at 27 (Fiona Macmillan Patfield ed., 1997); Ronnie Cohen, *Feminist Thought and Corporate Law: It's Time to Find Our Way up from the Bottom (Line)*, 2 AM. U. J. GENDER & L. 1 (1994); Theresa A. Gabaldon, *Assumptions About Relationships Reflected in the Federal Securities Laws*, 17 WIS. WOMEN'S L.J. 215 (2002); Theresa A. Gabaldon, *Corporate Conscience and the White Man's Burden*, 70 GEO. WASH. L. REV. 944 (2002); Theresa A. Gabaldon, *Feminism, Fairness, and Fiduciary Duty in Corporate and Securities Law*, 5 TEX. J. WOMEN & L. 1 (1995); Theresa A. Gabaldon, *The Lemonade Stand: Feminist and Other Reflections on the Limited Liability of Corporate Shareholders*, 45 VAND. L. REV. 1387 (1992); Faith Stevelman Kahn, *Legislatures, Courts and the SEC: Reflections on Silence and Power in Corporate and Securities Law*, 41 N.Y.L. SCH. L. REV. 1107 (1997); Janis Sarra, *The Gender Implications of Corporate Governance Change*, 1 SEATTLE J. FOR SOC. JUST. 457 (2002); Cheryl L. Wade, *The Impact of U.S. Corporate Policy on Women and People of Color*, 7 J. GENDER RACE & JUST. 213 (2003).

Martha Fineman, a leading feminist scholar, has had several workshops on a *Feminist Analysis of Corporations and Capitalism*. For an overview of these proceedings, see Janis Sarra, Martha's Garden, Cultivating and Nurturing Alternative Visions of Corporate Law Through the Feminism and Legal Theory Workshop, May 12, 2005 (unpublished manuscript, on file with author).

For corporate scholarship advocating diversity to break groupthink, see Ramirez, *supra* note 45, at 86.

64. CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT 173 (1982) ("[W]e have listened for centuries to the voices of men . . . so we

to move beyond the rational actor model[65] to explore perceptions of femininity and masculinity because many aspects of our social world are governed by these types of thinking. In this way, the perennial debate about these differences can aid our understanding of what men and women bring to corporate cultures. To explore these common beliefs, this Article turns to social construction theory to consider how gender ideologies arise from societal forces and strong cultural norms. Specifically, gender stereotypes act to pull men and women in the direction of conventional behavior.[66] That is, society enforces gender codes by sanctioning those who do not act according to traditional roles.

Gender roles are malleable over time and have undergone profound change in the last thirty years.[67] At the same time, such roles are slow to change. Although men deal with women on a professional level, perceptions about other women in their lives who may follow traditional roles—such as wives, daughters, or mothers—may spillover to the workplace.[68] Because of these conflicting gender roles, women executives may have a more difficult time building relationships with businessmen.

Much discourse on promoting broader gender norms is, by its nature, inherently contradictory within itself. While this analysis warns against stereotyping, it distinguishes separate world experiences for men and women. Recognizing these mixed messages, this Article explores these essentialist theories to provide a broad-brush perspective to consider questions about gender and corporate governance one step at a time.

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have come more recently to notice not only the silence of women but the difficulty in hearing what they say when they speak.").

65. Corporate law scholarship has been dominated by economics, restricting how this literature views human nature. *See* Donald C. Langevoort, *Behavioral Theories of Judgement and Decision Making in Legal Scholarship: A Literature Review*, 51 VAND. L. REV. 1499, 1526 (1998) [hereinafter *Behavioral Theories*] (considering whether law and economics theory is influential "because its central rhetorical construct of rational man evokes an image of an institutionally controlled (and controllable) world" and "because the image of the rational actor as the ideal-type in the prevailing social structure reflects the egocentric self-image of judges and lawyers").

66. JOAN WILLIAMS, UNbending Gender 246 (2000).

67. Of course, women have always worked. Yet, women pursuing high-powered careers and combining these careers with motherhood is a new phenomena. Specifically, the baby-boom generation was the first to delay childbearing to pursue work outside the home. This is not to say that women have not had an influence on societies through their care labor; after all, one can view the "hand that rocks the cradle" as the "hand that rules the world."

68. Oakley, *supra* note 17, at 328.

At the outset, we need to emphasize that men have gender too. A new area of "men's studies" has arisen to better understand prevailing notions of masculinity.[69] Men also face changing gender patterns. Under traditional gender norms, men face great pressure to succeed and gain status as the family breadwinner.[70] Although this conventional view remains, shifting norms lead to confusion over what it means to be a man today.[71] Specifically, men also face the double bind—if they show sensitivity they are wimps, but if they show toughness they are criticized as insensitive.[72] Accordingly, men may have less room for acceptable gender performance than women; that is, women face less criticism for adopting traditional male behavior than men expressing feminine traits.

Gender perspectives allow us to see that corporations are male institutions. Specifically, Catalyst emphasizes that gender differences arise because corporate environments were designed by and for men and presumably geared toward their behavior and responsive to their

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69. *See, e.g.*, SUSAN FALUDI, STIFFED: THE BETRAYAL OF THE AMERICAN MAN (1999); THE GENDERED SOCIETY READER (Michael S. Kimmel ed., 2000); LIONEL TIGER, THE DECLINE OF MALES (1999). This new field of research on "masculinities" directs us to consider men's views of ambition and aggression and how these factors play out in men's organizational experience. *See infra* notes 96-98, 133-144 and accompanying text. In addition, this lens allows us to consider how gender constrains men in their roles as breadwinners in the new economy and as fathers in changing patterns of family life. *See, e.g.*, Martin H. Malin, *Fathers and Parental Leave*, 72 TEX. L. REV. 1047 (1994).

70. In contrast, other research posits that these obstacles to change should be in terms of male supremacy and power. *See, e.g.*, ANTHONY MCMAHON, TAKING CARE OF MEN 174-75 (1999) (asserting that obstacles to change focused solely on sociological accounts of men's family life neglects to include "power, male supremacy and agency"). Under these theories about male supremacy—the main obstacle is the male psyche—men want to control women to bolster male egos. *Id.* at 34-35. White male power over women differs from other forms of domination by race and class because it takes place in the context of intimate relationships. *See id.* at 23-31 (discussing men's perceived right to leisure and service).

To provide evidence for this position, researchers emphasize many factors. This Article mentions two. First, men's household labor has not increased since the early 1990s—ten hours per week. *Id.* at 13. Interestingly, this low contribution does not vary by race, social class, and country. *Id.* at 12-13. Surprisingly, it also does not differ according to women's level wage and the number of children. *Id.* Because there are few social sanctions to enforce egalitarian marriages and praise for small contributions is relatively easy for men to earn, men have little incentive to increase their efforts doing domestic chores. *Id.* at 23-25.

Second, Sweden has significant incentives for men to take paternity leave, but few fathers take advantages of these benefits. *Id.* at 171. Only fourteen percent of fathers take the parental leave offered by legislation; fifty percent of fathers only take a few days following the birth of a child. *Id.* This is despite widespread advertising campaigns picturing macho sports heroes with babies espousing the joys of parenting. *Id.*

71. *Id.* at 176.

72. *Id.*

needs.[73] Compared to corporations in social democracies, American firms are more masculine because they emphasize shareholder value and bottom-line norms to a greater degree.[74]

B.   Gender Differences in Business Ethics

Some efforts to reform corporate governance emphasize that women's feminine traits may increase corporate morality.[75] Gender issues in business ethics have been explored extensively outside the corporate governance scholarship. The statistical findings are inconclusive, leading to much debate. This Article questions whether this approach will be effective in leading to significant advancements for the career tracks of women executives.[76]

Researchers suggest that gender influences the perceptions of ethical transgression—evaluators tend to see women as less blameworthy than men for the same immoral acts.[77] Providing evidence on a related issue, studies find that men commit more fraud at higher amounts than women—$185,000 for men compared with $48,000 for women.[78] One can hypothesize that because more men hold high-level positions that provide the potential to manipulate financial statements, the relative level of fraud by women will rise when they reach comparable positions of management. In this regard, it is noteworthy that embezzlement by women has increased significantly in recent years—80.5% between 1993 and 2002.[79]

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73. *Cf.* CATALYST INC., *supra* note 32, at 16-19 (discussing the barriers to women's advancement including exclusion from informal networks and gender stereotyping).

74. *See* Amir N. Licht, *The Mother of All Path Dependencies: Toward a Cross-Cultural Theory of Corporate Governance Systems,* 26 DEL. J. CORP. L. 147, 170-80 (2001) (evaluating how different corporate governance systems incorporate the masculine trait of "[v]aluing achievement, heroism, assertiveness, and material success versus relationships, modesty, caring for the weak, and interpersonal harmony").

75. *But see* Robin R. Radtke, *The Effects of Gender and Setting on Accountants' Ethically Sensitive Decisions,* 24 J. BUS. ETHICS 299 (2000) (finding that male and female accountants responded to ethically sensitive situations in similar manners); Stacy A. Teicher, *Do Female Execs Have Cleaner Hands?,* CHRISTIAN SCI. MONITOR, Mar. 15, 2004, at 14 (questioning the common conception of women as an ethical force capable of improving corporate practices).

76. *See* Morgan E. Forbes, *Questioning Feminine Connection,* 12 HYPATIA 140 (1997) (critiquing common assumptions about women).

77. *See generally* Karen J. Maher & Jeffrey J. Bailey, *The Effects of Transgressor Sex on Judgments of Unethical Behavior,* 18 J. BUS. ETHICS 157 (1999) (describing the debate among researchers and ultimately concluding that gender plays no role).

78. Teicher, *supra* note 75, at 14.

79. *Id.*

C. Women Executives and the Ethic of Care

Many theoretical discussions of high-powered women in business start with the philosophy developed by Carol Gilligan, a psychologist.[80] Gilligan posits that women tend to exhibit a strong ethic of care that provides women with the talent to speak in a "distinct moral language of their own."[81] Gilligan provides findings that varied with the prevailing notions of morality espoused by Lawrence Kohlberg, a psychologist who examined boys.[82] In testing both girls and boys, Gilligan found that more boys use justice reasoning that emphasizes values of personal autonomy and focuses upon rights and obligations.[83] In contrast, Gilligan discovered that girls display a more relational view that seeks to solve ethical issues in a manner that preserves relationships.[84] Gilligan's interviews, however, may show that men often have traits of care and compassion, while many women possess the supposedly male language of rights.[85]

Using Gilligan's research,[86] many scholars emphasize that the ethic of care arises from societal expectations that women will devote their lives to the needs of others and expend less energy on their own desires.[87] Under this perspective, men are primarily separate selves, while women are more connected to other people. This view emphasizes that women bear most of the burden for the care of children, husbands, elderly parents, and other family members.[88]

To explain this socialization divergence, researchers suggest that distinct "self-schemas" influence the way men and women compre-

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80. GILLIGAN, *supra* note 64, at 1-2. Gilligan maintains that young girls "run into a wall" when they become adolescents because spirited girls are reminded to be ladies. Christopher Lasch, *Meeting at the Crossroads: Women's Psychology and Girls' Development*, NEW REPUBLIC, Dec. 7, 1992, at 34. Specifically, Gilligan's study of girls seven to eighteen showed that girls' voices become silenced. *Id.* This adolescent socializing suggests that girls' " 'web of relationships' can be suffocating, inhibiting, and oppressive." *Id.*

81. Lasch, *supra* note 80, at 34.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. GILLIGAN, *supra* note 64, at 65-66.

87. For analysis of this view, see LINDA BABCOCK & SARA LASCHEVER, WOMEN DON'T ASK: NEGOTIATION AND THE GENDER DIVIDE 62-72 (2003).

88. "[E]ighty-five percent of women are mothers and young girls are socialized to be mothers." Marleen O'Connor-Felman, *American Corporate Governance and Children: Investing in Our Future Human Capital During Turbulent Times*, 77 S. CAL. L. REV. 1255, 1272 (2004) (footnotes omitted). Some scholars espouse that mothers have particular instinctual knowledge for caretaking given their greater investment in the reproduction process. Gilligan, however, does not present the care perspective as biologically determined. *See* GILLIGAN, *supra* note 64, at 67 (describing the moral decisionmaking of women in terms of their choices).

hend everyday life.[89] Under this view, gender serves as a filter through which people receive knowledge and comprehend circumstances. In contrast to men, women tend to have the primary goal of developing strong personal bonds. For this reason, upsetting this relationship harms women's self-regard more than it does men's.

These self-schemas develop because adults deal with male and female children in traditional ways.[90] Although parents may take significant steps to avoid these messages, children may subconsciously absorb lessons about conventional roles for men and women. Research shows that children start building gender schemas at a very young age.[91] Specifically, by age two, children recognize that occupations and domestic responsibilities are arranged by gender.[92] By age six, they have sophisticated understandings of the extensive gender signs they see on a daily basis.[93] The result is that strong cultural signals teach children that men control much of the world.

D. Women's Hidden Aggression in Competitions

Some difference theorists emphasize that this childhood socialization results, in part, from distinctive styles of play for girls and boys. Girls play in small groups where participants have equal status. In addition, girls offer courteous recommendations to support harmony and will even end games to prevent hurt feelings. Furthermore, Gilligan discovered that outspoken girls become timid during adolescence in the hope of making themselves agreeable.[94] In this light, Gilligan emphasizes that this adolescent training to fit into "webs of relationships" may stifle girls' authentic voices.[95]

Boys play in larger groups where games are rougher and more competitive. Boys issue direct orders to one another in an atmosphere of conflict and struggle for dominance. Boys walk away from arguments as friends, putting the fight behind them.[96] Specifically, when boys engage in friendly competition, researchers suggest that "you know where you stand"—they fight and "have it be over with."[97]

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89. BABCOCK & LASCHEVER, *supra* note 87, at 118-19.

90. *Id.* at 29.

91. *Id.* at 28.

92. *Id.*

93. *Id.*

94. Lasch, *supra* note 80, at 34.

95. *Id.*

96. RACHEL SIMMONS, ODD *Girl* Out: The Hidden Culture of Aggression in Girls 16 (2002).

97. *Id.*

In contrast, recent theorists have begun to emphasize that girls compete by different means than boys. Scholars suggest that girls' socialization to "be nice" leads to undercover means of aggression.[98] Young girls avoid overt acts of animosity because this behavior conflicts with traditional views about "good girls." To avoid sanctions, at a young age, girls learn to manipulate emotions in relationships to inflict harm while maintaining the appearance of friendliness.[99] Under this bullying, the perpetrator conceals her intent to harass others by using the cover of "it was just a joke." To acquire admiration, she must invest as much energy appearing amicable as she devotes to exercising animosity.[100] Starting in middle-school, "cliques" of girls form that fight in popularity contests to gain superiority over low ranking groups. To acquire social status and authority, girls learn to wear masks of empathy to score points in the power ratings. In a paradoxical fashion, maintaining this false façade, girls need to avoid appearing "conceited" because this conflicts with the view that they are selfless. Indeed, one of the worst insults a girl can receive is that she has a big ego, or she "thinks she's all that."[101]

Theorists suggest that girls' approach to expressing anger, domination, and conflict may carry over into the corporate world for women.[102] To support this idea, researchers assert that women who climb to high levels of management withdraw from other women to evade associations with those who do have the same power status.[103] Similarly, many career women perceive that successful women do not spend much time mentoring other women.[104] Given these factors, women executives favor dealing with men because associations are more transparent.[105]

Girls' tendencies to engage in covert conflict also restrict their ability as women to compete against men in tournaments. Under this

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98. *Id.* at 6-7, 17-18.

99. Nicki R. Crick et al., *Childhood Aggression and Gender: A New Look at an Old Problem, in* 45 NEBRASKA SYMPOSIUM ON MOTIVATION: GENDER AND MOTIVATION 75, 95-98 (Dan Bernstein ed., 1999); *see also* PATRICIA A. ADLER & PETER ADLER, PEER POWER: PREADOLESCENT CULTURE AND IDENTITY 56-73 (1998) (discussing the techniques used by children to create and control "cliques" of friends).

100. Rachael Simmons states: "Covert aggression isn't just about not getting caught; half of it is looking like you'd never mistreat someone in the first place." SIMMONS, *supra* note 96, at 23.

101. *Id.* at 107.

102. *Id.* at 265.

103. *Id.* at 266.

104. SHEILA WELLINGTON, CATALYST INC., BE YOUR OWN MENTOR: STRATEGIES FROM TOP WOMEN ON THE SECRETS OF SUCCESS 163 (2001).

105. *See* SIMMONS, *supra* note 96, at 117 (discussing female duplicity).

perspective, girls have fewer opportunities to engage in contests with direct challenges.[106] In addition, women may receive social sanctions for using straightforward styles of competitive behavior. Specifically, studies show that many view assertiveness as a negative leadership trait from women managers. Studies reveal that the same behavior by women is judged harshly as "boasting," but not when done by men.[107] To succeed in general, women may avert the loss of male pride that happens when men are "one upped by a girl." In some cases, women executives seek training in order to avoid "scaring the boys"; they learn to modify their aggressive behavior to appear nicer.[108] For these reasons, researchers assert that men's and women's different self-schemas can have a profound impact on how they see conflicts over status.[109]

E.   The Double Bind Faced by Women Executives

Many scholars reject the ethic of care notion as a means of promoting women executives because it reinforces stereotypes and leads to the double bind. To support how this double bind impedes the career success of women executives, these researchers emphasize experiments that use the same resumé, but change the gender of the applicant. These tests revealed more favorable reviews, from both men and women, for the male applicant over the female.[110] These scholars also point to examinations which show that, although women executives perform according to the same objective criteria as men, both men and women judge women's performance lower than men's.[111] Investigations reveal that when asked to evaluate personal attributes of leaders, evaluators perceived women as more temperamental and domineering, despite the fact that the performance of men and women were similar. Surveys show that women in mixed gender groups were most influential when they were "friendly, cooperative, confident, but nonconfrontational, and considerate."[112] Yet, when questioned, participants stated that they did not have gender biases.[113]

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106. *See id.* at 120 (observing that girls speak in code).

107. *Id.* at 106-07.

108. Neela Banerjee, *Some "Bullies" Seek Ways to Soften Up: Toughness Has Risks for Women Executives*, N.Y. TIMES, Aug. 10, 2001, at C1.

109. BABCOCK & LASCHEVER, *supra* note 87, at 118-19.

110. WILLIAMS, *supra* note 66, at 248.

111. *Id.*

112. BABCOCK & LASCHEVER, *supra* note 87, at 105.

113. *Id.* at 90.

Successful women managers may use the double bind to their advantage. This idea emphasizes "gender as performance," that is, women switch between a wide range of behaviors depending on the context in which they are acting. Women play this complicated gender game, not only to make life simpler, but to make progress in their career tracks.[114] Under this double bind, women learn when to emphasize gender differences and when to disguise them. If necessary, women executives may put up a masculine front of toughness or use the feminine face of caring. Viewed in this light, some business women may use common perceptions of moral authority to overcome obstacles and gain prestige in the workplace.

F. Women Executives "Don't Ask" at the Bargaining Table

Scholars maintain that women's relational tendencies lead them to ask for less at the bargaining table at work and at home.[115] Since more terms in the employment relationship are negotiable than in the past, this is a serious impediment to women's success. Surveys reveal that almost eight times as many men than women asked for more money when first obtaining jobs.[116] Compared to men, women set low goals and safe targets in managing their careers. Studies also indicate that women do not take actions to obtain raises and promotions. To explain, researchers maintain that powerful gender pressures reduce women's sense of personal entitlement.[117] For these reasons, scholars suggest that women do not negotiate for more because they tend to be satisfied with less than men.[118] Researchers provide three reasons for this theory. First, women are not trained to measure their time and talent in monetary ways since they are socialized to do caring work at home.[119] Second, both men and women disapprove of women behaving in competitive ways and impose societal sanctions for

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114. *Id.* at 85.

115. *Id.* at 2-4.

116. *Id.* at 1.

117. *Id.* at 50-54.

118. *Id.* at 41-43.

119. *Id.* at 43. Most studies show that women tend to put more effort into their paid employment than do men in comparable jobs, while also putting more effort into domestic responsibilities. These research findings lead some scholars to maintain that men's success in the labor market is based upon their reliance on women on the home front. This advantage for men stems from the fact that men earn more than women, but it is also a cause of women earning less in the workplace. *See, e.g.,* Jane Waldfogel, *The Effect of Children on Women's Wages,* 62 AM. SOC. REV. 209, 216 (1997) (hypothesizing that women with children suffer a wage penalty); Jane Waldfogel, *The Family Gap for Young Women in the United States and Britain: Can Maternity Leave Make a Difference?,* 16 J. LAB. ECON. 505, 507 (1998) (same).

being too aggressive.[120] Finally, in entering the workplace, women have faced decades of unfavorable labor market experiences.[121] Importantly, the first step in not asking for a higher initial salary may amount to approximately one million dollars on average by the time many women retire.

Studies show that men are more optimistic—seeing many more opportunities to negotiate.[122] Women, however, tend not to recognize that circumstances can change if they bargain. Men's optimism fosters more of a "can do" attitude leading to less vulnerability to negative feedback.[123] In contrast, the average women's feelings of self-worth fluctuate more than men's—whether positive or negative.[124] Due to this lack of self-confidence, women develop an "imposter syndrome," a sense of inadequacy that they are just "faking it," that is objectively unfounded.[125] Women's lower sense of self-confidence may lead women to engage in less risk-taking than men. Researchers suggest that socialization may cause women to both recognize and avoid more risk because they are more vulnerable overall.[126] Theorists explain these findings by emphasizing that men have controlled women's lives until recently and still do to a large extent.

Men's greater sense of optimism about what is available gives them an advantage over women at the negotiating table. Specifically, men develop more aggressive targets, introduce higher offers, and concede fewer points.[127] Both men and women ask for higher offers from women.[128] Men give more pressure to concede.[129] That is, men push risky positions in order to drive the other side to accept.[130] Both men and women demand more from women than they require from men to agree to a bid.[131] In addition, men, for the most part, are less likely to believe that disagreement about issues means that the conflict between negotiators is personal.[132]

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120. BABCOCK & LASCHEVER, *supra* note 87, at 62-63.

121. *Id.* at 49-50.

122. *Id.* at 19-20.

123. *Id.* at 52.

124. *Id.* at 51.

125. *Id.* at 77.

126. *Id.* at 136.

127. *Id.* at 135.

128. Sara J. Solnick, *Gender Differences in the Ultimatum Game*, 39 ECON. INQUIRY 189, 190 (2001).

129. Ian Ayres, *Fair Driving: Gender and Race Discrimination in Retail Car Negotiations*, 104 HARV. L. REV. 817, 850 (1991).

130. BABCOCK & LASCHEVER, *supra* note 87, at 135.

131. *Id.* at 150 (42.5% larger on average).

132. *Id.* at 118-19.

III. CORPORATE GOVERNANCE: WOMEN, TOURNAMENTS, AND GROUPTHINK

This Article emphasizes the need for open exploration of gender stereotyping at the most senior levels within organizations. This Article is not about ways to "fix" women so they can fit in. We should not seek to "add women and stir" into corporate cultures. Admittedly, the presence of more women in upper management is not a cure-all for corporate governance problems. If more women ascended to the highest positions of corporate authority, we do not know how they would change business cultures. At the same time, changing corporate cultures will not eliminate gender biases.

Gender research, however, adds a richer view of corporate actors by examining why and how these behavioral tendencies differ among men and women. As this analysis unfolds, many scholars may find reason to challenge these theories. In this way, this Article seeks to invigorate debate about these fundamental questions of corporate governance. This Article asserts that even though we do not have solutions, we can make a contribution by asking questions. In this spirit, we can speculate on theories suggesting how women executives may foster ethical atmospheres or how gladiator workplaces may impede women managers. Specifically, this Part examines how gender perspectives may influence two corporate governance issues: (1) promotion tournaments and (2) groupthink.

A. Gender Differences in Tournament Structures

1. Social Psychology and Tournaments.—In general, social psychology reveals good corporate actors can make bad decisions when placed in certain situations.[133] Even the finest managers may lack the cognitive objectivity to review business decisions. These executives may do so without shame because self-serving biases protect their self-esteem.[134] Societal and corporate norms promote these justifications so that managers can continue to view themselves as honest.

2. Biases Fostered by Promotion Tournaments.—Firms seek to reduce monitoring expense by implementing evaluation systems to pro-

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133. For an overview of this dynamic, see BEHAVIORAL LAW AND ECONOMICS (Cass R. Sunstein ed., 2000); Christine Jolls et al., *A Behavioral Approach to Law and Economics,* 50 STAN. L. REV. 1471 (1998); *Behavioral Theories, supra* note 65; Lynne A. Stout, *In Praise of Procedure: An Economic and Behavioral Defense of* Smith v. Van Gorkom *and the Business Judgment Rule,* 96 NW. U. L. REV. 675 (2002).

134. For an overview of issues pertaining to corporate morality, see, e.g., Langevoort, *Organized Illusion, supra* note 8, at 107-09.

mote a set number of employees based on their standings compared to their colleagues. Although it is common for managers to use the rhetoric of "team building," the tournament fosters a survival-of-the-fittest or "gladiator"[135] corporate culture.[136] The tournament structure requires players to continue to defeat opponents in successive rounds. Winners receive high compensation and status; losers may face termination. For some employees, this system offers thrilling career opportunities; for others, the tournament contributes to anxiety-ridden lives.

Success in one round does not mean success in higher rounds; as the stakes increase so does the pressure. To remain "major players in the game," the winners must continuously produce profits. The ongoing "what have you done for me lately?" pressures of competition may lead superstars to fear that they may lose status. Social psychologists reveal that when people sense that they may forfeit benefits, they may take more risks to maintain the rewards than they would to acquire the reward in the first place, ignoring long-run regard for their reputations.[137] This is called a "loss frame."

In analyzing the behavioral biases of those who prosper in tournament contests, Donald Langevoort explains that superstars are "high-ego" or "high-Mach" employees who may be highly narcissistic individuals.[138] Successful people can become overconfident to the extent that they do not see realistic boundaries to their power—the "winner's curse."[139] In this way, high-Mach types fail to perceive mistakes as at-

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135. William Bratton used this term to refer to Enron's corporate culture while presenting his work at Tulane Law School in April, 2002. William W. Bratton, *Enron and the Dark Side of Shareholder Value*, 76 TUL. L. REV. 1275 (2002). For an analysis of the societal culture that led to the Enron scandal, see Kent Greenfield, *September 11th and the End of History for Corporate Law*, 76 TUL. L. REV. 1409 (2002) and Faith Stevelman Kahn, *Bombing Markets, Subverting the Rule of Law: Enron, Financial Fraud, and September 11, 2001*, 76 TUL. L. REV. 1579 (2002).

136. *See, e.g.*, Langevoort, *Ego, supra* note 8, at 874-75. As an example, Enron used the "rank and yank" system whereby workers evaluated each other; those falling at the bottom of the curve were fired, while those at the top were given large bonuses. Under this peer-review process, a group of twenty employees vote unanimously to judge Enron employees. The top five percent ranked superior received bonuses sixty-six percent higher (and much larger stock option grants) than those ranked excellent, the next thirty percent. *See* Bethany McLean, *Why Enron Went Bust*, FORTUNE, Dec. 24, 2001, at 58 (describing Enron's culture of arrogance and the techniques employed to maximize value).

137. *See generally* Amos Tversky & Daniel Kahneman, *The Framing of Decisions and the Psychology of Choice*, 211 SCIENCE 453 (1981).

138. Donald C. Langevoort, *The Organizational Psychology of Hyper-Competition: Corporate Irresponsibility and the Lessons of Enron*, 70 GEO. WASH. L. REV. 968, 975 (2002); *see also* Michael Maccoby, *Narcissistic Leaders: The Incredible Pros, The Inevitable Cons*, HARV. BUS. REV., Jan.-Feb. 2000, at 69, 69.

139. RICHARD H. THALER, THE WINNER'S CURSE (1992).

tributable to their actions.[140] Specifically, self-serving biases may allow the superstar to see hardship resulting from bad luck, but fortune from exceptional talents. In addition, rather than modify plans when a long-term project starts to flounder, these executives may throw even more good money after bad. This cognitive bias is known as the "optimism-commitment whipsaw"—whereby some executives disregard red flags and deepen their investments.[141] With this perspective, we can see how successful managers may get caught in an "encore trap" in meeting analysts' forecasts for next quarter's profits.

In this way, Langevoort emphasizes that tournament structures may defeat a firm's attempts to implement compliance programs to ensure moral behavior.[142] Facilitating these biases, Langevoort explains that firms using tournaments infuse their corporate atmospheres with military and sports rhetoric to inculcate both competitiveness and loyalty at the same time. Such metaphors allow employees to see dishonest conduct as merely the type of combative action needed to win the battle.[143] An employee may come to view corporate efforts to foster an ethical workplace as hypocritical given tournament competition.[144]

In struggling to ascend to higher rounds of the tournament contest, high-Mach types need to feel loyalty to team members when necessary, but betray colleagues when the time comes. In other words, high-Mach executives can sever ties of trust quickly by shutting down their emotions. In this way, behavioral dissonance allows people to go through these contests thinking little about what might be left behind in order to succeed at any cost.

In choosing winners and losers in the tournament, managers form beliefs about the integrity of a particular candidate—a heuristic

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140. Donald C. Langevoort, *Selling Hope, Selling Risk: Some Lessons for Law from Behavioral Economics About Stockbrokers and Sophisticated Customers*, 84 CAL. L. REV. 627, 664 (1996) [hereinafter *Selling Hope, Selling Risk*] (noting that high-Mach types, who believe in which they are selling will "experience the happy confluence of higher sales volume and lower moral anxiety" despite their use of aggressive and manipulative sales tactics).

141. Langevoort, *Organized Illusions, supra* note 8, at 147.

142. Donald C. Langevoort, *Monitoring: The Behavioral Economics of Corporate Compliance with Law*, 2002 COLUM. BUS. L. REV. 71, 89-90.

143. *See* Donald C. Langevoort, *Taking Myths Seriously: An Essay for Lawyers*, 74 CHI.-KENT L. REV. 1569, 1591-92 (2000) [hereinafter *Taking Myths Seriously*] (discussing the thought process of junior attorneys).

144. *Id.* Yet, this explanation of how corporate cultures promote processes whereby corporate actors rationalize away unethical actions does not mean that such actors should necessarily be let off the hook for bad behavior. Rather, the goal is to shed light on the powerful dynamics that flow from tournaments and the corporate cultures they create.

device know as a "schema."[145] Specifically, once supervisors made a commitment, they have a subconscious need to maintain consistency.[146] People tend to interpret new information in a manner to confirm the status quo—"cognitive conservatism."[147] When they face information that indicates that their initial decision was wrong, they may fail to see these warning signs. Once the fraudulent behavior is discovered, supervisors may be "surprised as anyone," not comprehending how they could let it happen.

3. Women's Cognitive Makeup and Tournaments.—

 a. *Impediments to Women's Success in Winning the Game.*—Gender research suggests that social stereotyping influences women's cognitive makeups to impede their success in tournaments. Importantly, women's minor missteps at the start can lead to major difficulties in the long-run race. These subtle differences between men and women are significant because minor setbacks can create a self-perpetuating cycle that quickly accumulates. First, the tendency for women not to ask for more money at the beginning of employment may foster biases that they are worth less.[148] In formulating initial schemas of candidates, supervisors tend to use higher salaries as evidence of greater talent. Thus, women's salary differential may lead to low performance evaluations for women in the early rounds of the competition. Thus, men may proceed to higher rounds, in part, simply because they ask for more money in the beginning.

Second, scholars examine gender differences in pyramid games similar to tournaments. Laboratory studies using tournament structures tend to substantiate the position that supervisors give women executives less challenging assignments based on unfounded assumptions. Researchers report that both men and women supervisors have a tendency to grade women's performance lower based on the fact that they are women.[149] Specifically, these studies show that both women and men appraise men on their "potential" while women are more commonly evaluated on their performance. The net result was that managers promote men at a much faster rate than women.[150]

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145. *See, e.g.*, Donald C. Langevoort, *Where Were the Lawyers? A Behavioral Inquiry into Lawyers' Responsibility for Clients' Fraud*, 46 VAND. L. REV. 75, 98-99 (1993) [hereinafter *Lawyers' Responsibility*].

146. *See id.* at 101 (discussing the need for schema consistency which requires ignoring or rationalizing away contrary impressions).

147. *Id.* at 100.

148. BABCOCK & LASCHEVER, *supra* note 87, at 8-9.

149. WILLIAMS, *supra* note 66, at 248.

150. BABCOCK & LASCHEVER, *supra* note 87, at 15.

Women's ability to ascend to higher rounds is also impeded because more women tend not to market themselves to supervisors—believing that hard work and talent alone are sufficient to climb the corporate ladder.[151]

Studies also purport to demonstrate that men and women respond differently to competitive environments depending on the gender mix of the opposition. Men perform better when they compete against women than against men. Indeed, the higher the proportion of women among their challengers, the better men perform. Men's accomplishments in all-male groups is the same as mixed-gender groups, but women's success in all-women groups improves significantly than when they are in mixed-gender groups.[152] While one may argue that women simply do not like competition against men, we need to ask why this is so. Perhaps, women seek to protect men from feeling shame for letting "a girl beat them." Women know that if they win they will face sanctions for threatening male notions of masculinity.

The higher women climb in the tournament, the more "masculine" the job is perceived—increasing the chances that supervisors will not see women executives as suitable for that level of the game.[153] Research studies show that the smaller the women's percentage in a tournament group, the more likely colleagues will devalue women's contributions.[154] These studies also show that as women's token status becomes salient, the more this status will affect her performance.[155] Specifically, studies show that token women in groups performed twenty-one percent worse than women in the all-female groups.[156]

Because people react negatively to women behaving in competitive ways, women may internalize sanctions that they may accept the imposter image—they accept the legitimacy of their own inferiority as they reached levels that they are "not supposed to achieve."[157] Women executives' sense that they are "faking it" increases as they win more rounds of workplace contests. Rather than feeling she is a "special person with a Midas touch," she may feel that she is a fraud who will be exposed any day. In this way, we can see that women may have

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151. *Id.* at 32.
152. *Id.* at 102.
153. *Id.* at 92-93.
154. *Id.* at 92.
155. *Id.* at 80.
156. *Id.*
157. *Id.* at 77-79.

less of the sense of invincibility that superstars need to challenge colleagues in competitive environments.

b.   The Behavioral Makeup of Women Superstars.—With respect to women superstars, one may interpret research on gender differences in quite different ways. On the one hand, one can see how women executives' biases may promote more business integrity for three reasons. In general, the notion is that women may have fewer of the "white male traits" of "egocentrism" that use self-deception to justify questionable behavior.[158] First, women may not allow success to cloud their judgments; they are less likely to think "everything is going to work out all right." In addition, since women take less risk, they may be less likely to engage in wrongdoing because they may see excessive risk-taking as part of the game. In this way, women executives may have an advantage over men who often overestimate their chances and aim too high.[159] Finally, if women have more of an ethic of care, they may be less able to alter their emotions in order to betray team members to proceed to the next level of competition. Women may worry more about what they leave behind—including fraudulent actions.[160]

On the other hand, these same behavioral tendencies of women may operate to the detriment of corporations. Women executives may manipulate gender performance to move up in the tournament in ways that are not available to men. Under this view, women can be just as high-Mach as men, but use three different means. First, with respect to overconfidence, women executives may need larger egos than men to succeed. To see why, we can envision high-powered women having bigger egos because they battle on additional fronts that men do not face—in a more complex web of tournament matches at home, work, and society.

Second, while men may use direct tactics for conflict, women executives may express anger and quests for domination beneath the surface. Women's hidden aggression may give them greater ability than men to fake loyalty to team members. Because women are as-

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158. *Grease and Grit, supra* note 58, at 1628. According to Langevoort, "[W]hite males might have a competitive advantage because of their comfort and familiarity with the language and norms of workgroup interaction. . . . [W]hite males would have a continuing advantage simply because of their primacy in setting the cultural norms and their numerical domination of the status quo." *Id.* at 1626.

159. BABCOCK & LASCHEVER, *supra* note 87, at 136.

160. *See id.* at 118 (noting the greater importance women place on relationships); O'Connor, *supra* note 6, at 1307-08 (stating that studies indicate that businesswomen may possess a higher degree of moral development than male executives).

sumed to have moral authority, they may appear to be congenial while using relationships to inflict harm upon opponents.

Third, we can question how the tournament may alter the moral values of women in a destructive manner because they must make larger sacrifices to succeed. For women, we hope that "oppression in a male hierarchy" may make them more insightful concerning "good ole boy" cultures. Although women may be more likely to see how male standards create ethical risks, the hardships faced may not improve their personalities in ways assumed. Rather than ennobling, her climb to the top may be an embittering experience that increases cognitive biases. She may rationalize that the game is rigged against her to begin with, so she is justified in taking more ethical short cuts than men.

In sum, women who win the tournament may possess dexterity in gender performance to keep their aggression and ego below the radar screen in ways that do not offend men. This raises questions whether many women executives have the caring values often attributed to them.

B.   Group Cognitive Biases and Women in the Boardroom

1.   Social Psychology and Small Group Decisionmaking.—Corporate law scholars use studies of small-group decisionmaking in social psychology to evaluate the deliberative processes of boards.[161] This literature suggests that boards make better decisions in groups than those made by individuals.[162] To explain these results, social psychologists theorize that groups curb individual defects by presenting different perspectives, awakening concentration, and fixing mistakes among members.[163]

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161. *E.g.*, Cox & Munsinger, *supra* note 10, at 89; Lynne L. Dallas, *Proposals for Reform of Corporate Boards of Directors: The Dual Board and Board Ombudsperson*, 54 WASH. & LEE L. REV. 91, 93 (1997).

162. STEPHEN M. BAINBRIDGE, CORPORATION LAW AND ECONOMICS 208 n.4, 209-10; *cf.* Jayne W. Barnard, *Institutional Investors and the New Corporate Governance*, 69 N.C. L. REV. 1135, 1170-73 (1991) (noting the finding of social scientists that changing the processes used in group decisionmaking may improve the outcome).

163. *E.g.*, BAINBRIDGE, *supra* note 162, at 209 n.5; Robert J. Haft, *Business Decision by the New Board: Behavioral Science and Corporate Law*, 80 MICH. L. REV. 1, 9-14 (1981); *see also* Donald C. Langevoort, *The Human Nature of Corporate Boards: Law, Norms, and the Unintended Consequences of Independence and Accountability*, 89 GEO. L.J. 797, 801-05 (2001) [hereinafter *Human Nature*] (setting forth the importance of the board of directors providing advice and bringing outside experience to bear in developing corporate strategy).

Social psychology reveals that cognitive flaws affecting small groups may impair boardroom politics.[164] Even if it was possible to decrease the time and informational constraints facing independent directors, these groups can suffer from behavioral defects similar to those that affect individuals.[165] Specifically, groups may be influenced by psychological processes—group mindlessness—that may lead boards to avoid seriously scrutinizing managerial policy. Indeed, when several factors come together, they can multiply group biases so that the effect is much greater than simply adding the factors together.[166] Remember, however, that "contagious bias"[167] may help in making routine decisions and does not always lead to faulty results. In addition, just because a group fails does not mean that it was the result of defective decisionmaking. Finally, within the same group, group biases may influence one decision, but not others.[168]

Because CEOs dominate the boards,[169] many boards do not consist of equal-status peers that have impartial leadership. Cognitive biases arise in independent directors' perceptions that are influenced by the CEO, who still effectively chooses those directors.[170] In general, social psychology indicates that independent directors are likely to feel loyalty to their appointer.[171] Social psychology warns that members of a group tend to conform their opinions to what they per-

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164. Donald Langevoort explains that we should not "expect people to respond fully to legal rules that ask them to modify their actions upon spotting danger signs, when perceiving such signs would provoke the stress of an ego threat." Langevoort, *Ego, supra* note 8, at 869. Shaming may be an ineffective tool because independent directors may not recognize the wrongfulness of their behavior because cognitive processes minimize the effect of ego-threatening information. *Id.* at 856-58.

165. *See generally* Christopher P. Neck & Gregory Moorhead, *Groupthink Remodeled: The Importance of Leadership, Time Pressure, and Methodical Decision-Making Procedures*, 48 HUM. REL. 537 (1995) (discussing "groupthink" which can result in individuals within a group seeking consensus to such a degree that alternative courses of action are ignored and the wrong decision arrived at).

166. Cox & Munsinger, *supra* note 10, at 104.

167. Donald C. Langevoort, *The Epistemology of Corporate-Securities Lawyering: Beliefs, Biases and Organizational Behavior*, 63 BROOK. L. REV. 629, 647 (1997) [hereinafter *Epistemology*].

168. IRVING L. JANIS, GROUPTHINK 14, 132 (2d ed., rev. 1983). As an example, Janis referred to how groupthink influenced President Kennedy's inner circle of advisors in formulating strategic plans leading to the Bay of Pigs, whereas the members avoided the same errors when deliberating the Cuban Missile Crisis. *Id.*

169. For a further explanation of directors' schema, see *Epistemology, supra* note 167, at 676 (discussing the role of attorneys in managing the various tendencies of directors).

170. *See* Cox & Munsinger, *supra* note 10, at 98-99 (discussing the CEO's role in selecting board members and how this affects group conformity).

171. For analysis of how directors' schemas develop from insiders' perspectives, see *Epistemology, supra* note 167, at 630-36.

ceive the leader of the group wants to hear.[172] In this way, independent directors may lose their outsider perspective.[173]

Moreover, individual members of a group may adjust their behavior in response to their impressions of other group members. Under these group biases,[174] boards may make riskier decisions than those made by individuals alone.[175] Specifically, there is a strong tendency of like-minded people deliberating in groups to move toward extreme consequences. That is, group biases may foster over-optimism, lack of vigilance, and sloganistic thinking. In this way, small groups may come to believe that their goals are based on ethical principles in a way that allows them to avoid questioning the honesty of their behavior.

2. *Groupthink in the Boardroom.*—One of the most studied behavioral biases in small group decisionmaking is groupthink. The creator of this theory, Irving Janis, describes groupthink as "a mode of thinking that people engage in when they are deeply involved in a cohesive in-group, when the members' striving for unanimity override their

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172. Haft, *supra* note 163, at 41-42; *see also Human Nature, supra* note 163, at 797.

173. *See Epistemology, supra* note 167, at 637-38 (discussing the potential of attorneys to blend into and thereby become influenced by the prevailing corporate culture).

174. Rather than moving toward the center of group opinion, under a process called "polarization," groups may make riskier decisions than those made by individuals acting alone. Cass R. Sunstein, *Deliberative Trouble? Why Groups Go to Extremes,* 110 YALE L.J. 71, 74 (2000). This involves a process whereby an entire group quickly comes to share a view because some people in the group appear to accept the belief. *Id.* at 74. Group conformity does not provide the whole answer because individuals' private opinion also changed to favor the riskier positions. *Id.* at 74-75. The group may find positions based on rhetoric currently favored in the culture to be more significant or "persuasive arguments." *Id.* at 89. People like to maintain certain self-perceptions, thus if an individual likes to think of himself as more risk prone than average, he may shift his position to favor even more risk after hearing the other members. *Id.* at 87. The most vocal members may act as "risk entrepreneurs," leading to a limited argument pool whereby there are many arguments in favor of a risky project and few against. In a masculine environment, individual members may want to hold themselves out to others as people who are not afraid to take risk.

Under a process called "cascades," there may be a snowballing effect. *Id.* at 82. Members of a group come to share a more extreme view in a cascade-like process, reaching a "tipping" point where group consensus forms. *Id.* Similar to polarization, cascades occur for information and reputation reasons. *Id.* at 81. Specifically, these cascades occur because members may publicly take a stand or remain silent in order to maintain their reputations with other members of the group, although their private perceptions may vary. *Id.* at 83. Thus, directors may concur with initial opinions expressed to aid in maintaining the self-esteem of the original speaker.

175. *E.g.,* John C. Coffee, Jr., *"No Soul to Damn: No Body to Kick": An Unscandalized Inquiry into the Problem of Corporate Punishment,* 79 MICH. L. REV. 386, 395 (1981); Dallas, *supra* note 161, at 107; Sunstein, *supra* note 174, at 75.

motivations to realistically appraise alternative courses of action."[176] Although Janis's groupthink hypothesis is well-accepted in the field of social psychology, empirical tests have produced mixed results as to the theory's validity.[177] Many of the conditions, such as cohesiveness, are hard to replicate in laboratory settings.

Cohesiveness, a common trait in boards, is one of the most important precedents for groupthink. It is important to note that cohesiveness[178] is one of the most controversial topics in social psychology. Janis's characterization of harmful cohesiveness is similar to the warm "clubby atmosphere" on boards.[179] Too much camaraderie can lead groups to avoid facing hard questions. Specifically, "fictive friendships"[180] may create boardroom norms that interpret directors' criticism of the CEO as disloyalty. Board members know that renomination to the board depends on "appropriate performance," which means they need to conform their behavior to the "cult of politeness." These pressures lead some directors to use least-effort solutions, rather than criticize corporate strategies.

According to Janis, when the group is faced with ethically questionable decisions, groupthink leads members to avoid doubt about the appropriateness of their actions. Viewed in this light, groupthink is a defensive mode for groups coping with decisional stress. Members use group concurrence to ease anxieties aroused from violating ethical standards.[181] They avoid feelings of shame and guilt[182] by rationalizing "we are a good and wise group."[183] In addition, successful groups may succumb to the winner's curse when group narcissism and unlimited confidence prevail. This may lead to excessive risk-taking because members unconsciously generate shared illusions of superior-

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176. JANIS, *supra* note 168, at 9. Janis developed the groupthink theory by examining how small, high-level groups of government officials used faulty decisionmaking procedures that resulted in bad results—specifically analyzing Pearl Harbor, the Korean War, the Bay of Pigs, and the Vietnam War. *Id.* at vii-x.

177. *See, e.g.*, Marceline B.R. Koorn et al., *Managing Group Decision Making Processes: Individual Versus Collective Accountability and Groupthink*, 2 INT'L. J. CONFLICT MGMT. 91 (1991).

178. JANIS, *supra* note 168, at 245.

179. *Id.* at 247.

180. O'Connor, *supra* note 6, at 1246.

181. JANIS, *supra* note 168, at 250-54. For these reasons, members avoid raising ethical concerns that imply that a "fine group . . . , with its humanitarianism and its high-minded principles, might be capable of adopting a course of action that is inhumane and immoral." *Id.* at 12.

182. Ronald R. Sims, *Linking Groupthink to Unethical Behavior in Organizations*, 11 J. BUS. ETHICS 651, 653-54 (1992).

183. JANIS, *supra* note 168, at 256.

ity that hinder critical reflection and reality testing.[184] The group surmises "we needn't worry, everything will go our way."[185]

In order for groupthink to develop, Janis maintains that group members engage in self-censorship to repress dissent. Specifically, Janis states: "When groupthink tendencies become dominant, the members . . . try to avoid saying anything that might disturb the smooth surface of unanimity that enables the members to feel confident that their policies are correct and are bound to succeed."[186] Members may criticize dissenters for being "soft" on risk-taking; the objector may receive subtle ridicule and rebuff for asking too many questions.[187] Thus, directors may detect "which way the wind is blowing,"[188] and will "put up and shut up" in order to advance their careers.

Viewed in this light, we can see that corporate governance reforms may result in corporate lawyers leaving behind even more extensive paper trails to document compliance with hollow rituals. These reforms can only provide independent directors with the "power to act,"[189] but do not assure that they have the "will" to act.[190] This perspective explains why many boards have learned to go through the motions of good corporate procedures, but nevertheless continue to fail to challenge managers when necessary. In the end, we need directors who are bold and courageous enough to say that the emperor CEO has no clothes.

3. Women's Ability to Prevent Groupthink on Corporate Boards.—

a. *Women Joining the Corporate Elite.*—We should consider how group behavioral biases may affect women to a greater degree than men. Specifically, this Article posits that women directors may be less likely than men to "rock the boat" because they face more criticism for dissenting because of their gender.

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184. *Id.*

185. *Id.*

186. *Id.* at 95.

187. *See id.* at 39-40 (noting why doubts about the CIA invasion of Cuba were not pressed). Most people do not want to risk embarrassment by displaying their ignorance in public. *Selling Hope, Selling Risk, supra* note 140, at 657.

188. Haft, *supra* note 163, at 38.

189. Shann Turnbull, *Crumbling Corporate Governance Myths,* CORP. LIBRARY, Sept. 5, 2002, http://www.thecorporatelibrary.com/special/turnbull/turnbull10.html. Thus, boards increase the form, but not substance on important issues such as executive pay. Millstein, *supra* note 52, at 19.

190. *See* Turnbull, *supra* note 189.

Studies of the "small world of the corporate elite"[191] are pessimistic about the progress made in promoting outsider values on corporate boards.[192] This cynicism arises because "directors who represent diversity on corporate boards share the same values as the old, homogeneous groups."[193] Given that women and men are trained to think as corporate members, they will have similar ethical perspectives to laser focus on bottom-line goals. Perhaps, directors representing diversity learn to assure incumbent boards that they will "fit in" and not cause trouble. Thus, some corporate scholars posit that the power elite produces a façade of diversity by selecting women and minorities who share the same values as the existing CEOs.[194]

   b.   Women's Fear of Speaking Up.—In evaluating women directors, we need to recognize that the cultural cohesiveness on corporate boards can create a large hurdle for people who are "not like them."[195] The "fictive friendships" that prevail among white men on boards make it more difficult for women to become part of the "good ole boys' club."[196] Women may have had to internalize the required personality changes to fit in to a greater degree than men in order to become a rubber-stamped member of the "elite private club."

   Because women professionals may lack self-confidence, they may engage in more self-censorship in corporate boardrooms. Specifically, studies of small group decisionmaking reveal that women may be more likely to second guess their opinions, suppress doubts, and couch opinions in a tentative manner.[197] For this reason, women speak less in mixed-gender groups, that is, they take fewer turns in the conversation and take less time in each turn.[198] In analyzing women directors' roles in boardrooms, one may argue that women's contributions may be treated with less attention and respect than those of their

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191. Mina Yoo et al., *The Small World of the Corporate Elite*, DIRECTORSHIP, Nov. 2001, at 4, 4-5 (finding that, based on an analysis of boards and directors of the largest U.S. corporations in 1999, each director, on average, could reach every other director through 4.6 intermediators and each board through 3.7).

192. O'Connor, *supra* note 6, at 1309-10.

193. *Id.* at 1310.

194. *Id.*; *accord* RICHARD L. ZWEIGENHAFT & G. WILLIAM DOMHOFF, DIVERSITY IN THE POWER ELITE: Have Women and Minorities Reached the Top? 192 (1998).

195. Cox & Munsinger, *supra* note 10, at 105-08.

196. For a general discussion of these "fictive friendships" among board members, see O'Connor, *supra* note 6, at 1246.

197. *Cf. Lawyers' Responsibility*, *supra* note 145, at 105 (noting this tendency in groups of lawyers).

198. *See* DEBORAH TANNEN, YOU JUST DON'T UNDERSTAND: WOMEN AND MEN IN CONVERSATION 87-88 (1990).

male colleagues. Thus, women executives who rise to directors positions do not have the same degree of power as male board members.

Even if women executives have a greater ethic of care than men, the tendency to "go along to get along" may be more deeply ingrained in women directors. Specifically, in order to avoid a "relationship-threatening act of defiance,"[199] women executives may accept explanations at face value without making efforts to investigate statements. They may downplay red flags to avoid criticism for being "unmasculine"—feminine idealists.[200] Even if women directors soft pedal disagreement, they may face subtle criticism in the form of collegial jokes made at their expense. In addition, having a directorship may mean more status to a woman according to her own self-image, and that received by her peers, because there are so few women who have obtained this prize. For this reason, women may be more subject to consensus pressure than those firmly in the club. Viewed in this light, women may be even more yes-men than men.[201]

This Article questions the notion that women have cornered the market on integrity in business. We need to recognize that society often deals with harshness of the "heartless world of the marketplace" by giving women new ideological significance as saintly figures who uphold morality. This view attributes women with symbolic meaning that glorifies the mother as the heart and soul of the family.[202] In other words, women are perceived as "angels in the earth" creating a haven from the increasing competition of the marketplace.[203] Thus, using the authority of the "moral mother" to promote women executives is likely to reinforce traditional gender roles.[204] This Article maintains that rather than relying on this window dressing, we need to

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199. *See Selling Hope, Selling Risk, supra* note 140, at 684.

200. *See* JANIS, *supra* note 168, at 114-15 (discussing this type of pressure within the Johnson administration).

201. *Cf.* Canice Prendergast, *A Theory of "Yes Men,"* 83 AM. ECON. REV. 757, 769 (1993) (noting employees rewarded on a subjective basis may become more likely to tell supervisors what they want to hear).

202. In a paradoxical manner, although women are also breadwinners, mothering norms have intensified in the new economy.

203. To promote the notion of the moral mother in times of economic change, traditionalists may blame working women as contributing to societal problems involving families and children. For this reason, some gender scholars posit that corporations may find it more acceptable to punish women at work because they may be spending less time on the homefront caring for family members.

204. O'Connor-Felman, *supra* note 88, at 1274. While the ethic of care may have a place in certain corporate contexts and societal transformation, we need to use this view cautiously so women do not perform this caring role at their own expense and aspirations. To climb the corporate ladder, women executives need to learn that self-assertion is not selfish. *Id.*

fine tune gender analysis to understand the more complex dynamics that influence women in high-powered positions.

CONCLUSION: THE TOURNAMENT AS A REFLECTION OF OUR NARCISSISTIC SOCIETY

Although this Article analyzes many aspects of gender and corporate cultures, we must keep in mind that this is only a portion of the picture.[205] One of the most significant barriers to the advancement of women executives is that they make more personal sacrifices in terms of marriage and children than their male counterparts.[206] Societal demands concerning work and family norms restrict women's ability to compete in the tournament and force women to make harsh "choices" on a daily basis.

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205. *See, e.g., id.* at 1267-70.

206. The glass ceiling consists of many varied and pervasive forms of gender bias that occur in both overt and covert ways. One of the most significant barriers is the difficulty of balancing the demands of the workplace with caring burdens at home. CATALYST INC., *supra* note 40, at 37. Catalyst's 1996 study was the "first large-scale research study of women who have made it to senior management in the nation's largest companies." *Id.* at 4. This study reported that seventy-two percent of these women were married; sixty-four percent had children; eighty-seven percent were part of career couples; that married women contributed an average of sixty-eight percent of their household income; and three-quarters provided "over half of the total household income, making them the primary 'breadwinners' of the family." *Id.* at 9.

In *Creating a Life: Professional Women and the Quest for Children*, the economist Sylvia Ann Hewlett reports that "the more successful the woman, the less likely it is she will find a husband or bear a child." SYLVIA ANN HEWLETT, CREATING A LIFE: PROFESSIONAL WOMEN AND THE QUEST FOR CHILDREN 41 (2002). Women sacrifice much more in terms of relationships and general quality of life to keep up with men in the business world. For instance, Hewlett notes that only fifty-seven percent of high-powered women were married compared with eighty-three percent of the men. *Id.* at 87-88. These women are more likely to be divorced than similarly situated men (eighteen percent compared to twelve percent). In contrast to the dim numbers for high-powered women, sixty-one percent of men in the corporate elite have stay-at-home wives. *Id.* at 103. "Only 39 percent of high-achieving men are married to women who are employed full time, and 40 percent of these earn less than $35,000 a year." *Id.*

Hewlett suggests that the disparate numbers pertaining to family life between men and women in high-powered positions stems from the fact that high-flying men do not want to marry their counterparts. *Id.* at 170. Hewlett suggests three possible reasons for this phenomena: (1) they would have no time for each other because of the high pressure they are under, (2) the man's earning power would not be appreciated as much, (3) men want a wife who will support them and not vice-versa. *Id.* at 178. In other words, they want a nurturer, not a predator as a wife; Hewlett surmises that it may be harder for women to be predators at work and nurturers at home. *Id.* at 172-76. This is a harsh sacrifice for these women because, as Hewlett demonstrates, the pressures of work/family stress can strain marriages to the breaking point. *Id.* at 183. Hewlett reveals that it is difficult to find spouses capable of living with accomplished women and thus women's chances of finding spouses decrease with age, while men's prospects in finding younger wives rise. *Id.* at 169-71.

To fully understand the issues pertaining to how corporate cultures influence men and women, we need to examine the broader context of the role of tournaments in our society. Specifically, tournaments reflect that the United States is in an economic transition to the new economy at the same time that it is undergoing a social revolution in gender roles. Under this economic reform, corporations have sought to promote more flexible labor markets in response to stock market pressure to increase shareholder value. Tournaments restructure the social contract with employees to shift more risk onto workers, resulting in longer working hours, greater workplace demands, less job security, and stagnating wages.

Occurring simultaneously with this economic transition, the women's movement has spurred dramatic change in gender roles as women reject their traditional role in providing domestic services and have entered the labor force on a larger scale. As a result, in less than the span of a human lifetime, women's roles have changed more than in all of history. Although the shift in the gender composition of the labor force evolved independently of globalization, these two phenomena intersect and interact to magnify the forces reshaping the connections between family, work, and corporation. Using this wide-angled framework, this Article asserts that tournament structures magnify and accelerate socio-economic development and, in turn, will be influenced by such socio-economic development.

Researching tournament structures not only allows us to learn about the society we live in and the dynamics of corporate cultures, it offers an occasion to learn about ourselves. Specifically, we can see that the pressures of the tournament promote narcissism—a prominent feature of the winner-take-all society. Under this narcissist society, the tournament is a symbol of egocentricity as well as an allegory about the loss of individuality.[207] The tournament promotes a gladiator mentality, whereby many executives work long hours for more than just the money. Rather, the greatest incentive to win the tournament may be ego—knowing that they defeated opponents to become major players.[208]

These survival-of-the-fittest competitions drive executives by the thrill of the race and the fear of losing; they begin to think that only time spent in an instrumental way has value—to the detriment of what else life offers. Specifically, in order to "do what it takes to succeed," executives may devote more energy to winning the game than they do

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207. O'Connor, *supra* note 6, at 1314.
208. *Id.*

for what once might have mattered most in their lives—family and friends. In the male-dominated world of corporations, however, many employees desire to work less and spend more time with their families, even if this entails less compensation.[209] In this way, serious questions arise whether the tournament society contributes to personal and societal well-being.

The hope is that our daughters will increase the number of women who will ascend to upper-level management. We can ask what the everyday life of today's high-powered mothers tells our daughters. Our daughters have grown up in a new world—they were raised by high-powered mothers who are arguably the most liberated and privileged group of women ever seen. These women, however, have a strong sense of betrayal because they were raised with hopes that they could "have it all," only to find they are running on exhausting treadmills. Our daughters will face even more demands from the "don't look down" society. Specifically, we can expect greater pressures from the 24/7 workplace, family balance, the second shift, daycare, no-fault divorce, and the glass ceiling. We need to ask how we can improve tournament structures for our daughters and sons who will enter the workforce in a few years.

Although simple solutions will not work, some large firms are making progress by studying workplace norms using outside consultants, such as Catalyst, to organize employees in small groups to identify gender barriers and remove stereotypes.[210] Although efforts to reshape corporate cultures are significant, widespread societal changes in individual notions about gender norms and tournament structures are required.

Untangling and clarifying the connections between gender, power, and ego in the corporate context is a difficult task. Given that corporate law scholars have not traditionally incorporated gender perspectives, it is hoped that they will listen and learn to approach these topics with new eyes and fresh opinions.[211] In this way, corporate law

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209. *See* Amy L. Wax, *Family-Friendly Workplace Reform: Prospects for Change*, 596 ANNALS AM. ACAD. OF POL. & SOC. SCI. 36, 46 (2004).

210. Sturm, *Employment Discrimination*, *supra* note 3, at 524-27. For literature discussing how training programs for directors should focus on diversity to overcome biases that directors may have in working with people who are "different," see *Human Nature*, *supra* note 163, at 800.

211. As scholars studying tournaments, we can question whether we may succumb to the distinct patterns of cognitive faults in the tournament of academia. Since tight-knit groups form, we may inquire whether groupthink tendencies may emerge within many areas of study—including corporate law. Corporate law scholarship is a world dominated mostly by white men who tend to be politically conservative—using law and economics to uphold the status quo. Analogizing to our understanding of corporate boards, we may ask whether the

scholars can offer significant perspectives about the accountability for some of the major levers of societal power—the largest corporations of the world.

participation in this cohesive community of researchers may lead to an atmosphere that restricts genuine opinion because the room for discussion is so narrow. Specifically, as corporate scholars we may lose contact with parts of ourselves because the tournament for scholarship silences individual voice. In the dominating drive to acquire positions at the most prestigious law schools, we may tailor our publications in a manner that will lead to more points in the game.

With this new field of research, we have an opportunity to break free of these behavioral tendencies. To begin the study of gender and corporate law, scholars need to examine their own entrenched attitudes about men, women, and the workplace. Rather than playing this game of intellectual chess, we need to let our egos fade to work collectively as problem-solvers to build organizational structures, brick by brick, that will promote individual, organizational, and societal well-being.