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Book Review

***Challenging Boardroom Homogeneity* by
Aaron Dhir¹**CHERYL L. WADE²

OVER THE PAST TWO YEARS, US citizens have heard a great deal about diversity as it relates to race in general, and African Americans in particular. A string of deaths of unarmed African American men at the hands of white police officers has galvanized the nation's attention. When Michael Brown was shot and killed in Ferguson, Missouri in August, 2014, there was a considerable amount of discussion about the gross underrepresentation of African Americans on the police force and among local politicians. Many observers believed that a racially-homogenous police force and the homogeneity among political leaders partially explained the mistreatment of African Americans at the hands of the white Americans in charge. In the months after Brown's death, more African Americans were killed by police officers. Some of the incidents, including the shooting death of Freddie Gray in Baltimore, were highly publicized. But Gray's death was different—while everyone in charge in Ferguson was white, in Baltimore the state prosecutor, mayor, police chief, and several elected officials were African American. Even the group of six police officers involved in the incident was diverse: Three of the officers charged were black.³

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1. Aaron Dhir, *Challenging Boardroom Homogeneity: Corporate Law, Governance, and Diversity* (New York, NY: Cambridge University Press, 2015).
 2. Harold F McNiece Professor of Law, St. John's University School of Law.
 3. It is worth noting that one of the officers, Edward Nero, was recently acquitted of all charges. See Jess Bidgood & Timothy Williams, "Police Officer in Freddie Gray Case is Acquitted of All Charges," *The New York Times* (23 May 2016), online: <http://www.nytimes.com/2016/05/24/us/baltimore-officer-edward-nero-freddie-gray-court-verdict.html?_r=0>.

I mention the troubled relationship between some in the African American community and many police departments because it provides a symbolic narrative that offers insight into the discussion of homogeneity at the top of the most salient segments of society. Corporate boardrooms are one of these contexts. Aaron Dhir gives readers a nuanced discussion of this issue in *Challenging Boardroom Homogeneity*.⁴

Dhir's discussion is very different from the typical US discourse about diversity. Americans rarely focus on the homogeneity of those who lead our most important institutions unless there is a crisis. More often than not, Americans engage in a superficial analysis about the value of diversity and how it can be achieved.⁵ We say we want diversity without challenging the omnipresent homogeneity of those who control our institutions. This superficiality taints discussions about police brutality and about the value of diversity on corporate boards. In the United States we say all the right words—diversity, inclusion, access—without digging deeply into the causes of and cures for the lack of gender and racial diversity.

My police metaphor does not help to explain why diversity may be important for corporate boards. It does, however, demonstrate the timeliness and importance of Dhir's diversity discussion. Of course, the answer to the question of why boardroom diversity is important depends on how one defines diversity. If diversity is defined in a way that includes race, and if we look at Baltimore, we can say that the fact that the city's leaders were African American meant that the official response to Gray's death was replete with empathy for the victim's family and community. The road to accountability and the search for answers was not as delayed as it was in those places where the police force and city leadership lacked racial diversity. It seems that the racial diversity among Baltimore's leaders illustrates how they can shape outcomes in ways that take into account the interests of constituents who are too frequently ignored. But, we can also say,

4. *Supra* note 1.

5. See *e.g.* Cheryl L Wade, "Gender Diversity on Corporate Boards: How Racial Politics Impedes Progress in the United States" (2014) 26:1 Pace Int'l L Rev 23 at 24. Wade notes that "diversity doublespeak sanitizes the conversation and obfuscates the continuing problems of racism, sexism, and discrimination because by merely pretending to communicate, the speaker can make bad concepts seem good; See also Rebecca K Lee, "Core Diversity" (2010) 19:2 Temp Political & Civ Rts L Rev 477 at 479. Lee argues that:

To move toward meaningful equality...we need to reconceptualize the purpose and value of diversity in organizations. Most employers implement models of diversity that promote... 'surface diversity'...which focus[es] on diversifying the organization's ranks but which stop[s] short of valuing diversity in full form, thus inhibiting substantive equity.

that on some level, the benefits of the diversity of Baltimore's political leaders and police force may have been insignificant. After all, while he was in the custody of six officers, three of whom were black, Gray suffered injuries that could have been prevented.⁶

Like political leaders, corporate boards can help to set a tone of parity and equity. And, like their counterparts in political life, boards help to establish the culture of the entities they manage. Diversity among leaders is an important first step. Diversity alone—at any level in the corporate hierarchy or in a municipal administration, for that matter—does not, however, solve the problem of structural and cultural bias. In the Baltimore example, this is evident from the fact that not even the African American officers assisted a badly injured Gray. Dhir's measured approach to diversity and homogeneity reveals the difficulties, nuances, and complexities that participants in any meaningful discussion of these issues will encounter. Dhir does not advocate for diversity without exploring whether it makes a difference. He avoids the kind of superficiality that typifies US discourse on these issues. His book is an antidote to Americans' complacency about a status quo in which women and people of color are underrepresented among business and political leaders.

Dhir mentions but does not emphasize racial homogeneity. He focuses on the underrepresentation of women on corporate boards because, as he explains, “[i]n the field of corporate governance, international regulatory efforts aimed at diversification have largely involved gender.”⁷ This focus on gender rather than race is crucial and helpful because the issues that impede women's access to corporate boards differ from those that slow access for people of colour. When writing about diversity, most US legislators, scholars, and commentators conflate considerations about the racial and gender homogeneity that persist in the business setting and ignore salient differences between women's advancement and the advancement of people of colour.⁸ In contrast, Dhir provides an in-depth discussion about gender homogeneity that is helpfully clear about his normative views of diversity and homogeneity. In discussing the United States' approach

6. Justin Fenton, “Freddie Gray alleged back injury detailed in unsealed report,” *The Baltimore Sun* (31 December 2015), online: <www.baltimoresun.com/news/maryland/freddie-gray/bs-md-ci-freddie-gray-back-injury-20151231-story.html>.

7. *Supra* note 1 at 9.

8. See e.g. Janis V Sanchez-Hucles & Donald D Davis, “Women and Women of Color in Leadership: Complexity, Identity, and Intersectionality” (2010) 65:3 *Am Psychologist* 171 at 178. Sanchez-Hucles and Davis note that “[w]hen considering identity, researchers must go beyond the past emphasis on ‘master identity’ and examine gender and race/ethnicity individually.”

to board diversity, Dhir avoids the vagueness that is characteristic of American discussions on the topic.

The recent focus in the United States on board diversity began in earnest on December 16, 2009, when the Securities and Exchange Commission (SEC) amended Item 407(c) of Regulation S-K.⁹ Under the amended rule, corporate boards must disclose, in their proxy and registration statements, their process for finding and evaluating individuals to join and serve on the board. In describing this process, boards must disclose whether they include diversity as one of the bases for identifying and choosing board members. If diversity is a consideration, boards must describe how it factors into the decision-making. In addition, if boards have a policy covering diversity in the board nomination process, they must disclose the policy, the way it is implemented and they must describe how the policy's effectiveness is evaluated.

The SEC's board diversity rules had some potential to inspire corporate directors to think about the homogeneity of their boards in a meaningful way. As Dhir explains, the goal of disclosure is to provide potential investors and security holders with material information. But disclosure also has the potential to change corporate behaviour: It can inspire as well as simply describe. Faced with a disclosure requirement, corporate managers might change policies or practices that, if disclosed, could damage their companies' reputations. Alternatively, companies might boost their reputations by voluntarily disclosing certain facts. For example, some companies that have attained some amount of diversity voluntarily disclose the racial and gender composition of their boards by sending shareholders proxy materials that include directors' pictures. The SEC board diversity rule has the potential to encourage boards with no formal or informal diversity policy to consider adopting one. The requirement that boards describe how they implement and evaluate the effectiveness of their diversity policy might have encouraged reflection about the process's adequacy. Unfortunately, however, the SEC's amended rules do not seem to have inspired meaningful reflection about the lack of diversity on corporate boards.

Dhir observes that more corporate boards added discussion about diversity in their proxy statements after the SEC board diversity disclosure rules became effective in 2010. But within the first few months after the rules' effective date, it was clear that the diversity discussion inspired by the SEC's changes was just doublespeak.¹⁰ For example, since the SEC rules did not define diversity, some companies articulated a commitment to diversity but defined the concept

9. *SEC Corporate Governance*, 17 CFR § 229.407 (2010).

10. Wade, *supra* note 4 at 30-32.

expansively. Many companies expressed a commitment not only to racial and gender diversity, but also enumerated a long list of others factors including: ethnicity, age, national origin, geographic location, experience, background, viewpoint, and skills. The resulting disclosure was vague, superficial, and obscure. Dhir observes that the SEC approach in the 2009 amendments “may not produce diversity-enhancing results along socio-demographic lines” in the future because of the agency’s failure to define diversity.¹¹

Dhir is not alone in this assessment of the SEC board diversity rule. Five years after the SEC rules became effective, and coinciding with the release of *Challenging Boardroom Homogeneity*, a group of nine large public pension funds suggested that the SEC require companies to disclose the race, gender, ethnicity, experience, and skills of each board nominee. The pension fund representatives insisted that they need this information to make better investment decisions concerning the companies that are or should be in their portfolios.

In addition to his thorough examination of boardroom diversity in the United States, Dhir undertakes a meticulous global examination of approaches to achieving greater gender diversity on boards of directors. He observes that not only do most jurisdictions define diversity, but also that these definitions all include gender. Dhir highlights Norway’s approach to board diversity because it was the first to create and impose quotas aimed at achieving gender balance on boards.¹² He also describes reform efforts in Iceland, Italy, France, and Belgium—nations that followed Norway’s example and imposed quotas of their own intended to create greater gender parity on boards.¹³ Dhir’s text, graphs, and appendices include important information about other jurisdictions across the globe.¹⁴

For me, *Challenging Boardroom Homogeneity* is an almost perfect balance of theoretical and practical discourse. Theories about diversity come alive in the narratives of Dhir’s interviews in Norway, where legislative reform dramatically accelerated the numbers of women serving on the nation’s boards. The interviews reveal board directors’ perceptions about how increasing the numbers of women on boards improved firm governance and boardroom decision-making. Many of his interviewees express appreciation of the experiences, value, perspectives, and independence that women bring to boards. Some of them discuss their perceptions of the way women monitor firms, assess risk, and deliberate, concluding that boards benefit from the differences in the approaches that are adopted by female

11. *Ibid* at 20.

12. *Supra* note 1 at 101 (Chapter 4).

13. *Ibid* at 75-76.

14. *Ibid*.

directors as compared to the approaches undertaken by their male counterparts. These interviews reveal directors' opinions and reactions about the impact of Norway's increased gender diversity on the operation and workings of boards and provide readers with rarely seen access to boardroom interactions.

The clumsiness in the language of some of the interviewees demonstrates the difficulty many have when thinking and talking about diversity. One of Dhir's interviewee's statements are inconsistent, while other quotes show the interviewees stumbling to find the right way to describe Norway's dramatic changes in board diversity.¹⁵ Admirably, Dhir does not merely report his interviewees' observations, but instead carefully critiques them. For example, he raises the possibility that some interviewees stereotype women and the value they bring to directorial work.¹⁶ Most important is the fact that his interviews and his analysis of them provide strong evidence of diversity's benefits and vividly illustrate the importance and complexity of interpersonal relationships on corporate boards.

Challenging Boardroom Homogeneity is a book of extraordinary depth and breadth. It is both theoretical and practical. Dhir thoroughly explicates theories that justify board diversity efforts. He addresses ideas about quotas, making the book important for both quota supporters and detractors in jurisdictions that have attained mandated gender diversity goals. Those who do not support quotas have much to learn from Dhir about the successes of the quota approach; those who do support quotas will be able to ensure that progress continues.

Even those who live in jurisdictions that have not adopted the quota approach, such as the United States, should read Dhir's book. One salient reason relates to Dhir's observation that in nations where quotas have been mandated, nominators have been forced to look beyond traditional pools to find female directors. Even without adopting quotas, this strategy of looking beyond the usual networks of potential board nominees can be implemented.

Challenging Boardroom Homogeneity is likely to elevate the level of discourse on diversity issues. The US focus in the business setting on concepts such as diversity, inclusion, and access is still superficial. Dhir's book may help American businesspeople dig more deeply when considering boardroom homogeneity. His dissection of business leaders' arguments that there are too few qualified women in the pipeline to board membership is instructive. He could, however, have hit even harder when examining the causes of homogeneity in the United States. He does not offer a deep critique of the legacy of past discrimination or of the problem of continuing bias against women. Typically, "happy talk" focusing

15. *Ibid* at 110-46.

16. *Ibid* at 101-46.

solely on inclusion, access, diversity, and equal opportunity limits thought about the root causes of the underrepresentation of women and the continuing problem of sexism. Dhir avoids the happy talk, and instead provides readers with an excellent discussion of implicit biases that have impeded women's access to board membership. I would nevertheless have liked to have seen a little more acknowledgement of the harsh reality of the blatantly sexist attitudes that existed in the past and, to a significant extent, persist now.

Challenging Boardroom Homogeneity is almost encyclopedic in its thoroughness, but it does not read like an encyclopedia. Dhir is an engaging writer, and he has produced a page turner. He is meticulous and provides comprehensive details and background. He asks why women are underrepresented in the first place and explains why nations around the world initiated reforms intended to increase the numbers of women on boards. He dives into the long-running debate about the justifications for efforts to diversify boards and gives his readers a complete foundation for understanding global reform efforts regarding boardroom homogeneity.

In sum, Dhir's book expertly explores whether diverse boards make a difference. His exhaustive research has produced a book that is admirably judicious and measured. He provides his readers with a fair assessment of the notion of diversity, particularly as it relates to boards of directors. He gives his readers an insightful glimpse into the boardroom and digs deeply into the interpersonal relationships that drive directorial decision-making. The power of Dhir's work comes from his rare access to board members whose analyses are especially salient as corporate power increases around the world.

Why should anyone take the time to read about boardroom homogeneity in the middle of this second decade of the twenty-first century? There is, after all, so much about which to worry—terrorism, climate change, poverty, and hunger. But, after reading *Challenging Boardroom Homogeneity*, the importance of women's inclusion in and access to the boards of companies across the globe becomes patently clear.