

GENDER DIVERSITY ON CORPORATE BOARDS

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ABSTRACT

Gender diversity on corporate boards is a popular topic both in academic and in business publications, but the focus is typically on ‘how’ rather than ‘why’. This paper argues that the motivation for seeking to increase the number of women on boards necessarily affects the means of achieving that goal. Indeed, some motivations may undermine one another. This paper argues that a clear rationale will positively affect the implementation of programs for change, and uses international examples as evidence that this is possible.

I INTRODUCTION

It is a truth universally acknowledged that a corporation in possession of a board of directors must be in want of a woman.¹

Gender diversity is recognised as a pressing challenge for corporate governance. However, the current debate regarding the way to achieve gender diversity on boards is hampered by a lack of critical discussion about why such a goal is sought. Although reasons for gender diversity are frequently asserted, they are less frequently considered in the theoretical detail which would highlight the extent to which motivation affects implementation. This paper argues that in order to consider programs which may facilitate real change we must first give proper consideration to the question of why we seek gender diversity on corporate boards. The specific reason for pursuing gender diversity will inevitably affect the method of pursuit. This paper begins with an overview of the most commonly cited reasons in favour of gender diversity on corporate boards. The second part of this paper takes this analysis a step further, highlighting the relationship between motivation and ‘solution’ and demonstrating that the current practice of using many simultaneous and competing reasons is neither compelling nor productive. Finally, I consider some examples of how motivation affects policy at a national level and show how the link between theory and practice is evident in other jurisdictions.

II THE EXISTING DEBATE

Gender diversity on corporate boards is a popular topic in academic and business publications. There does not appear to be any express opposition to an increase in the number of women on corporate boards; nevertheless, the increase in numbers has been limited. In Australia, although the number of female directors in the top 200 companies has risen steadily, the percentage is currently just 18.6 per cent² despite over a decade of significant attention. Statements of support are not translating into actual change. A recent Australian Human Resources Institute study found that although two-thirds of CEOs and senior executives supported gender equity,³

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1 With apologies to Jane Austen.

2 Australian Institute of Company Directors, *Appointments to S&P/ASX 200 Boards* (31 August 2014) <<http://www.companydirectors.com.au/Director-Resource-Centre/Governance-and-Director-Issues/Board-Diversity/Statistics>>.

3 Serge Sardo and Paul Begley, ‘Gender Equity in the Workplace’ (Australian Human Resources Institute, 2011) 1. <http://www.wigb.gov.au/images/stories/pdf/AHRI%20gender_equity_in_the_workplace_2011.pdf>

only 37 per cent of companies actually had gender equity initiatives in place for leadership development.⁴ Similarly, Broome, Conley and Krawiec found that most corporate directors profess to support gender diversity but, even in lengthy interviews, cannot give explanations or examples as to why they do so.⁵ This paper argues that a key reason for the limited change is a failure to adequately address the relationship between motivation and choice of policy.

Although the question of why there should be more women on boards is rarely debated in any serious way, various reasons are often listed as a preface to debate about potential action for change. The most frequently cited reasons may be broadly grouped into three categories: social justice arguments, functional arguments, and empirical arguments. Social justifications rest on assertions of the need for equality and are therefore quite separate in both nature and style compared with functional and empirical arguments, which may be loosely linked as business case arguments. Functional justifications use management and social research to consider how women may improve business performance. Empirical justifications are attempts to quantify a hypothesised link between increased female participation on boards and company profits. Although analysis of the specific arguments is also important, for the purposes of this article the arguments will be considered briefly and within these three notional groups.

Social justice is a broad underlying rationale which is often left unexplained. A simple comparison between the percentage of women in the workforce and the percentage of women on boards may be cited as *evidence* of a problem. At their best, social justice arguments are premised on the intrinsic value of women. For example, Peta Spender argues that women's participation on boards is '*a measure of democratic leadership because these corporations are critical actors in the public sphere and their directors influence public debate and access to resources.*'⁶ Spender therefore eschews any business case arguments as unnecessary and demeaning to women's absolute right to economic equality.⁷ Similarly, Barbara Black asks,

Is it really necessary to make a business case to justify increased efforts towards board diversity?
The number of women, including professional women ... should put the onus on the business community to explain their failure to nominate more female candidates for board positions.⁸

However, the argument that such imbalance is necessarily wrong for democratic, social, or other reasons is rarely explicated. Perhaps it is the lack of explicit statement which allows the incompatibility between social justice arguments and 'business case' arguments to go unnoticed. Perhaps the social justice argument does not carry the same 'call to action' as a business case. Whatever the explanation, there is a lack of advocacy focusing on social justice alone as sufficient motivation for action in relation to gender diversity on corporate boards.

Functional business case arguments can be separated from social justice arguments in that they deal with the instrumental value rather than the intrinsic value of women. As a subset of the overall 'business case' function, these arguments seek to suggest the manner in which women might benefit a corporate board. These reasons may be related to the nature of diversity *per se*, to the advantages of characteristics perceived to be female-specific, or to the representational role of women in power. Management and psychological research has demonstrated that diverse teams tend to make better decisions,⁹ so in many cases the argument in favour of women on boards is merely an argument for diversity of any kind. In this way, the same effect could be

4 Ibid 6.

5 Lissa Broome, John Conley and Kimberley D Krawiec, 'Dangerous Categories: Narratives of Corporate Board Diversity' (2011) 89 *North Carolina Law Review* 759, 760.

6 Peta Spender, 'Gender Diversity on boards in Australia – Waiting for the great leap forward?' (2012) 27 *Australian Journal of Corporate Law* 23, 27.

7 Ibid 28.

8 Barbara Black, 'Stalled: Gender diversity on corporate boards' (2011-2012) 37 *University of Dayton Law Review* 7, 20.

9 Katherine W Phillips and Denise Lewin Loyd, 'When surface and deep-level diversity collide: the effects of dissenting group members', *Organizational Behavior and Human Decision Processes* 99 (2006) 143, cited in Mary Curtis, Christine Schmid and Marion Struber, 'Gender diversity and corporate performance' (Credit Suisse Research Institute, 2012), 18.

achieved through diversity of worldview,¹⁰ ethnicity¹¹ or age.¹² In some cases, the asserted functional advantages are related to the specific (perhaps imagined) nature of women. Women are argued to be intrinsically more risk averse,¹³ more likely to champion tough questions,¹⁴ more intensive in their monitoring style¹⁵ and more likely to be well prepared for board meetings.¹⁶ Women are claimed to develop more effective marketing strategies¹⁷ due to the fact that women make a majority of purchasing decisions.¹⁸ These ‘feminine characteristics’ are argued to be a reason to ensure more women reach board level positions. Additionally, women’s presence on boards may be intended to serve as a signal to employees, shareholders or stakeholders.¹⁹ However, the signal may not be sufficiently clear.²⁰ Similarly, women on boards may help to attract and retain talented female employees at an individual firm level.²¹ At a macro or national level, low representation of female candidates at all levels is argued to be a ‘waste of talent’.²² For example, the Grattan Institute argues that a 6 per cent increase in female workforce participation would lead to a \$25 billion increase in Australian GDP.²³ Alone or in conjunction with other reasons, these functional motivations are typically outlined with limited awareness of the fact that such instrumental purposes undermine the very nature of equality and social justice.

From a practical perspective, empirical arguments may be the most effective encouragement for an individual firm to appoint more females to the board, as they suggest that female board members increase financial performance.²⁴ The empirical business case is amorphous despite significant research and even more advocacy.²⁵ However, attempts to find such evidence have proved inconclusive thus far. Empirical work has been used to argue that there is a positive

10 See, eg, Regina Burch, ‘Worldview Diversity in the Boardroom: A Law and Social Equity Rationale’ (2011) 42 *Loyola University Chicago Law Journal* 585.

11 See, eg, Lisa Fairfax, ‘The bottom line on board diversity: A cost–benefit analysis of the business rationales for diversity on corporate boards’ (2005) *Wisconsin Law Review* 795.

12 Muhammad Ali, Yin Lu Ng and Carol T Kulik, ‘Board age and gender diversity: A test of competing linear and curvilinear predictions’ (2013) *Journal of Business Ethics* <<http://link.springer.com/article/10.1007%2Fs10551-013-1930-9>>.

13 See, eg, Judy F Graham et al, ‘Gender differences in investment strategies: An information processing perspective’ (2002) 20(1), *International Journal of Bank Marketing* 17, 17.

14 Douglas Branson, ‘An Australian Perspective on a global phenomenon: Initiatives to place women on corporate boards of directors’ (2012) 27 *Australian Journal of Corporate Law* 793, 811.

15 Renee Adams and Daniel Ferreira, ‘Women in the Boardroom and their impact on governance and performance’ (2008) *Journal of Financial Economics* 291, 301.

16 Ibid.

17 Michelle Yun, ‘The next phase in supporting women at work: Balancing fiduciary duties and corporate legitimacy’ (2012) 26(1) *Wisconsin Journal of Law, Gender and Society* 65, 83.

18 Ibid.

19 See, eg, Broome, Conley and Krawiec, above n 5, 792; Lissa Broome and Kimberley D Krawiec, ‘Signaling through board diversity: Is anyone listening?’ (2008) 77 *University of Cincinnati Law Review* 431, 452.

20 Patrick S. Shin and Mitu Gulati, ‘Showcasing Diversity’ (2011) 89 *North Carolina Law Review*, 1023.

21 David Matsa and Amalia Miller, ‘Chipping Away at the Glass Ceiling: Gender Spillovers in Corporate Leadership’, 101(2) *American Economic Review* 635, 639.

22 See, eg, Claudia Sussmuth-Dyckerhoff, Jin Wang and Josephine Chen, ‘Women Matter: An Asian Perspective’ (McKinsey and Company, 2012) 1 <http://www.mckinsey.com/~media/McKinsey%20Offices/Japan/PDF/Women_Matter_An_Asian_perspective.ashx>.

23 John Daley ‘Game Changers: Economic Reform Priorities for Australia’ (Grattan Institute, June 2012) 39 <http://grattan.edu.au/static/files/assets/bc719f82/Game_Changers_Web.pdf>.

24 This view assumes that decisions about gender diversity should devolve to firm level.

25 See, eg, Women on Boards *Why women are good for business* (December 2011) <<http://www.womenonboards.org.au/pubs/articles/1112-why-women-are-good-for-business.htm>>; Thomson Reuter, *Average Stock Price of Gender Diverse Corporate Boards Outperform Those with No Women* (10 July 2013) <<http://thomsonreuters.com/press-releases/072013/Average-Stock-Price-of-Gender-Diverse-Corporate-Boards-Outperform-Those-with-No-Women>>; Renuka Rayasam *Do more women on the board mean better results?* (*New Yorker*, 19 November 2013) <<http://www.newyorker.com/business/currency/do-more-women-on-the-board-mean-better-results>>; Shivali Nayak ‘More women in the boardroom can improve profitability’ (CNBC Asia Pacific, 7 March 2012) <<http://www.cnbc.com/id/46034361#>>.

link,²⁶ a negative link,²⁷ no link,²⁸ or a context-specific link²⁹ between increased gender diversity and business outcomes. For example, international non-profit research organisation Catalyst reports that companies with more female board members have a 53 per cent higher return on equity, a 42 per cent higher return on sales and a 66 per cent higher return on invested capital.³⁰ Conversely, others purport to find a negative relationship between gender diversity and firm performance.³¹ Daunfeldt and Rudholm point to a negative effect on return on total assets after a time lag of two years in Swedish companies,³² while Bohren and Strom suggest that less gender diversity creates more value in Norway.³³ The search for empirical proof that women increase profit suffers from serious theoretical and practical limitations. Most studies which purport to show a positive link suffer from indistinct causality: large, well-performing firms tend to have better diversity programs, but can those diversity programs be credited with success, or are diversity programs a symptom of success? Despite many complex attempts, problems with isolating and measuring board performance statistically have not been fully addressed, and indeed may not be possible to address.³⁴ Another reason for the inconclusive results is the lack of a definite link between board behaviour and firm performance. This leaves the business case arguments in the difficult territory of trying to prove something which is not susceptible of proof. Ultimately, even if the 'business case' were capable of unequivocal proof and even if such proof were provided in great quantity, the result would only serve to indicate one way in which firm value could be increased. Firms would have to weigh this opportunity against other opportunities to increase firm value. As Donald Langevoort notes, '*there are always close substitutes in the world of corporate governance*'.³⁵ Women would thus, in the context of this argument, be competing in a marketplace of adding value. In this way, the instrumental view of women presented by the empirical business case seriously undermines claims of intrinsic value put forward by social justice arguments. The two arguments can therefore be considered incompatible as motivations for increasing gender diversity on corporate boards. To a lesser extent, the empirical claims differ from functional claims in that empirical claims privilege *results* whereas functional claims privilege *process*. Results and process may frequently be consistent, but when the success of a policy is measured, the outcome may vary depending on which approach is preferred.

III THE RELATIONSHIP BETWEEN MOTIVATION AND IMPLEMENTATION

The arguments for gender diversity on corporate boards have been grouped into three categories for the purposes of this discussion, but when mobilised as a mixture, the mixed arguments are

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- 26 David Carter, Betty Simkins and W Gary Simpson, 'Corporate Governance, Board Diversity and Firm Value' (2003) 38 *Financial Review* 33; Nancy M Carter and Harvey M Wagner *The Bottom Line* (Catalyst, 2007) <<http://www.catalyst.org/knowledge/bottom-line-corporate-performance-and-womens-representation-boards-20042008>>; Ronald C Anderson et al, 'The economics of director heterogeneity' (2011) 40(1) *Financial Management* 5.
- 27 Sven-Olov Daunfeldt and Niklas Rudholm, 'Does Gender Diversity in the Boardroom Improve Firm Performance?' (Working Paper No. 60, HUI Research, 11 April 2012); Ovind Bohren and Oystein Strom, 'Governance and Politics: Regulating Independence and Diversity in the Board Room' (2010) 37(9) (November/December 2010) *Journal of Business Finance and Accounting* 1281; Kenneth Ahern and Amy Dittmar, 'The changing of the Boards: The impact of firm valuation and mandated female board representation' (2012) 127 *The Quarterly Journal of Economics* 137.
- 28 Lu Zhang, 'Board demographic diversity, independence and corporate social performance' (2012) 12(5) *Corporate Governance* 686; Yi Wang and Bob Clift, 'Is there a "business case" for board diversity?' (2009) 21(2) *Pacific Accounting Review*; Adams and Ferreira, above n 15.
- 29 Adams and Ferreira, above n 15, 3.
- 30 Nancy M Carter and Harvey M Wagner, 'The Bottom Line' (Catalyst, 2007) <<http://www.catalyst.org/knowledge/bottom-line-corporate-performance-and-womens-representation-boards-20042008>>.
- 31 See, eg, Daunfeldt and Rudholm, above n 27, 20; Bohren and Strom, above n 27; Ahern and Dittmar, above n 27; Matsa and Miller, above n 21.
- 32 Daunfeldt and Rudholm, above n 27.
- 33 Bohren and Strom, above n 27.
- 34 Renee Adams, Benjamin Hermalin and Michael Weisbach, 'The role of Boards of Directors in Corporate Governance: A conceptual framework and survey' (2010) 48(1) *Journal of Economic Literature* 58.
- 35 Donald Langevoort, 'Commentary: Puzzles about Corporate Boards and Board Diversity' (2011) 89 *North Carolina Law Review* 841, 844.

often weaker than any single rationale. If the reasons stated are inconsistent, this weakens any prescription for change. This article argues that the motivation for seeking to increase the number of women on boards necessarily affects the means of achieving that goal. Current debate focuses on discussion of the various mechanisms for increasing the number of women on boards, such as quotas, targets, mentoring programs and other initiatives. However, without a coherent rationale it is difficult to determine which method is most appropriate. Where social justice is the strong focus, quotas may be appropriate because they place primacy on the representation of women on boards rather than on any potential financial effects of that representation. Conversely, where considerations relate to profit enhancement it may be that targets are sufficient, because businesses must be free to choose the best means of enhancing their profit. Similarly, in considering a mechanism for change it is necessary to determine whether that mechanism is business- or government-driven. The choice of mechanism also devolves from the basic rationale for seeking the goal in the first place. For example, if gender-balanced boards provide better understanding of consumers, then inter-business competition in the marketplace should naturally lead to an increase in women on boards, and there would be no reason for government to legislate on the issue. However, if the key rationale is social justice or competition at an international level, then government ought to play a more central role in driving change. Rationale also determines the measure of success. Adding women to boards to provide successful female role models does not necessarily require any particular gender balance; success may be achieved with one or two females on most boards. However, if full use of the available talent pool is the primary motivation, then success might be measured by reference to the gender balance of the workforce in that sector, and therefore differ from sector to sector. At present the debate about ways to increase the number of women on boards pays insufficient attention to the reasons for such a goal. If the motivation were clear, there would be implications for the implementation of that goal.

IV INTERNATIONAL EXAMPLES AND THE POTENTIAL FOR COHERENCE

A International Examples: Norway, Spain, UK

Australian debate is fluid on the issue of rationale and takes influences from a variety of sources. However, in some other countries we can see a single specific rationale developed in the national discourse, and we can then trace the way that rationale affects the implementation of programs for change. For example, Norway and Spain have both implemented a formal quota system for gender diversity on corporate boards. However, the difference between rationales in these two countries can be traced through the discourse of national debate to legislation, implementation and outcomes. The United Kingdom does not have a quota, and it opposes any suggestion that quotas be implemented through the European Union. Instead, a variety of business-led initiatives are beginning to have some success, which is in keeping with the firm-level business case rationale favoured by UK discourse. In each jurisdiction, the implementation of policy links to a single dominant rationale for action.

In Norway, there is a social context of concern for gender equity,³⁶ but for the specific issue of gender diversity on corporate boards the primary rationale was a desire to make full use of the talent pool at a national level. The initial suggestion to implement quotas for non-government firms was initially made in October 1999 by the Minister for Children and Family Affairs, who proposed a change to the *Equal Status Act* 1978.³⁷ The proposal incorporated amendments

³⁶ See, eg, Catherine Casey, Renate Skibnes and Judith K Pringle, 'Gender Equality and Corporate Governance: Policy Strategies in Norway and New Zealand' (2011) 18(6) *Gender, Work and Organization* 613, 615; Aud Slettemoen in Darren Rosenblum, 'Feminizing Capital: A Corporate Imperative' (2009) 6(1) *Berkeley Business Law Journal* 55, 61; Siri Terjesen, Ruth V Aguilera and Ruth Lorenz (2014), 'Legislating a Woman's Seat on the Board: Institutional Factors Driving Gender Quotas for Boards of Directors' (2014) *Journal of Business Ethics* forthcoming.

³⁷ Mari Teigen, 'Gender quotas for corporate board in Norway: Innovative gender equality policy' in Collette Fagan, Maria C Gonzalez Menendez and Silvia Gomez Anson (eds), *Women on Corporate Boards and in Top Management: European Trends and Policy* (Palgrave Macmillan 2012) 70, 78.

relating to equal pay and reporting of gender metrics. After public consultation and referral to a committee for legal consideration, the measure was determined to be best situated within the *Companies Act*. This decision was consistent with the rationale demonstrated in various statements and explanations by government representatives. For example one of the drafters of the relevant legislation explained that ‘many people also think that the reasoning behind these gender equality rules is gender equality, but in fact it isn’t, it’s a side effect ... the point is that you need to use all the best people.’³⁸ Angsvar Gabriellsson, the Minister who caused a storm by announcing the quota laws before they had been discussed by cabinet, explained, ‘I didn’t do it for feminist reasons’.³⁹ Similarly, when addressing the Economic Commission for Europe, State Secretary for Norway Kjell Erik, demonstrated this motivation stating that ‘women of today are highly educated and we need their competence in all spheres and sector in the labour market.’⁴⁰ Quotas were introduced after initial voluntary targets went unmet. The quotas were implemented through corporations law, specifically the chapter devoted to ‘Company Management’. Although the issue was first raised as a gender equality issue it was quickly moved to company law as discourse developed to demonstrate the benefits to national productivity. The rationale of national productivity drives the use of company law and heavy sanctions.

Spain has also implemented a quota for women on corporate boards; however, unlike Norway it is apparent that social justice was the sole motivating factor for taking action on the issue of board diversity.⁴¹ Therefore, it is consistent to find that the quota is part of a larger gender equality act. The Spanish legislative requirement for corporate boards to appoint female directors formed part of an omnibus act containing old and new gender equity legislation, including parental leave provisions and workplace equality provisions.⁴² The preamble to the Organic Act 3/2007 of 22 March For Effective Equality Between Women And Men includes reference to the Spanish Constitutional right to equality and to various international treaties regarding principles of non-discrimination and subsumes the representation of women on corporate boards within the broader scope of corporate social responsibility.⁴³ The Spanish quota may be criticised for its lack of compliance mechanisms, but when considered as an equal opportunity aspiration it is, perhaps, less surprising that there are no harsher penalties for failure to meet the quota.

The UK has demonstrated opposition to quota legislation of either the Norwegian or the Spanish variety. In the UK, national discourse is centred on individual business efficacy rather than the national talent pool or social justice. For example, Baroness Bottomley of Nettlestone argued in Parliament that ‘We believe in voluntary principles, in persuasion, in best practice and a bit of naming and shaming. Our approach is a voluntary one wherever possible and quotas offend.’⁴⁴ As a result, the government does not envisage a central role for itself in this area. However, business has taken up the challenge quite impressively, using techniques such as mentoring, business-led targets and talent identification schemes, and there has been an increase in female directors from 12.5 per cent in 2011 to 20.7 per cent in 2014.⁴⁵ Even where government action is not evident, as in the UK example, there remains a clear relationship between rationale for action and chosen form of action in relation to women on boards.

38 Aud Slettemoen in Rosenblum, above n 36, 65.

39 Pilita Clark, ‘The Accidental Feminist’ *Financial Times* (online) October 13 2005.

40 Kjell Erik ØIE, State Secretary, Ministry for Children and Equality, Norway, ‘Gender equality: a key component of a modern growth strategy’ (Speech delivered at Economic Commission For Europe 60th Anniversary Session, Geneva, 25–27 April 2007).

41 *Public Limited Liability Companies Act* § 6-11a (Norway).

42 *Gender Equality Act 2007*(Spain); Mijntje Lückcrath-Rovers (2010) ‘A comparison of gender diversity in the corporate governance codes of France, Germany, Spain, the Netherlands and the United Kingdom’ <<http://ssrn.com/abstract=1585280>>.

43 Organic Act 3/2007 of 22 March For Effective Equality Between Women and Men (Spain), 4.

44 United Kingdom *Parliamentary Debates*, House of Lords, 10 January 2013, 343 (Baroness Bottomley of Nettlestone).

45 Susan Vinnicombe, Elena Dolder and Caroline Turner, *The Female FTSE Board Report* (Cranfield University UK, 2014), 22.

B *The Potential for Australia*

In Australia, a variety of competing motivations are evident in relation to gender diversity on boards, and the focus of argument remains on implementation. However, in order to determine responsibility for change it is important to consider the rationale for seeking to increase the number of women on boards. Current discourses tend to include a political appetite for social justice (albeit not fully realised) and an economic appreciation of the potential business case (albeit not sufficient to warrant action). Several high-profile figures have expressed support for government action by way of board gender quotas.

Former Federal Sex Discrimination Commissioner Liz Broderick,⁴⁶ Former Governor-General Quentin Bryce,⁴⁷ and Treasurer Joe Hockey⁴⁸ have all spoken in support of quotas. In an article for the *Australian Financial Review* Liz Broderick argued:

Getting more women onto boards ... is not just about gender equity. It's also about our desire to remain internationally competitive. No country, industry or organisation can afford to waste the skills of more than half its population.⁴⁹

Broderick's focus on the national talent pool reflects that of the Norwegian government.

While still Governor-General, Quentin Bryce commented that '*the Australian way of affirmative action is setting goals and recognising discrimination and lack of opportunity and deciding to take action.*'⁵⁰ Speaking on the ABC program *Q & A*, Joe Hockey, then shadow treasurer with responsibility for corporate governance issues, commented, '*I just don't understand how you can claim as a director of a company that all wisdom and knowledge lies in the hands of men only.*'⁵¹ These two comments display a concern regarding discrimination.⁵²

Similarly, the leader of the Australian Greens Party, Senator Christine Milne, supports the implementation of quotas as a means of overcoming discrimination.⁵³ In March 2013 Milne moved that the Senate '*calls on the Government to legislate to ensure ASX200 companies have a minimum of 40 per cent female board directors within the next 5 years.*'⁵⁴ Only the eight members of the Australian Greens party voted in favour of the motion and only one senator sought to make a statement regarding their vote.⁵⁵ Senator Michaelia Cash, of the Liberal National Party, made a short statement defending her party's opposition to the motion. Her statement focused on the individual business case, and essentially argued that quotas undermine merit:

high-level appointments of women should recognise merit and excellence ... the appointment of women to boards for reasons other than merit and excellence could be counterproductive and work against the long-term interests of women.⁵⁶

Similarly, when asked to comment on his colleague Joe Hockey's view of quotas, the then-Leader of the Opposition, Tony Abbott, asserted that '*if women are given the chance to show their abilities they will get places on their merits.*'⁵⁷ The views of Cash and Abbott, which prioritise the functional business case at the level of the firm, appear to remain the majority

46 Christine Milne 'Why I changed my mind about quotas for women on boards' (11 April 2013) Mamamia <<http://www.mamamia.com.au/news/christine-milne-quotas-for-women-on-boards/>>.

47 Kristy Needham and Michael Gordon, 'Quotas "wrong, difficult and tokenistic"' *Sydney Morning Herald* (online) 9 March 2011.

48 Ibid.

49 Elizabeth Broderick 'Mandatory quotas may be needed on boards' *Australian Financial Review* (online) 8 April 2010.

50 Tony Wright, 'The Governor-General, Quentin Bryce, has advocated the introduction of quotas to ensure more women are appointed as directors on company boards' *Sydney Morning Herald* (online) 3 August 2011.

51 Lenore Taylor and Kirsty Needham, 'The Opposition Leader, Tony Abbott, has rejected Joe Hockey's push for quotas' *Sydney Morning Herald* (online) 3 September 2011.

52 Ibid.

53 Milne above n 46.

54 Commonwealth of Australia *Parliamentary Debates* 13 March 2013, 1616 (Michaelia Cash).

55 Ibid.

56 Ibid.

57 Taylor and Needham above n 51.

discourse. However, one concern is that there is limited scope for such discourse to occur and develop as it did in the UK after the Davies report, and in other countries by the introduction of legislation.

If we take the above discourses as potential motivations we may consider the implications of each rationale. For example, if equity were to be the primary motivating factor, then government is likely to be the primary means of change. The debate regarding which mechanism would be most suitable could then take place within the boundaries provided by the consideration that equity is the prioritised outcome. This focus provides much needed clarity to discussion. It is beyond the scope of this paper to discuss the appropriate legislative or other mechanisms to be employed in service of the aim of equity. However, the example of Spain may be relevant; there the government unilaterally set quotas and reinforced the importance with governmental incentives.

Alternatively, if the 'business case' is to be the primary motivator, the outcome is likely to be different. The business community claims an intention to act and asserts that government need not intervene.⁵⁸ However, little real change is evident.⁵⁹ As discussed above, the empirical business case remains unconvincing. If, alternatively, the functional business case rhetoric is to be effective, implementation programs must focus on the specific functional effect sought. In this way programs such as the forced reporting of generic intentions to increase the number of women on boards would be not only insufficient but also irrelevant. The coherent response to functional arguments may be specific or fundamental. While specific responses would engage with the claimed functional advantages of women on boards, this may or may not lead to an acceptable increase in the overall number of women on boards. Indeed, we have seen engagement of this kind in various areas in Australia already;⁶⁰ some even advocate a more serious transformation of corporate law.⁶¹ These examples of the different possibilities inherent in the social justice and business arguments demonstrate, in the specific Australian situation, the vast difference in coherent programmatic change which can be caused by a difference in rationale for change.

V CONCLUSIONS

Gender diversity has been theoretically accepted as a normative goal for corporate boards. However, the motivations for this goal are often inconsistent and uncertainty about purpose is limiting further developments. This paper has outlined and analysed the various proposed reasons for gender diversity on corporate boards, noting that many frequently combined reasons are actually inconsistent. The individual reasons and their potentially relevant implications were also discussed. Examples of coherent programs for action on the international stage have been provided as both narrative for this argument and as evidence of its effectiveness. Finally, the outcome of two potential rationales in the Australian context have been canvassed. The importance of logical and rhetorical coherence is important when serious changes are being proposed, and it is unlikely that widespread change will be achieved without such a focus on the choice of rationale.

58 See, eg, Business Council of Australia *Increasing the Number of Women in Senior Executive Positions* (Business Council of Australia, November 2013) <http://www.bca.com.au/docs/7dab6016-8fd4-494a-b54f-d89c17279534/Increasing_Number_Women_Senior_Exec_Positions_checklists_FINAL_5.11.2013.pdf>.

59 Blackrock, *Glacial Change in Diversity at ASX200 Companies: Can Australia Escape the Imposition of Diversity Quotas?* (Blackrock Investment Management Limited, 2013), 2.

60 See, eg, Australian Institute of Company Directors, *Board Diversity: Think Outside the Square* (Australian Institute of Company Directors, October 2013).

61 See, eg, Andreas Scherer and Guido Palazzo, 'The new political role of business in a globalised world: A review of a new perspective on CSR and its implications for the firm, governance and democracy' (2011) 48(4) *Journal of Management Studies*; Kent Greenfield, 'The Progressive possibility of corporate law' (2013) 28 *Australian Journal of Corporate Law* 3, 8; Jonathon Porritt, *Capitalism as if the World Matters* (Earthscan, 2007).