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INTRODUCTION

Corporations hold incredible power over many aspects of American life. Their power and influence are felt in our economic, political, and educational systems.[1] Recent corporate scandals demonstrate the havoc that corporations can wreak on housing markets, job markets, and the global marketplace.[2] Scholars have long posited that greater corporate board diversity will lead to better strategic decisionmaking, organizational behavior, and financial performance. Yet, the underrepresentation of women and people of color serving on corporate boards and the barriers to achieving greater diversity persist. Common barriers include stereotypes about aptitude and capabilities, the scarcity of mentors and role models, and the lack of access to informal networks. Another obstacle to gaining greater corporate board diversity is the over-reliance on traditional recruitment practices.

Given these barriers, can law schools build responsive pedagogy and curriculum that help? Maybe. The goal of this Essay is to explore and

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1. André Douglas Pond Cummings, Steven A. Ramirez, & Cheryl L. Wade, *Toward a Critical Corporate Law Pedagogy and Scholarship*, 92 WASH. U. L. REV. 397 (2014) (providing an in-depth examination of the role that corporations play in the U.S. housing market, the prison industrial complex, electoral processes, immigration, and educational policies).
2. *Id.*

propose modest curriculum changes that can be used to address some of these barriers. This Essay suggests that law schools should augment their business curriculum to: (1) better prepare students to become business lawyers; (2) integrate critical corporate scholarship into the business curriculum; and (3) include field placements and/or simulation exercises that can provide real world and/or simulated learning opportunities and access to important networks. Part I provides a brief overview of the underrepresentation of women and people of color on corporate boards. Part II addresses some of the barriers to achieving greater diversity. Part III proposes ways in which law schools can use the curriculum and classroom to address some of the societal and institutional barriers to achieving greater corporate board diversity.

I. CORPORATE BOARD DIVERSITY

Corporations often tout the benefits of diversity. Advocates and academics posit that board diversity is essential to better governance and decisionmaking, which leads to greater corporate profitability, and/or that board diversity should be sought out of fairness and equity concerns.[3] Yet, the racio-ethnic and gender composition of corporate boards remains predominantly white and male.[4] Almost three-quarters of Fortune 500

3. For articles discussing the various rationales for board diversity, see Renée B. Adams & Daniel Ferreira, *Women in the Boardroom and Their Impact on Governance and Performance*, 94 J. FIN. ECON. 291, 291–303 (2009) (finding diverse boards increased accountability of corporate officers for poor performance); Regina F. Burch, *Worldview Diversity in the Boardroom: A Law and Social Equity Rationale*, 42 LOY. U. CHI. L.J. 585, 603 (2011) (discussing improving shareholder value and fairness); Lisa M. Fairfax, *The Bottom Line on Board Diversity: A Cost-Benefit Analysis of the Business Rationales for Diversity on Corporate Boards*, 2005 WIS. L. REV. 795 (analyzing business rationales for increased diversity); Joan M. Heminway, *Women in the Crowd of Corporate Directors: Following, Walking Alone, and Meaningfully Contributing*, 21 WM. & MARY J. WOMEN & L. 59 (2014) (discussing rationales in the context of crowd theory); Kristin N. Johnson, *Banking on Diversity: Does Gender Diversity Improve Financial Firms' Risk Oversight?*, 70 SMU L. REV. 327 (2017) (discussing enhanced financial performance, better governance, and improved risk oversight); Steven A. Ramirez, *Diversity and the Boardroom*, 6 STAN. J.L. BUS. & FIN. 85 (2000) (discussing business benefits resulting from pursuing diversity on boards); Deborah L. Rhode & Amanda K. Packel, *Diversity on Corporate Boards: How Much Difference Does Difference Make?*, 39 DEL. J. CORP. L. 377 (2014) (discussing board performance); Cheryl L. Wade, *Gender Diversity on Corporate Boards: How Racial Politics Impedes Progress in the United States*, 26 PACE INT'L L. REV. 23 (2014) (discussing reducing discrimination).

4. Corporate board diversity studies gather data on board diversity based on compiling information from various public filings and relying on survey, email, and written responses from corporations. While the data reported by the studies vary slightly, they all find that corporate boards are predominately white and male. *See, e.g.*, DELOITTE, MISSING PIECES REPORT: THE 2016 BOARD DIVERSITY CENSUS OF WOMEN AND MINORITIES ON FORTUNE 500 BOARDS 9 (2017) [hereinafter MISSING PIECES], http://www.catalyst.org/system/files/2016_board_diversity_census_deloitte_abd.pdf (explaining that white men make up over two-thirds of Fortune 500 boards); SPENCER STUART, 2016 SPENCER

board seats are held by white men.[5] While modest gains have been made, progress is slow.[6] Collectively, women and people of color hold 30.8 percent of Fortune 500 board seats.[7]

Women have excelled in educational attainment.[8] They also participate in the labor force at almost an equal rate to men.[9] This should set the expectation that women are equally represented on corporate boards and in leadership positions. However, women held only 20.2 percent of the seats on Fortune 500 boards in 2016.[10] This represents modest gains from previous years, with women holding 16.6 percent of Fortune 500 board seats in 2012 and 15.7 percent in 2010.[11] Women are also underrepresented in leadership positions in Fortune 500 companies, representing 5.2 percent of CEOs, 26.5 percent of senior executive officer positions, and 36.9 percent of mid-level manager positions.[12] These percentages are far below the percentage of women participating in the labor force.[13] The percentages also run counter to the fact that women

STUART BOARD INDEX, 19–20 (2016) [hereinafter SSBI], https://www.spencerstuart.com/~/media/pdf%20files/research%20and%20insight%20pdfs/spencer-stuart-us-board-index-2016.pdf (stating that women comprised 21 percent of directors, and minorities 15 percent).

5. MISSING PIECES, *supra* note 4, at 10.

6. For articles describing in detail the overall gains in board diversity but finding that progress remains slow, stalled, or stagnant, see MISSING PIECES, *supra* note 4, at 2; SSBI, *supra* note 4, at 20; EGONZEHNDER, 2016 GLOBAL BOARD DIVERSITY ANALYSIS 8 (2017), https://www.gbda.online/assets/EZ_2016GBDA_DIGITAL.pdf; Jayne W. Barnard, *More Women on Corporate Boards? Not So Fast*, 13 WM. & MARY J. WOMEN & L. 703, 705 (2007); Barbara Black, *Stalled: Gender Diversity on Corporate Boards*, 37 U. DAYTON L. REV. 7, 7 (2011); Rhode & Packel, *supra* note 3, at 381 (discussing the progress and pace of improving board diversity).

7. MISSING PIECES, *supra* note 4, at 9.

8. *Women in the Workforce: United States*, CATALYST (Aug. 11, 2016), http://www.catalyst.org/knowledge/women-workforce-united-states [hereinafter *Catalyst Workforce*] ("[W]omen earned more than half of bachelor's degrees (57.1%), master's degrees (59.9%), and doctorate degrees (51.8%)." This is not a recent trend, as women have earned more bachelor's degrees than men since 1982, master's degrees since 1987, and doctorate degrees since 2006).

9. *Id.* (women represent nearly half of the labor force).

10. *Id.* A recent survey of almost 900 public company directors reported that "[a]n equal percentage of directors believe that 21–40% and 41–50% are the optimal ranges for female board representation. Both of these ranges, however, are notably higher than the actual percentage of women serving on boards." PRICEWATERHOUSECOOPERS, THE SWINGING PENDULUM: BOARD GOVERNANCE IN THE AGE OF SHAREHOLDER EMPOWERMENT 6 (2016), https://www.pwc.com/us/en/corporate-governance/annual-corporate-directors-survey/assets/pwc-2016-annual-corporate-directors-survey.pdf [hereinafter PWC PENDULUM SURVEY]. Interestingly, 10 percent of survey responders believed that 20 percent or less was the optimal range. *Id.*

11. MISSING PIECES, *supra* note 4, at 10.

12. *Women in S&P 500 Companies*, CATALYST, http://www.catalyst.org/knowledge/women-sp-500-companies (last visited Mar. 6, 2018).

13. *Catalyst Workforce*, *supra* note 8.

surpass men in obtaining advanced degrees.[14]

For people of color, the underrepresentation on corporate boards is striking. In 2016, people of color held fewer than 15 percent of Fortune 500 board seats.[15] More specifically, African Americans, Hispanics, and Asians/Pacific Islanders accounted for 7.9 percent, 3.5 percent, and 3.1 percent of Fortune 500 board seats, respectively.[16] Of all board seats in the Fortune 500 in 2016, women of color held 3.8 percent.[17] Black women held 2.4 percent,[18] Hispanic women held 0.8 percent,[19] and Asian women held 1.0 percent of those board seats.[20]

II. BARRIERS TO ACHIEVING GREATER DIVERSITY

Why has progress toward greater board diversity stalled? One obstacle is that corporate leaders and board members do not believe that board diversity will enhance corporate profits.[21] Studies examining the relationship between board diversity and enhanced corporate performance are mixed.[22] While some studies have found positive correlations, others found negative correlations or no significant relationship.[23] Increased corporate earning rationale tends to dominate the diversity debate because it "appeals to a culture steeped" in maximizing shareholder value.[24] It could be that the focus on corporate earnings is misguided.[25] Greater emphasis should be placed on the fact that board diversity may lead to better decisionmaking, greater access to a broader talent pool, and enhanced corporate reputation among

14. *Id.*

15. MISSING PIECES, *supra* note 4, at 11; *see also* PRICEWATERHOUSECOOPERS, THE GOVERNANCE DIVIDE, BOARDS AND INVESTORS IN A SHIFTING WORLD 10 (2017), https://www.pwc.com/us/en/governance-insights-center/annual-corporate-directors-survey/assets/pwc-2017-annual-corporate--directors--survey.pdf [hereinafter PWC GOVERNANCE DIVIDE] ("More than half of directors, 58%, say that their board does have racial diversity—despite the small number of racially diverse directors on public company boards.").

16. MISSING PIECES, *supra* note 4, at 11; *see also* SSBI, *supra* note 4, at 20 (stating that the percentage of racio-ethnically diverse board members at the top 200 S&P 500 companies has not changed significantly over the past five to ten years).

17. MISSING PIECES, *supra* note 4, at 10.

18. *Id.* at 21.

19. *Id.*

20. *Id.*

21. PWC GOVERNANCE DIVIDE, *supra* note 15, at 11 (revealing that "[m]ore than 40% [of survey respondents] do not think board diversity enhances company performance at all," and "almost one in six directors (16%) think that diversity on their board has had no benefit").

22. Rhode & Packel, *supra* note 3, at 383–94; Johnson, *supra* note 3, at 338–45 (summarizing empirical literature on the relationship between board diversity and corporate earnings).

23. Rhode & Packel, *supra* note 3, at 383–94; Johnson, *supra* note 3, at 338–45.

24. Rhode & Packel, *supra* note 3, at 383.

25. *Id.*

shareholders and consumers.[26]

Common barriers also include stereotypes about aptitude and capabilities, the scarcity of mentors and role models, and lack of access to informal networks. These barriers are due in part to "in-group" bias, which is the preference that individuals feel for those who share similar backgrounds "such as race, ethnicity, and gender."[27] These preferences affect both favorable and unfavorable assessments of an individual's intelligence, accomplishments, and aptitude.[28] In-group members will favorably assess the credentials and accomplishments of their own members, ascribing them to "intelligence, drive, and commitment."[29] Meanwhile, the credentials and achievements of out-group members are seen as unmerited, and due to a fluke or preferential treatment.[30]

These barriers are reinforced with affinity bias, which is the tendency to align ourselves with people who share similar identities, interests, and backgrounds.[31] This leads people to invest in and allocate resources to those who are in their affinity group, while excluding others.[32] These biases can affect whom an organization hires, promotes, and develops, which leads to barriers to opportunity.[33]

Another obstacle to gaining entry to the boardroom is the over-reliance on traditional recruitment practices.[34] The selection process relies significantly on existing director or personal networks. Corporate directors are often selected from the senior officer ranks of corporations.[35] Because women and people of color hold few senior-level positions, they are less likely than white men to be selected to join

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26. *Id.* at 393.

27. Angela R. Foster, *A Quest to Increase Women in Corporate Board Leadership: Comparing the Law in Norway and the U.S.*, 26 WASH. INT'L L.J. 381, 385 (2017); *see also* Antony Page, *Unconscious Bias and the Limits of Director Independence*, 2009 U. ILL. L. REV. 237, 249–53 (discussing in-group bias across several factors).

28. Rhode & Packel, *supra* note 3, at 404.

29. *Id.* at 405.

30. *Id.*

31. Kathleen Nalty, *Strategies for Confronting Unconscious Bias*, 45 COLO. LAW. 45, 46 (2016).

32. *Id.*

33. *Id.* at 47.

34. Sonja S. Carlson, *"Women Directors": A Term of Art Showcasing the Need for Meaningful Gender Diversity on Corporate Boards*, 11 SEATTLE J. FOR SOC. JUST. 337, 356 (2012) (quoting LAURA TYSON, THE TYSON REPORT ON THE RECRUITMENT AND DEVELOPMENT OF NON-EXECUTIVE DIRECTORS 5 (2003), http://facultyresearch.london.edu/docs/TysonReport.pdf) ("[T]raditional recruitment practices are frequently informal and leverage personal networks, which means 'many directors have been selected from relatively narrow pools of people sharing common experiences, career patterns and backgrounds.'").

35. *Id.*; Tamara S. Smallman, *The Glass Boardroom: The SEC's Role in Cracking the Door Open So Women May Enter*, 2013 COLUM. BUS. L. REV. 801, 808–09.

corporate boards.[36] This leads to the appointment of directors that share similar backgrounds.[37] The few diverse board directors that are selected tend to serve on multiple boards.[38] They are also more likely than white men to do so.[39] This shows that companies would rather draw from the same pool of diverse candidates than cast a wider net.[40] In other words, in order to serve on a board, diverse candidates need to already be on a board.[41]

III. MODEST CURRICULUM PROPOSALS

Given these obstacles and barriers, can law schools build responsive pedagogy and curriculum that help? Maybe. Law schools may do so by augmenting their business curriculum to better prepare students to become business lawyers and eventual board members. The first step would be to do extensive outreach to business leaders and communities to understand: (1) the attributes that are important to both business and legal hires; and (2) their short-term and long-term business needs.[42] The outreach should include alumni to gauge their level of preparedness when entering the workforce and their ability to complete job responsibilities. Alumni outreach could also seek feedback on what courses best prepared them for the workforce and where improvements in the curriculum can be made.

Based on this outreach, law schools can then recast their business curriculum as a tiered model. The first tier could include course(s) on business and financial literacy and concepts including, but not limited to: understanding financial statements and instruments, basic accounting principles, and valuation techniques. The second tier could allow students to take more advanced business courses. Law schools could offer simulation-based business law courses that provide students with an opportunity to see a transaction unfold while identifying possible risks, proposing solutions, and defending their proposals based on facts, data,

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36. Carlson, *supra* note 34, at 356.

37. *Id.*

38. MISSING PIECES, *supra* note 4, at 14; *see also Still Too Few: Women of Color on Boards*, CATALYST (Mar. 17, 2015), http://www.catalyst.org/knowledge/still-too-few-women-color-boards (finding that a quarter of women of color served on multiple boards, which is more than twice as likely as white women are to serve on multiple boards).

39. MISSING PIECES, *supra* note 4, at 14.

40. *Id.*

41. *Id.*

42. PWC PENDULUM SURVEY, *supra* note 10, at 4 (finding that the most important director attributes continue to be financial expertise (93 percent describe as very important), operational expertise (69 percent), industry expertise (68 percent), and risk management expertise (63 percent); interestingly, legal expertise is ranked lowest at 11 percent).

and legal and regulatory constraints.[43]

Advanced business courses could follow a traditional law school and/or cross-disciplinary course model. A cross-disciplinary approach may broaden the scope and add to the depth of a school's business curriculum by enhancing faculty resources and expertise.[44] Throughout their careers, lawyers and business professionals will work together and learn from one another, so it may make sense to bring them together sooner as students.[45] Cross-disciplinary education can also help students develop connections and relationships within local business and legal communities, which will broaden their professional and personal networks.[46] The third tier could move students into various field placements where they could explore potential career opportunities while enhancing their resumes.[47]

How might these curriculum proposals address the obstacles and barriers to achieving greater boardroom diversity? Law schools can integrate critical scholarship throughout their business law curriculum. Critical scholarship can be used to challenge the status quo of corporate leadership and board homogeneity.[48] It can provide the theoretical framework that will help students understand the role that historical and present-day discrimination and implicit bias plays in reinforcing negative stereotypes about the qualifications and capabilities of women and people of color.[49] Students can then use this framework as future practitioners and academics to develop and improve upon existing diversity initiatives and programming.

As mentioned earlier, directors are still found primarily through personal networks. Law schools could invite business leaders—including

43. *See, e.g.*, Afra Afsharipour, *Integrating the Financial Crisis in the Business Associations Course: Benefits and Pitfalls*, 5 J. BUS. & TECH. L. 5, 9 (2010) (discussing the pedagogical benefits of including active learning methods and real-world examples in the classroom); Alina S. Ball, *Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics*, 22 CLINICAL L. REV. 1, 8–9 (2015) (exploring business law curricula advantageous for law students); Robert J. Rhee, *Specialization in Law and Business: A Proposal for a JD/"MBL" Curriculum*, 17 CHAP. L. REV. 37, 38 (2013) (proposing a program designed to supplement law students' business acumen).

44. Rhee, *supra* note 43, at 53–55 (discussing how a career in business law requires interdisciplinary training that allows for a better understand of a business client's perspective and problems).

45. Seth Freeman, *Bridging the Gaps: How Cross-Disciplinary Training with MBAs Can Improve Transactional Education, Prepare Students for Private Practice, and Enhance University Life*, 13 FORDHAM J. CORP. & FIN. L. 89, 101 (2008).

46. *Id.*

47. Eric C. Chaffee, *Answering the Call to Reinvent Legal Education: The Need to Incorporate Practical Business and Transactional Skills Training into the Curricula of America's Law Schools*, 20 STAN. J.L. BUS. & FIN. 121, 174 (setting forth an externship model for building business-related competencies in law students).

48. Cummings, Ramirez & Wade, *supra* note 1.

49. Ball, *supra* note 43, at 25.

board members—into the classroom as either guest speakers or adjuncts. This might create and strengthen relationships between the law school and business leaders, which could benefit students by improving their understanding of corporate boards and raising the law school's visibility. While immediate corporate board diversity gains will not be realized, it may serve as a catalyst for future opportunities. It may also provide a competitive advantage for students for field placements or entry-level positions.

In order to provide these opportunities to diverse students, law schools must take steps to generate interest among diverse students in taking business law courses. Diverse students may not enroll in these courses because of lack of familiarity or exposure to the corporate law profession. Steps may include programming or episodic mentoring/networking opportunities with business faculty and alumni. These opportunities should be geared toward building and developing relationships so students gain familiarity and exposure to business law.

CONCLUSION

The legal academy must take steps to build responsive pedagogy and curriculum to better prepare students to become business lawyers. It could do so by conducting extensive outreach to business and industry leaders, the legal community, and alumni to understand long-term and short-term hiring and business needs. A fundamental component of any augmentation to existing business curriculum is to integrate critical scholarship, which could then provide the theoretical framework to develop and improve upon existing diversity initiatives and programming.

Law schools should also include programming or episodic mentoring/networking opportunities for diverse students with business faculty and alumni geared toward building and developing relationships with the corporate business law community. This Essay does not provide a magic bullet to achieving greater board diversity. It does, however, offer a way to better engage with students and the legal and business communities to work toward it.