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## Women in the Crowd of Corporate Directors: Following, Walking Alone, and Meaningfully Contributing

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WOMEN IN THE CROWD OF CORPORATE DIRECTORS:  
FOLLOWING, WALKING ALONE, AND  
MEANINGFULLY CONTRIBUTING

JOAN MACLEOD HEMINWAY\*

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INTRODUCTION

Albert Einstein is (perhaps erroneously) credited with having said: “The woman who follows the crowd will usually go no further than the crowd. The woman who walks alone is likely to find herself in places no one has ever been before.”<sup>1</sup> But this dichotomy leaves out the fortune of a woman who meaningfully participates in the crowd. Moreover, it leaves out the effect of the woman’s behavior on the crowd itself.

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1. The quote is attributed to Albert Einstein on the GoodReads website. *Quote by Albert Einstein*, GOODREADS, <http://www.goodreads.com/quotes/157357-the-woman-who-follows-the-crowd-will-usually-go-no>, archived at <http://perma.cc/AYP8-4XT6> (last visited Nov. 4, 2014). That attribution, however, is called into question on the Quote Investigator website. *The One Who Follows the Crowd Will Usually Go No Further Than the Crowd*, QUOTEINVESTIGATOR, <http://quoteinvestigator.com/2012/10/18/follows-crowd/>, archived at <http://perma.cc/6CGJ-UWVJ> (last visited Nov. 4, 2014). Regardless of the origin of the quote, it presents an appropriate jumping-off point for the thoughts shared in this Article.

History, theory, and research outcomes indicate that crowds have the capacity to behave differently from the individuals that constitute them. A person may cast aside or suppress his or her individual identity in favor of a crowd identity.<sup>2</sup> A crowd member may adopt group behaviors because he or she is susceptible and the behaviors are infectious,<sup>3</sup> because he or she has commonalities that are reinforced in the crowd,<sup>4</sup> or because his or her association with the crowd leads to jointly held norms that dictate or otherwise affect behavior.<sup>5</sup> Gender differences may impact these dynamics.<sup>6</sup>

Very interesting, you (might) say. But . . . so what? Who cares? For those of us who pay attention to gender diversity on corporate boards of directors, there may be some learning that can come from this body of work. Specifically, if corporate boards of directors are crowds, then the observations from this body of theoretical and empirical work may provide valuable information about the role of women as members of those boards of directors.

Since 1994, the year in which the *William & Mary Journal of Women and the Law* was first published, women have become larger

2. S. D. Reicher, *The Battle of Westminster November 6, 2014: Developing the Social Identity Model of Crowd Behaviour in Order to Explain the Initiation and Development of Collective Conflict*, 26 EUR. J. SOC. PSYCHOL. 115, 116 (1996) (“[T]he shift from individual to group behaviour involves a shift from personal to social identity and hence the emergence of cultural standards as a basis for behavioural control.”).

3. See GUSTAVE LE BON, *THE CROWD: A STUDY OF THE POPULAR MIND* 15 (Kitchener 2001) (1986), available at <http://socserv2.socsci.mcmaster.ca/~econ/ugcm/3ll3/lebon/Crowds.pdf>, archived at <http://perma.cc/5SJR-KVE8>.

4. See FLOYD ALLPORT, *SOCIAL PSYCHOLOGY* 202 (1924); ERICH GOODE, *COLLECTIVE BEHAVIOR* 58 (1992).

[T]he way people act in crowds or publics is an expression or outgrowth of *who they are ordinarily*. . . . [L]ike-minded people come together in, or converge on, a certain location where collective behavior can and will take place, where individuals can act out tendencies or traits that they had in the first place.

*Id.*

5. See RALPH H. TURNER & LEWIS M. KILLIAN, *COLLECTIVE BEHAVIOR* 83–84 (1957).

6. See, e.g., ROSE CHALLENGER ET AL., *UNDERSTANDING CROWD BEHAVIOURS: SUPPORTING EVIDENCE* 130 (Mark Leigh ed., 2009), available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/192606/understanding\\_crowd\\_behaviour-supporting-evidence.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/192606/understanding_crowd_behaviour-supporting-evidence.pdf), archived at <http://perma.cc/YA46-6J9B> (consciously referencing gender, and not sex, differences because the referenced distinctions between men and women are behavioral or social rather than biological (although they may have roots in human biology)); Jayde Pryzgoda & Joan C. Chrisler, *Definitions of Gender and Sex: The Subtleties of Meaning*, 43 SEX ROLES 553, 554 (2000) (“‘Sex’ has come to refer to the biological aspects of being male and female. ‘Gender’ typically refers only to behavioral, social, and psychological characteristics of men and women.”); Gary R. Webb et al., *An Examination of Gender Roles in Crowds* 1–21, at 14 (Univ. of Del. Disaster Research Ctr., Preliminary Paper #231, 1995), available at <http://dspace.udel.edu/bitstream/handle/19716/639/PP231.pdf?sequence=1>, archived at <http://perma.cc/V2P5-5GC3>.

players on boards of directors (and in corporate management more generally).<sup>7</sup> Women now also constitute a significantly higher share of new director nominees in the United States than they have in the past.<sup>8</sup> Yet, there is evidence that the rate of growth of women's board participation has slowed in recent years—and in any event, the growth rate has not been high over the intervening years.<sup>9</sup> The aggregate data are mixed and offer no cause for overall optimism, although some data points do indicate progress.<sup>10</sup>

This is, for most who follow board diversity or composition studies, a somewhat old and tired story. With the thought that new perspectives often can be helpful, this Article approaches an analysis of women's roles on corporate boards of directors from the standpoint of crowd theory. Crowd theory—in reality, a group of theories—explains the behavior of people in crowds. Specifically, this Article describes theories of the crowd from social psychology and applies them to the literature on female corporate directors, looking at the effects on both women as crowd members and boards as decision-making crowds.

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7. See, e.g., Dan R. Dalton & Catherine M. Dalton, *Women and Corporate Boards of Directors: The Promise of Increased, and Substantive, Participation in the Post Sarbanes-Oxley Era*, 53 BUS. HORIZONS 257, 259 (2010) (citing data showing an increase in the number and percentage of female directors of Fortune 500 firms from 1993 to June 2009); JUDITH WARNER, THE WOMEN'S LEADERSHIP GAP 2 (Ctr. for Am. Progress 2014), available at <http://cdn.americanprogress.org/wp-content/uploads/2014/03/WomenLeadership.pdf>, archived at <http://perma.cc/Y8A6-4LGT> (“From 1997 to 2009, women's share of board seats in S&P 1500 companies increased 7.2 percentage points, or 94 percent, and their share of top executive positions increased by 2.8 percentage points, or 86 percent. The share of companies with female CEOs increased more than six-fold.”).

8. EDWARD KAMONJOH, GENDER DIVERSITY ON BOARDS: A REVIEW OF GLOBAL TRENDS 10 (2014), available at <http://www.issgovernance.com/file/publications/2014-iss-global-board-diversity-report.pdf>, archived at <http://perma.cc/3FCN-447U>.

9. See, e.g., RACHEL SOARES ET AL., 2013 CATALYST CENSUS: FORTUNE 500 WOMEN BOARD DIRECTORS 1, CATALYST (Dec. 10, 2013), <http://www.catalyst.org/knowledge/2013-catalyst-census-fortune-500-women-board-directors>, archived at <http://perma.cc/NJL2-ADBx> (revealing that women held 16.6% of board seats in the Fortune 500 in 2012 and 16.9% in 2013); Dalton & Dalton, *supra* note 7, at 259 (noting growth rates of .46% from 1993 through 2001 and .51% from 2002 through 2009).

10. See, e.g., Dalton & Dalton, *supra* note 7, at 257 (noting “pervasive disappointment” with stagnant growth rates, yet also presenting data that gives cause for some optimism); Penny Pritzker, Remarks at Global Conference on Women in the Boardroom (Sept. 16, 2014) (transcript available at <http://commerce.gov/news/secretary-speeches/2014/09/16/us-secretary-commerce-penny-pritzker-delivers-remarks-global-conf>, archived at <http://perma.cc/RJX5-DZ4V>) (“Many of you . . . have seen the boardroom change for the better; yet you know that we are still a long way from equality of opportunity in corporate leadership.”); Mary Jo White, Completing the Journey: Women as Directors of Public Companies (Sept. 16, 2014) (transcript available at <http://www.sec.gov/news/speech/detail/speech/1370542961053#.VCDaykvFru>; archived at <http://www.perma.cc/9WYP-GEER>) (noting progress over the years but remarking generally that “[o]ur position internationally does not demonstrate leadership . . .”).

## I. THE CONCEPT OF A CROWD

What, exactly, is a crowd? Is a crowd different from other groups, and if so, in what way or ways is it different? How do crowds behave? How do men and women in crowds behave? Answering these questions is critical to an assessment of the propriety and value of a crowd theory analysis of boards of directors and their male and female members.

### A. *Defining the Crowd*

Establishing a clear definition of the collection of individuals to which crowd theory applies is not as easy as it sounds. Crowd theorists and commentators typically define and describe the crowd in comprehensive terms. In his recent book popularizing crowd theory, author James Surowiecki uses the term to describe any group of people who have “the ability to act collectively to make decisions and solve problems[.]”<sup>11</sup> Gustave Le Bon, perhaps best described as the founding father of crowd theory, similarly conceptualizes a crowd broadly to include decision-making groups of various sizes, compositions, and types.<sup>12</sup> However, Le Bon more precisely defines a crowd by its psychological profile:

From the psychological point of view the expression “crowd” assumes quite a different signification. Under certain given circumstances, and only under those circumstances, an agglomeration of men presents new characteristics very different from those of the individuals composing it. The sentiments and ideas of all the persons in the gathering take one and the same direction, and their conscious personality vanishes. A collective mind is formed, doubtless transitory, but presenting very clearly defined characteristics. The gathering has thus become what, in the absence of a better expression, I will call an organised crowd, or, if the term is considered preferable, a psychological crowd. It forms a single being, and is subjected to the law of the mental unity of crowds.<sup>13</sup>

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11. JAMES SUROWIECKI, *THE WISDOM OF CROWDS* xvii (First Anchor Books 2005).

12. See LE BON, *supra* note 3, at 13–14.

13. *Id.* Le Bon further notes, in sum:

Whoever be the individuals that compose it, however like or unlike be their mode of life, their occupations, their character, or their intelligence, the fact that they have been transformed into a crowd puts them in possession of a sort of collective mind which makes them feel, think, and act in a manner quite different from that in which each individual of them would feel, think, and act were he in a state of isolation. There are certain ideas and feelings

Preferred dictionary definitions take a narrower approach, often focusing on the need for a group to include many individuals to constitute a crowd.<sup>14</sup> Yet, researchers have studied crowds that have relatively few members.<sup>15</sup> A number of scholars and other commentators assume the existence of a crowd in their work.<sup>16</sup>

A prominent modern crowd theorist notes that the crowd has historically been defined by reference to its function in society.<sup>17</sup> The crowd was the “other” for members of political, intellectual, and artistic elites, who saw the crowd as a threat to their power or authority.<sup>18</sup>

[I]f the masses in general were seen as a potential threat to the status quo, the crowd was the mass in action. It was the potential catastrophe made actual. And so the crowd became a dense symbol which regrouped all the bourgeois fears and fantasies of chaos. If social discipline seemed under threat from alcoholism, the crowd was characterised as drunken, either metaphorically or literally. If the patriarchal order seemed under assault from independent women, the crowd was described metaphorically as feminine . . . .<sup>19</sup>

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which do not come into being, or do not transform themselves into acts except in the case of individuals forming a crowd. The psychological crowd is a provisional being formed of heterogeneous elements, which for a moment are combined, exactly as the cells which constitute a living body form by their reunion a new being which displays characteristics very different from those possessed by each of the cells singly.

*Id.* at 15.

14. See, e.g., *Crowd*, DICTIONARY.COM, <http://dictionary.reference.com/browse/crowd>, archived at <http://perma.cc/MU5B-AKLQ> (last visited Nov. 4, 2014) (“[A] large number of persons gathered closely together; throng; ‘a crowd of angry people.’”); *Crowd*, THE FREE DICTIONARY, <http://www.thefreedictionary.com/crowd>, archived at <http://www.perma.cc/QQE4-T8JB> (last visited Nov. 4, 2014) (“A large number of persons gathered together; a throng.”); *Crowd*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/crowd>, archived at <http://perma.cc/V84W-N79T> (“[A] large number of persons especially when collected together.”).

15. See, e.g., John R. G. Dyer et al., *Consensus Decision Making in Human Crowds*, 75 ANIMAL BEHAV. 461, 463 (2008) (indicating that research on crowds was done using groups of eight individuals).

16. See, e.g., CHARLES MACKAY, EXTRAORDINARY POPULAR DELUSIONS AND THE MADNESS OF CROWDS xix–xx (3d ed. 1932) (employing various characterizations, including: nations, communities, millions of people, multitudes, and herds).

17. Stephen Reicher, *Crowd Psychology*, in AN ENCYCLOPEDIA OF HUMAN BEHAVIOR 632 (Vilyanour Ramachandran ed., 2d ed., 2012) [hereinafter Reicher, *Crowd Psychology*] (“[C]rowds provide a particularly productive site in which to understand how people are constituted and act as social subjects. Crowds . . . are critical to the formation of the social identities and social relationships which regulate everyday life.”).

18. Stephen Reicher, *The Psychology of Crowd Dynamics*, in BLACKWELL HANDBOOK OF SOCIAL PSYCHOLOGY: GROUP PROCESSES 185 (Michael A. Hogg & Scott Tindale eds., 2001) [hereinafter Reicher, *Crowd Dynamics*].

19. See Reicher, *Crowd Psychology*, *supra* note 17, at 631; see also Reicher, *Crowd Dynamics*, *supra* note 18, at 187–88.

Under this type of definition, the crowd is a collection of people that is to be feared—yet (as a result) in some ways respected.

The relative lack of definition of the concept of a crowd is a bit unsettling. As a phenomenon for study, it seems that crowds are most meaningfully defined within a social, political, or economic context.<sup>20</sup>

[T]he behaviour of crowds will vary as a function of what categories are involved. The norms and values—and hence the actions—of, say, a crowd of environmentalist protestors will be different from those of a crowd of soccer fans which, in turn will be different from those of a Catholic crowd welcoming the Pope. The process of conformity to group standards may be general, but the behaviours it leads to will always depend upon contextually relevant belief systems.<sup>21</sup>

Accordingly, in studying crowd behaviors, it is important to understand something about the environment in which the crowd takes action and the nature of the crowd members. Part II contextualizes the board as a crowd. But first, it is important to understand some of the thinking on crowd theory.

### *B. Theorizing the Crowd*

There is a growing academic literature on crowds that is becoming more and more nuanced over time. Moreover, popular commentary has picked up on these scholarly works to synthesize them and make the learning from them more available and accessible. The account provided below, while incomplete,<sup>22</sup> is designed to provide an accurate foundation for the application of crowd theory to board of directors.

#### *1. Early Crowd Theory*

Early literature focused on the madness of crowds. In his book entitled *Extraordinary Popular Delusions and the Madness of Crowds*, which was originally published in 1841, historian Charles Mackay provides readers with notorious examples of mad crowds—The Mississippi Scheme, the South-Sea Bubble, the Tulipomania, etc.<sup>23</sup> In his 1852 preface, he describes in florid language what he thinks these historical episodes manifest:

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20. Reicher, *Crowd Psychology*, *supra* note 17, at 633–34.

21. *Id.* at 634.

22. For more complete renderings, see DAVID L. MILLER, INTRODUCTION TO COLLECTIVE BEHAVIOR AND COLLECTIVE ACTION (3d ed. 2013); Reicher, *Crowd Psychology*, *supra* note 17.

23. See MACKAY, *supra* note 16, at xxi–xxiv.

In reading the history of nations, we find that . . . they have their whims and their peculiarities; their seasons of excitement and recklessness, when they care not what they do. We find that whole communities suddenly fix their minds upon one object, and go mad in its pursuit; that millions of people become simultaneously impressed with one delusion, and run after it, till their attention is caught by some new folly more captivating than the first.<sup>24</sup>

Mackay goes on to famously note (with similar flourish): “Men, it has been well said, think in herds; it will be seen that they go mad in herds, while they only recover their sense slowly, and one by one.”<sup>25</sup>

By their nature, Mackay’s historical observations begged for sociological and psychological study. Gustave Le Bon rose to the occasion with his work, showcased in his book, *The Crowd: A Study of the Popular Mind*, originally published in 1895.<sup>26</sup> Le Bon, like Mackay before him, focused most intently (although not exclusively) on the crowd’s capacity to misbehave.<sup>27</sup> He theorized that crowd madness (such as it is) spreads like an infection to susceptible individuals in the crowd—individuals who manifest or acquire, through their membership in the crowd, attributes that they do not have when acting outside the crowd.<sup>28</sup>

Different causes determine the appearance of . . . characteristics peculiar to crowds . . . . The first is that the individual forming part of a crowd acquires, solely from numerical considerations, a sentiment of invincible power which allows him to yield to instincts which, had he been alone, he would perforce have kept under restraint . . . .

The second cause . . . is contagion . . . . It must be classed among those phenomena of a hypnotic order. . . . In a crowd every sentiment and act is contagious, and contagious to such a degree that an individual readily sacrifices his personal interest to the collective interest . . . .

A third cause, and by far the most important, determines in the individuals of a crowd special characteristics which are quite contrary at times to those presented by the isolated individual.<sup>29</sup>

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24. *Id.* at xix.

25. *Id.* at xx.

26. LE BON, *supra* note 3.

27. *See, e.g., id.* at 6 (“Crowds, doubtless, are always unconscious, but this very unconsciousness is perhaps one of the secrets of their strength.”); *see also id.* at 9 (“Today the claims of the masses are becoming more and more sharply defined, and amount to nothing less than a determination to utterly destroy society as it now exists . . .”).

28. *Id.* at 17.

29. *Id.*

The bottom line, according to Le Bon:

[T]he disappearance of the conscious personality, the predominance of the unconscious personality, the turning by means of suggestion and contagion of feelings and ideas in an identical direction, the tendency to immediately transform the suggested ideas into acts . . . are the principal characteristics of the individual forming part of a crowd. He is no longer himself, but has become an automaton who has ceased to be guided by his will.<sup>30</sup>

Alternatives to Le Bon's theory emerged. For example, one group of scholars effectively contends that, while crowds may behave differently—more aberrantly—than their individual members would in the same circumstances, it may be that socially facilitated convergence, rather than contagion, is the cause of the changed behavior.<sup>31</sup> Convergence theorists claim that people come to the crowd with commonalities that are heightened and reinforced by their crowd membership.<sup>32</sup> Essentially, their work asserts that “[p]eople become crowd members because they lack something already, they don't come to lack something because they have become crowd members.”<sup>33</sup> Although it provides a different explanation for the madness of the crowd, convergence theory, like Le Bon's contagion theory, focuses on and portrays crowds as negative social, political, and economic forces.<sup>34</sup> Under these theories, individual crowd members lose their inhibitions, if not their identities, when they become a part of the crowd.<sup>35</sup>

## 2. Contemporary Crowd Theory

Other scholars focused on emergent norms in the crowd—claiming that crowd behavior is determined by norms established among the crowd members after they have engaged with each other over a period of time.<sup>36</sup> “The *emergent norm* approach is based on the view

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30. *Id.* at 19.

31. See ALLPORT, *supra* note 4, at 295–300 (arguing against contagion theory and in favor of a theory of the crowd based on social facilitation).

32. See *id.* at 295 (“The individual in the crowd behaves just as he would behave alone, *only more so.*”).

33. Reicher, *Crowd Psychology*, *supra* note 17, at 633.

34. See ALLPORT, *supra* note 4, at 294, 313.

35. *Id.* at 312.

36. See CHALLENGER ET AL., *supra* note 6, at 95 (explaining that behavioral norms become characteristic of a particular crowd after a period of “milling,” in which prominent members of the crowd, known as “keynoters,” interact with crowd members); see also Reicher, *Crowd Psychology*, *supra* note 17, at 633.

[C]rowds do not become homogenous entities in an instant. Rather, there is an extended period where people mill about. They are addressed by many

that the impact of groups on individuals resembles *normative constraint* rather than contagious mental unity.”<sup>37</sup>

This view sees collective behavior as an emergent of interaction processes taking place in periods when social controls have lost viability and old values have come into doubt. The intensive interaction involved in milling gives rise to a heightened suggestibility in which a common mood engenders new sentiments and conceptions of a situation.<sup>38</sup>

Emergent norm theorists presuppose that crowd participants do not surrender their individual identities or objectives when they act in a crowd; rather, they conform their behaviors to new norms that emerge from the collective setting to serve those personal interests and purposes.<sup>39</sup> “[T]he unity of the crowd is often produced through the interaction of participants who are actually behaving in different fashions, and on the basis of different motivations.”<sup>40</sup>

Modern crowd psychology study focuses much of its analytical attention on a social identity model.<sup>41</sup>

The foundational assumption of social identity research is that when people act as group members they shift from acting in terms of personal identity to acting in terms of social identity. That is, the eclipse of ones [sic] sense of oneself as a unique individual is not a *loss* but a *refocusing* of identity.<sup>42</sup>

The personal identity/social identity dichotomy emanated from work done in small group settings by Henri Tajfel that led to the articulation of social identity theory.<sup>43</sup> The social identity approach to crowd theory combines social identity theory with self-categorization theory.<sup>44</sup> Importantly, while most theoretical accounts of crowd behavior focus significant attention on physical crowds (e.g., rioting

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would be influence agents, or ‘keynoters.’ Gradually, particular keynoters who are more striking than others begin to gain sway and norms begin to spread through the crowd. Homogeneity, like normativity, is therefore an emergent property of encounters among crowd members.

*Id.*

37. MILLER, *supra* note 22, at 31.

38. Joseph R. Gusfield, Book Review, 20 MIDWEST SOCIOLOGIST 55, 55 (1957) (reviewing RALPH H. TURNER & LEWIS M. KILLIAN, COLLECTIVE BEHAVIOR (1957)).

39. See MILLER, *supra* note 22, at 32–33.

40. TURNER & KILLIAN, *supra* note 5, at 103.

41. See Reicher, *Crowd Psychology*, *supra* note 17, at 634.

42. *Id.*

43. Matthew J. Hornsey, *Social Identity Theory and Self-Categorization Theory: A Historical Review*, 2/1 SOC. & PERSONALITY PSYCH. COMPASS 204, 206 (2008).

44. See *id.* at 204–05.

mobs, attendees at sporting events) and physical behaviors (e.g., looting, vandalism), social identity theory “draws an explicit distinction between physical crowds based on co-presence (aggregates) and psychological crowds based on social identification.”<sup>45</sup>

Even from this condensed sampling, it is easy to see that the academic approaches are distinct, yet compelling. Anecdotal experience indicates that they have descriptive, analytical, and predictive power (although none alone are sufficient to describe and predict crowd behaviors in all settings). Having said that, the relationships between and among the various theories are complex; they overlap, supplement, complement, and conflict with each other. Accordingly, the learning is somewhat hard to put to practical use.

### 3. *Pragmatic Synthesis*

A bit more than ten years ago, however, a columnist for *The New Yorker*, James Surowiecki, took on the task of synthesizing crowd theory with other academic work in the area of group predictions and problem-solving in his popular press book *The Wisdom of Crowds*.<sup>46</sup> Specifically, Surowiecki’s book explains more precisely why it is that crowds, contrary to Mackay’s and Le Bon’s depictions, often make better decisions than the individuals in them would if making the same decision alone.<sup>47</sup> The book first identifies three types of decision-making problems: cognition problems (which are “problems that have . . . definitive solutions”); coordination problems (which “require members of a group . . . to figure out how to coordinate their behavior with each other”); and cooperation problems (which “involve the challenge of getting self-interested, distrustful people to work together, even when narrow self-interest would seem to dictate that no individual should take part”).<sup>48</sup> Then, Surowiecki posits three conditions to crowd wisdom, based on his research. Those three conditions are “diversity, independence, and a particular kind of decentralization.”<sup>49</sup>

When Surowiecki talks about diversity, he is using the term “not in a sociological sense, but rather in a conceptual and cognitive sense”<sup>50</sup>—diversity bred of different ideas and decision makers with different experiences.<sup>51</sup> “Diversity helps because it actually adds

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45. Reicher, *Crowd Psychology*, *supra* note 17, at 634.

46. SUROWIECKI, *supra* note 11, at 11.

47. *Id.*

48. *Id.* at xvii–xviii.

49. *Id.* at xviii.

50. *Id.* at 28.

51. *Id.* at 29.

perspectives that would otherwise be absent and because it takes away, or at least weakens, some of the destructive characteristics of group decision making.”<sup>52</sup> Surowiecki asserts that diversity is particularly important to wise decision making in small groups,<sup>53</sup> and he describes and cites to a study conducted by political scientist Scott Page that shows that an intellectually diverse group may make better decisions than a uniformly highly intelligent group.<sup>54</sup>

The point of Page’s experiment is that diversity is, on its own, valuable, so that the simple fact of making a group diverse makes it better at problem solving. That doesn’t mean that intelligence is irrelevant . . . . But it does mean that, on the group level, intelligence alone is not enough . . . .<sup>55</sup>

Indeed, Professor Page’s work on diversity in complex systems both supports and complements Surowiecki’s. Page contends that the benefits of diversity (which he categorizes as “inescapable”) originate from two sources: averaging and diminishing returns.<sup>56</sup> Averaging “refers to the fact that if you have lots of types, you’ve got some insurance.”<sup>57</sup> This is consistent with Surowiecki’s observations that diversity adds perspectives.<sup>58</sup> “[D]iminishing returns to type, refers to the fact that in many contexts the marginal return (in productivity, profits, or fun) decreases the more you have of a type.”<sup>59</sup> This benefit is similar to Surowiecki’s contention diversity limits adverse attributes of crowd decision making.<sup>60</sup>

Surowiecki’s reliance on the value of independence as a condition to crowd wisdom is, in part, founded on its symbiotic relationship with diversity.<sup>61</sup> Independence allows diversity to flourish and, in this sense, is independence of judgment. “Independence doesn’t mean

52. SUROWIECKI, *supra* note 11, at 29.

53. *Id.*

54. *Id.* at 30.

55. *Id.*; *see also* SCOTT E. PAGE, DIVERSITY AND COMPLEXITY 9–10 (2011) [hereinafter PAGE, DIVERSITY AND COMPLEXITY] (“[D]iversity improves productivity for two rather mundane reasons: averaging and diminishing returns to type.”); SCOTT E. PAGE, THE DIFFERENCE: HOW THE POWER OF DIVERSITY CREATES BETTER GROUPS, FIRMS, SCHOOLS, AND SOCIETIES 234 (2007) (“[F]or a crowd to be wise its members must be individually smart or collectively diverse. Ideally, they would be both.”).

56. *See* PAGE, DIVERSITY AND COMPLEXITY, *supra* note 55, at 167.

57. *Id.*

58. *See* SUROWIECKI, *supra* note 11, at 29.

59. PAGE, DIVERSITY AND COMPLEXITY, *supra* note 55, at 167–68.

60. *See* SUROWIECKI, *supra* note 11, at 29.

61. *See id.* at 39 (noting that diversity helps preserve independence); *see also id.* at xix (“Diversity and independence are important because the best collective decisions are the product of disagreement and contest, not consensus or compromise.”).

isolation, but it does mean relative freedom from the influence of others.”<sup>62</sup> Surowiecki also cites two reasons why independence is important to crowd wisdom: it prevents the correlation of group members’ mistakes and it makes the generation of new information more probable.<sup>63</sup> He concludes that “[t]he smartest groups . . . are made up of people with diverse perspectives who are able to stay independent of each other.”<sup>64</sup> In support of that conclusion, he cites to behavioral work in a variety of fields (including sociology, social psychology, finance, and economics) that focuses on the downsides of a lack of independence among group members.<sup>65</sup>

The third (and last) of Surowiecki’s conditions to crowd wisdom, decentralization, relates to the structure of communication and other activities of the crowd. According to Surowiecki, a diverse and independent crowd that operates in a decentralized manner is more likely to generate a better solution to a problem.<sup>66</sup> Decentralization relies on and encourages specialization and independence and enables the generation and use of a diverse set of inputs in decision making.<sup>67</sup> Coordination is, however, required to ensure that these inputs are aggregated and factored into the decision-making process.<sup>68</sup> “Aggregation—which could be seen as a curious form of centralization—is therefore paradoxically important to the success of decentralization.”<sup>69</sup> For example, various methods of averaging the numerical outputs of individual decision-making in the crowd are forms of aggregation.<sup>70</sup>

Academic researchers cite to Surowiecki’s framework and continue to explore its validity.<sup>71</sup> The model does some heavy lifting that may be useful to us in thinking about specific crowds and the individuals that populate them. While he challenges the models of early crowd theorists like Le Bon, he does not discredit their work entirely.<sup>72</sup>

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62. *Id.* at 39.

63. *Id.*

64. *Id.*

65. SUROWIECKI, *supra* note 11, at 43–44, 49, 59, 65.

66. *Id.* at 70.

67. *Id.* at 71.

68. *Id.* at 71–72.

69. *Id.* at 75.

70. See Clinton P. Davis-Stober et al., *When Is a Crowd Wise?* 1, (June 29, 2014), available at <http://arxiv.org/pdf/1406.7563v1>, archived at <http://perma.cc/6ZX9-AHAB>; Jan Lorenz et al., *How Social Influence Can Undermine the Wisdom of Crowd Effect* 1, (June 23, 2010), available at <http://www.pnas.org/content/108/22/9020.full.pdf+html>, archived at <http://perma.cc/UK4Y-NU7W>; Pavlin Mavrodiev et al., *Effects of Social Influence on the Wisdom of Crowds*, Proc. Nat’l Acad. Scis. U.S. 2–3, (Apr. 16, 2012), available at <http://arxiv.org/pdf/1204.3463v1.pdf>, archived at <http://perma.cc/59LL-4DLR>.

71. See, e.g., Davis-Stober et al., *supra* note 70, at 1; Lorenz et al., *supra* note 70, at 1; Mavrodiev et al., *supra* note 70, at 1.

72. SUROWIECKI, *supra* note 11, at xvi–xvii.

Instead, he contextualizes that work—cabins it to certain circumstances.<sup>73</sup> His synthesis, therefore, provides us with useful new information in applying crowd theory in specific contexts.

### C. *Women in the Crowd*

Each of the crowd theories described *supra* in Part I.B. focuses, to some extent, on the identity of the crowd members. The theories differ, however, as to whether individual identities are abandoned, enhanced, employed, or converted. Moreover, none of these accounts of crowd theory squarely engage any in-depth study or discussion of particular, specified attributes of crowd members and their effects on crowd behavior.

Of course, some researchers have undertaken crowd studies that look at the characteristics of individual group members as a way of enhancing our understanding of how and when crowd theory is a good descriptor, guide, or predictor of crowd behavior. The gender of crowd members is among those attributes studied. It would be impossible (and no doubt counterproductive) to summarize all of the empirical work on women as crowd members in this Article. Accordingly, this subpart briefly summarizes key elements of that work.

Studies of gender and crowd behavior indicate that women and men do behave differently in crowds.<sup>74</sup> Specifically, a number of studies find that the crowd behaviors of women and men are consistent with expected gender attributes (e.g., passivity and helplessness for women and aggression and helpfulness for men).<sup>75</sup> Also, women's keynoting behaviors in the crowd—a way of categorizing crowd leadership or influence, generally defined as “making suggestions as to how individuals in a crowd should respond to [an] ambiguous situation”<sup>76</sup>—are different from those of men.<sup>77</sup>

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73. *Id.*

74. *See, e.g., infra* notes 75–77.

75. *See, e.g.,* Webb et al., *supra* note 6, at 16 (“We found that clearly distinguishable gender differences, generally reflecting conventional gender roles, characterized all of the crowd events. In all of the cases, men engaged in more aggressive forms of behavior than women.”); CHALLENGER ET AL., *supra* note 6, at 130 (“[A] qualitative examination of gender differences in crowd behaviours across three different situations—prior to a rock concert, prior to a sports event, and at a political rally—revealed that men engaged in more verbally aggressive behaviour and were more likely to incite both violence and forced entry into venues than their female counterparts.” (citation omitted)); *id.* at 145 (“[S]tudies of the Beverly Hills Supper Club fire (1977) report that women generally received more help than men, whilst more men than women offered to help and that women typically offered emotional support to victims whilst men tried to fight the fire.” (citations omitted)).

76. *See Glossary*, LIZABETH A. CRAWFORD & KATHERINE B. NOVAK, *INDIVIDUAL AND SOCIETY: SOCIOLOGICAL SOCIAL PSYCHOLOGY* G-526 (2013).

77. *See* Webb et al., *supra* note 6, at 15 (“[M]ale keynoting assumed more aggressive forms than female keynoting.”).

In addition, the crowd receives behaviors of women and men differently. Studies indicate, for example, that men's keynoting behaviors are more accepted than those of women.<sup>78</sup> In one crowd situation, both men and women who engaged in mocking behaviors directed at outsiders were received differently—with the female mocking being, at best, excused as inebriated conduct and the male mocking attracting positive, even encouraging, attention.<sup>79</sup> Again, these observed crowd reactions are consistent with social and research expectations.

Although these and other similar gender crowd studies do not relate to crowd decision-making behaviors, they indicate that institutionalized gender identity and roles are not abandoned when people become part of a crowd.<sup>80</sup> This finding is facially inconsistent with principles espoused by early crowd theorists, including Mackay and Le Bon, who posit that individual identity is abandoned or refocused in the crowd.<sup>81</sup> In addition, researchers reporting these results note, among other things, that the persistence of gender roles calls into question crowd theory that relies on "extra-institutional" explanations for crowd behaviors.<sup>82</sup> In other words, conventional gender identity may survive and impact crowd membership rather than being replaced by a distinct, collective, group-ordained identity (whether resulting from contagion or convergence).

## II. THE CORPORATE BOARD OF DIRECTORS AS A CROWD

This Article posits that crowd theory may be an interesting and helpful way to gain new insights on the way boards of directors operate and the roles that women play in them. That contention is stronger and more likely to be successful if boards of directors can be seen as crowds or as analogous to crowds in compelling, significant ways. An accurate assessment of the ways in which a board of directors is like or unlike a crowd depends on the board's nature and operations.<sup>83</sup> If a board of directors can be described as a group of

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78. *See id.* ("Male keynoters received significantly more attention, and apparently more positive sanctioning, than female keynoters from other crowd members.").

79. *See id.*

80. *See id.* ("[W]e found, as have others, that institutionalized gender roles are maintained across a range of settings"); *id.* at 18 ("[D]ata highlight the endurance of gender roles, and suggest that people rely on institutionalized cultural expectations when confronted with ambiguous situations.").

81. *See* LE BON, *supra* note 3, at 9 (contending that a person, in becoming a crowd member, "is no longer himself, but has become an automaton who has ceased to be guided by his will."); MACKAY, *supra* note 16, at xix–xx (describing the tendency of people to adopt new behaviors in crowds).

82. *See* Webb et. al., *supra* note 6, at 17–18.

83. *See* SUROWIECKI, *supra* note 11, at 212–13, 222.

people who can “act collectively to make decisions and solve problems,” then it can be seen as a crowd under the broad definitions used by crowd theorists.<sup>84</sup>

Under state law, a corporation is managed by or under the direction of its board of directors.<sup>85</sup> Accordingly, absent appropriate removal, restriction, or delegation of the directors’ power, the board is the pivot point for corporate action.<sup>86</sup> Board members typically take action by resolution at board and committee meetings and in written consents in lieu of meetings of the board and its committees.<sup>87</sup> In operation, the board’s decision-making process may be consensus-driven, but often is characterized by management dominance.<sup>88</sup>

The decision-making process for most corporations is not a process of consensus. A cornerstone of consensus decision making is that no member of the decision-making group is dominant or superior to the rest. At most corporations, the decision-making process, however, is dominated by management, particularly the CEO, and not the board of directors.<sup>89</sup>

Even where the board’s decision-making process is not management-controlled, management frequently supplies substantially all of the information used by the board in its deliberations.<sup>90</sup>

Directors, in their roles as such, are not agents of the corporation.<sup>91</sup> The officers of the corporation and others are appointed—generally or from time to time—to enter into all or specified obligations on behalf of the corporation.<sup>92</sup> As part of its management authority,

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84. *Id.* at xvii.

85. *See, e.g.*, DEL. CODE ANN. tit. 8, § 141(a) (West 2012); MODEL BUS. CORP. ACT § 8.01(b) (2013); *see also* CORPORATE LAWS COMMITTEE, ABA SECTION OF BUSINESS LAW, *Corporate Director’s Guidebook—Sixth Edition*, 66 BUS. LAW. 975, 985–86 (2011) [hereinafter *Guidebook*].

86. Lyman P.Q. Johnson & David Millon, *Recalling Why Corporate Officers Are Fiduciaries*, 46 WM. & MARY L. REV. 1597, 1607 (2005) (“The board of directors . . . is endowed with plenary governance authority and is the body most centrally responsible for the well-being of the corporate enterprise.”).

87. *See Guidebook, supra* note 85, at 1011.

88. Nicola Faith Sharpe, *Informational Autonomy in the Boardroom*, 2013 U. ILL. L. REV. 1089, 1114 (2013).

89. *Id.* (footnote omitted).

90. *See id.* at 1115 (“[W]hen boards participate in the approval phase of decision making, they are doing so based almost exclusively on the information and knowledge obtained, screened, and then shared by the CEO and her management team.”).

91. *See, e.g.*, Johnson & Millon, *supra* note 86, at 1605 (“[N]either the board of directors as a body, nor individual directors, are agents of either the stockholders or of the corporation . . .”).

92. *See, e.g., id.* at 1605–06 (“[O]fficers, such as the chief executive officer, the chief financial officer, general counsel, executive vice presidents, and many others, all are agents of the corporation, the principal.” (footnotes omitted)).

however, the board may direct the officers (and is charged with monitoring officer decision-making and other conduct) in the management of the firm.<sup>93</sup>

Moreover, as managers of the corporation, members of the board of directors—together with officers of the corporation—are charged with fiduciary duties of care and loyalty.<sup>94</sup> These duties generally require that a director act in accordance with standards articulated under state law when they oversee corporate affairs and make corporate decisions.<sup>95</sup> Directors owe these fiduciary duties to the corporation, although some cases and commentary charge directors with fiduciary duties to shareholders in addition to the corporation.<sup>96</sup> Most frequently, courts find that the duties owed to the corporation operate for the primary benefit of shareholders, as the corporation's owners and, more specifically, for the financial benefit of shareholders.<sup>97</sup> Yet even this formulation is ambiguous, since shareholders are not a monolithic group.<sup>98</sup> Suffice it to say, however, that the board acts in a fiduciary or fiduciary-like capacity in relation to the shareholders in managing the corporation.

A corporate board of directors is a collective.<sup>99</sup> Although each director has and must exercise his or her fiduciary duties individually, no single member of the board holds corporate management power in and of himself or herself; members of the board must act together to manage the firm.<sup>100</sup> In their capacity as macro-managers of the corporation, the directors jointly provide oversight, collectively make decisions, and act together to solve problems for the corporation.<sup>101</sup> Thus, the board of directors of a corporation appears to conform to the broad definitions of the crowd *supra* Part I.<sup>102</sup> Surowiecki expressly categorizes a corporate board of directors (as well as a jury) as a crowd—a specific kind of crowd: a “small group.”<sup>103</sup>

93. See *Guidebook*, *supra* note 85, at 986.

94. See *id.* at 982.

95. See *id.* at 990–92 (amalgamating and summarizing these state law standards).

96. See, e.g., Andrew S. Gold, *Dynamic Fiduciary Duties*, 34 CARDOZO L. REV. 491, 493 (2012).

97. See, e.g., *Guidebook*, *supra* note 85, at 985 (“Directors have a responsibility to act in the best interests of the corporation and its shareholders. To do so, they must focus on maximizing the value of the corporation for the benefit of its shareholders.”).

98. See Gold, *supra* note 96, at 493.

99. See *Guidebook*, *supra* note 85, at 981 (“[D]irectors exercise their decision-making powers only by acting collectively, either as a board or as a board committee.”)

100. See Stephen M. Bainbridge, *Why a Board? Group Decisionmaking in Corporate Governance*, 55 VAND. L. REV. 1, 12 (2002).

101. *Id.* at 9.

102. See SUROWIECKI, *supra* note 11, at xvii and accompanying text; see also LE BON, *supra* note 3, at 13–14 and accompanying text.

103. SUROWIECKI, *supra* note 11, at 175. He also uses the word “teams” to describe these small groups.

Consistent with this conclusion, corporate boards of directors have been described, theorized, and studied as decision-making groups or teams.<sup>104</sup> Many works assume that the board is or may be treated like a crowd.<sup>105</sup> This body of literature lays a foundation for applying crowd theory to the structure and operations of boards of directors.

### III. WOMEN AND CORPORATE BOARDS OF DIRECTORS

Women are a relatively new addition as to the members of the crowd of corporate directors. It was about 30 years ago that women first became more noticeable on corporate boards of directors.<sup>106</sup> However, evidence of women on public company and large firm boards of directors extends back to the turn of the 20th century.<sup>107</sup>

As a result, studies of women on boards of directors also are relatively recent phenomena.<sup>108</sup> Much of the literature bemoans—or otherwise remarks on—the lack of female directors on public company corporate boards,<sup>109</sup> or studies whether women make a difference in

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104. See, e.g., Bainbridge, *supra* note 100, at 2 (2002); Jay Conger & Edward E. Lawler, *Sharing Leadership on Corporate Boards: A Critical Requirement for Teamwork at the Top*, CTR. FOR EFFECTIVE ORGS., 1 (2009), <http://ceo.usc.edu/pdf/g08-11.pdf>, archived at <http://perma.cc/F2CB-92PC>; Daniel P. Forbes & Frances J. Milliken, *Cognition and Corporate Governance: Understanding Boards of Directors as Strategic Decision-Making Groups*, 24 ACAD. MGMT. REV. 489, 490 (1999); Samuel N. Fraidin, *Duty of Care Jurisprudence: Comparing Judicial Intuition and Social Psychology Research*, 38 U.C. DAVIS L. REV. 1, 4 (2004); Donald C. Langevoort, *The Human Nature of Corporate Boards: Laws, Norms, and the Unintended Consequences of Independence and Accountability*, 89 GEO. L.J. 797, 797 (2001); Nicola Faith Sharpe, *Questioning Authority: The Critical Link Between Board Power and Process*, 38 J. CORP. L. 1, 15 (2012).

105. See, e.g., Erica Beecher-Monas, *Marrying Diversity and Independence in the Boardroom: Just How Far Have You Come, Baby?*, 86 OR. L. REV. 373, 396 (2007) (noting the application of social psychology, including Surowiecki's work, to corporate boards); Michael B. Dorff, *The Group Dynamics Theory of Executive Compensation*, 28 CARDOZO L. REV. 2025, 2042–45 (2007) (noting the possibility for social cascades in board decision-making); Kent Greenfield, *Proposition: Saving the World with Corporate Law*, 57 EMORY L.J. 948, 952–53 (2008) (“The ability of the board to make good decisions is a function of its ability to take advantage of the benefits of ‘the wisdom of crowds,’ the capacity of groups to outperform individuals in making certain kinds of judgments.”).

106. See David F. Larcker & Brian Tayan, *Pioneering Women on Boards: Pathways of the First Female Directors*, STAN. CLOSER LOOK SERIES, 2, Sept. 3, 2013, available at [http://www.gsb.stanford.edu/sites/default/files/35\\_Women.pdf](http://www.gsb.stanford.edu/sites/default/files/35_Women.pdf), archived at <http://perma.cc/PPZ5-AYW2> (“Based on a sample of 68 respondents, we find that the average company elected its first female director in 1985, 28 years ago.”).

107. *Id.* (noting that “Clara Abbott, wife of founder Wallace Abbott, served two terms on the board of Abbott Laboratories from 1900 to 1908 and from 1911 to 1924—although the company was not yet publicly listed at the time.”).

108. See Dalton & Dalton, *supra* note 7, at 258 (“Early discussions and data-based study of women’s promise and roles on boards of directors are first reflected in the literature over 30 years ago.” (citations omitted)).

109. See, e.g., WARNER, *supra* note 7, at 1; Dalton & Dalton, *supra* note 8, at 259 (describing existing research and stating, in sum, that “it has been noted that (1) women

corporate performance.<sup>110</sup> Some books and articles focus attention on how women or corporations can change board composition to incorporate more women.<sup>111</sup> The traditional news media, industry publications, and weblogs capture and digest much of this information for public consumption.<sup>112</sup>

The data in these studies and published reports demonstrate a number of things about women's participation on boards of directors in the United States. The number of women on boards of directors has increased over the long term,<sup>113</sup> but according to some, gains

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are grossly under represented as inside directors of the board; (2) the path to becoming CEO is often through inside director positions; and (3) women are thusly disadvantaged in their candidacies for CEO"); Sabina Nielsen & Morten Huse, *The Contribution of Women on Boards of Directors: Going Beyond the Surface*, 18 CORP. GOVERNANCE: AN INT'L REV. 136, 136 (2010).

Most previous research on women directors is of a descriptive nature and focuses primarily on counting the number of women on corporate boards and following the development of female representation on boards over the years. More analytically oriented studies are mostly concerned with the questions of why there are so few women on corporate boards . . . .

*Id.* (citations omitted).

110. See, e.g., NANCY M. CARTER ET AL., *THE BOTTOM LINE: CORPORATE PERFORMANCE AND WOMEN'S REPRESENTATION ON BOARDS*, CATALYST 2 (2007); Niclas L. Erhardt et al., *Board of Director Diversity and Firm Financial Performance*, 11 CORP. GOVERNANCE: AN INT'L REV. 102, 104 (2003).

111. See, e.g., DOUGLAS M. BRANSON, *NO SEAT AT THE TABLE: HOW CORPORATE GOVERNANCE AND LAW KEEP WOMEN OUT OF THE BOARDROOM* 180 (2008); Jayne W. Barnard, *More Women on Corporate Boards? Not So Fast*, 13 WM. & MARY J. WOMEN & L. 703, 719–23 (2007); Deborah L. Rhode & Amanda K. Packel, *Diversity on Corporate Boards: How Much Difference Does Difference Make?* 19–24 (Rock Center for Corporate Governance Working Paper Series—No. 89, Sept. 2010).

112. See, e.g., Diane Brady, *The Crumbling Case Against Women on U.S. Boards*, BLOOMBERG BUSINESSWEEK (Apr. 17, 2014), available at <http://www.businessweek.com/articles/2014-04-17/the-crumbling-case-against-adding-more-women-to-u-dot-s-dot-corporate-boards>, archived at <http://perma.cc/ZM5M-H46K>; Boris Groysberg & Deborah Bell, *Women on Boards: Another Year, Another Disappointment*, HBR BLOG NETWORK (Feb. 3, 2014), <http://blogs.hbr.org/2014/02/women-on-boards-another-year-another-disappointment/>, archived at <http://perma.cc/G825-8XEX>; Erin E. Harrison, *U.S. Lags in Placing Women on Boards as Investors Urge for More Diversity*, INSIDE COUNSEL (Feb. 6, 2014), <http://www.insidecounsel.com/2014/02/06/us-lags-in-placing-women-on-boards-as-investors-ur?t=department-management>, archived at <http://perma.cc/5HTA-GVGN>; Barbara B. Kamm, *Women in the Board Room: How to Increase Gender Diversity on Corporate Boards*, SAN JOSE MERCURY NEWS (Mar. 20, 2014), [http://www.mercurynews.com/opinion/ci\\_25384583/women-board-room-how-increase-gender-diversity-corporate](http://www.mercurynews.com/opinion/ci_25384583/women-board-room-how-increase-gender-diversity-corporate), archived at <http://perma.cc/9FVL-B8JG>; Mary Helen Martin, *Special Report: Women Lawyers Bring Added Value to Corporate Boards of Directors*, DAILY REPORT (May 30, 2014), <http://www.dailyreportonline.com/id=1202656976257/Special-Report-Women-Lawyers-Bring-Added-Value-to-Corporate-Boards-of-Directors?slreturn=20140615202013>, archived <http://perma.cc/37BT-6V9W>.

113. See Dalton & Dalton, *supra* note 7, at 259 (citing to evidence of equivalent growth before and after adoption of the Sarbanes-Oxley Act of 2002); 2020 WOMEN ON BOARDS, GENDER DIVERSITY INDEX 4 (2013) (showing gains in the percentage of women on boards between 2011 and 2013).

have slowed or are sluggish.<sup>114</sup> Women comprise a minority of most boards of directors, and some boards of directors are all male.<sup>115</sup> Evidence of the effect of female directors on corporate performance is mixed.<sup>116</sup> Multiple alternative rationales for increased female presence on boards of directors (other than positive performance effects) have been advanced and debated.<sup>117</sup> Yet, identifiable barriers exist to the participation of women on corporate boards of directors.<sup>118</sup> Most of this is somewhat old news.

However, theoretical and empirical work has begun to concentrate less on issues of board composition and more closely on women's potentially distinct roles in board decision-making.<sup>119</sup> This scholarship

114. See SOARES ET AL., *supra* note 9, at 1; Dalton & Dalton, *supra* note 7, at 259; see also Barnard, *supra* note 111, at 708 ("Recent studies have shown . . . that at the current rate of increase of women directors, it will take *seventy* years for women to achieve parity with men on corporate boards.").

115. See Nielsen & Huse, *supra* note 109, at 142 ("[T]he mean ratio of women on the boards is 12.8 per cent with values ranging between 0 and 66.67 per cent."); SOARES ET AL., *supra* note 9, at 1 ("In both 2012 and 2013, less than one-fifth of companies had 25% or more women directors, while one-tenth had no women serving on their boards.").

116. See, e.g., Rhode & Packel, *supra* note 111, at 4, 6, 8–10 (summarizing the results of studies on the relationship between board diversity and corporate performance); WARNER, *supra* note 7, at 3 (citing to various examples of the literature on board diversity and firm performance); see also Lisa M. Fairfax, *Clogs in the Pipeline: The Mixed Data on Women Directors and Continued Barriers to Their Advancement*, 65 MD. L. REV. 579, 589–94 (2006) (describing various direct and indirect effects of gender and racial diversity on corporate performance).

117. See Rhode & Packel, *supra* note 111, at 4 ("The 'business case' for diversity generally rests on two primary claims. The first is that it improves outcomes, particularly financial performance. The second is that it improves decision-making processes, which may in turn improve firm performance."). Two researchers summarize several key rationales, other than positive financial performance effects on the firm, for including women on corporate boards of directors:

Do women add unique value to the boardroom in other ways? Absolutely. They provide unique perspectives, experiences, and work styles as compared to their male counterparts. The addition of women to the boardroom, for example, can greatly enhance the board's deliberations. Women's communication styles tend to be more participative and process-oriented. These stylistic differences may enhance directors' decision-making processes by encouraging the board to consider a wider range of strategic options. Women's different experiences and perspectives may also help the board consider a wider variety of customer needs and interests. Just over half of the US population is female and women account for the majority of US consumer purchases. Who better, then, than a female board member to offer insights on the female customer?

Catherine M. Daily & Dan R. Dalton, *Women in the Boardroom: A Business Imperative*, 24 J. BUS. STRATEGY 8, 9 (2003).

118. See, e.g., Barnard, *supra* note 111, at 715–16; Rhode & Packel, *supra* note 111, at 15–19.

119. See, e.g., Morten Huse & Anne Grethe Solberg, *Gender Related Boardroom Dynamics: How Women Make and Can Make Contributions on Corporate Boards*, [http://www.boeckler.de/pdf/v\\_2006\\_03\\_30\\_huse3\\_f5.pdf](http://www.boeckler.de/pdf/v_2006_03_30_huse3_f5.pdf), archived at <http://perma.cc/4YXW-S9TS> ("We have seen through the perceptions and social constructions of the eight women

explores numerous hypothesized contributions to board practices and processes.<sup>120</sup> These contributions include, for example, the possibility that women bring different behaviors, competencies, or backgrounds to the boardroom,<sup>121</sup> that their presence signals diversity of opinion or thought process both to those on the board and to those observing the board's activities from the outside,<sup>122</sup> and that "women directors may have a differential rather than uniform impact on the effectiveness in fulfilling theoretically distinct board tasks."<sup>123</sup> These and other innovations in thought and research that look at the role of female directors in determining and executing board processes, taken together with scholarship analyzing and treating the board as a crowd (or team or group), motivate the observations about women in the crowd of corporate directors made *infra* in Part IV.

#### IV. WOMEN IN THE CROWD OF CORPORATE DIRECTORS

By looking at corporate boards of directors through a gendered crowd theory lens, we may gain insights that help us to understand more about the unique and optimized role of women as members of those boards. These insights may be useful in determining ideal board composition and operating structures and processes. They also provide a basis for additional theoretical and empirical work on female board members and on board diversity more generally.

As a synthesis of crowd theory, Surowiecki's work provides a useful framework for a crowd theory assessment of women as members of corporate boards of directors. Accordingly, the analysis provided below is organized around Surowiecki's three principal conditions to crowd wisdom: diversity of ideas and experience, independence of judgment, and decentralization of activities, characterized by tactical information aggregation.<sup>124</sup> For each element of crowd wisdom, existing theory and research shed some new light (or at least provide a new perspective) on women as corporate directors and the operation of gender-diverse boards of directors.

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directors that boardroom dynamics are not neutral to gender. Gender influences cognition as well as behaviour."); Nielsen & Huse, *supra* note 109, at 143 (finding that "women on boards influence key board processes, which in turn enhance or inhibit board effectiveness in strategic and operational control."); Rhode & Packel, *supra* note 111, at 10–15 (describing three theories underlying claims that diversity enhances board processes).

120. See, e.g., *infra* notes 121–23.

121. See Nielsen & Huse, *supra* note 109, at 137; Rhode & Packel, *supra* note 111, at 10–13.

122. See Rhode & Packel, *supra* note 111, at 13–15.

123. Nielsen & Huse, *supra* note 109, at 137.

124. See SUROWIECKI, *supra* note 11, at 11.

### A. *Female Directors and Diversity*

Women provide gender diversity to boards of directors, and that diversity may have specific, consistent value, at least for some corporations or on certain issues.<sup>125</sup> Moreover, as Surowiecki mentions in incorporating Scott Page's work into his own, there is some demonstrable positive effect to adding diversity of any kind to a crowd.<sup>126</sup> In some cases, these observed effects of gender diversity indicate or reflect diverse ideas or experiences.<sup>127</sup> But those connections between gender diversity and thought or background diversity are not guaranteed.<sup>128</sup>

Perhaps, then, women, *qua* women, are inherently or consistently different from men in ways that impact the objectives and operations of corporate boards of directors. A key issue is whether women bring to boards the requisite diversity of ideas and experience to create and sustain crowd wisdom or at least avoid crowd madness. Research offers evidence that women may bring game-changing perspectives and proficiencies to the boardroom.<sup>129</sup> However, in choosing women that have opinions or backgrounds substantially similar to those of their male colleagues (which is a distinct possibility, if not an expected result, if director candidates are all chosen from the same pools of people), a firm may limit or eliminate these ostensibly positive elements of diversity.<sup>130</sup> In fact, women in corporate leadership

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125. See, e.g., Fairfax, *supra* note 116, at 589–92 (addressing scholarly contentions that board diversity may enable higher quality decisions, that increased gender diversity on boards may constrain the negative impacts of harassment and discrimination actions, and that gender diversity on the board may enhance a firm's prospects in attracting and retaining diverse employees and customers); Janis Sarra, *The Gender Implications of Corporate Governance Change*, 1 SEATTLE J. FOR SOC. JUST. 457, 494 (2002) (“[T]he representation of women on corporate boards and at all levels of the corporate hierarchy could work to eliminate insidious forms of sexual harassment that appear to be pervasive in most corporate law regimes.”).

126. See SUROWIECKI, *supra* note 11, at 29–30; see also PAGE, DIVERSITY AND COMPLEXITY, *supra* note 55, at 9–10, 167–68.

127. See SUROWIECKI, *supra* note 11, at 29.

128. *Id.* at 30, 36.

129. See, e.g., Nielsen & Huse, *supra* note 109, at 137–38, 140 (listing various gender-related differences in behaviors and skills that may be relevant to board membership and participation); Rhode & Packel, *supra* note 111, at 10–12 (citing to evidence of different risk preferences, trust behaviors, work styles, life experiences, and decision-making behaviors); Mariateresa Torchia et al., *Women Directors on Corporate Boards: From Tokenism to Critical Mass*, 102 J. BUS. ETHICS 299, 311 (2011) (suggesting that gender differences and accompanying diverse experiences are likely to produce broader discussion of issues, consideration of alternatives, and new information).

130. See, e.g., Rhode & Packel, *supra* note 111, at 13 (“The educational, socioeconomic, and occupational backgrounds of women and minority directors tend to be quite similar to those of other directors. Studies on the extent to which gender influences leadership behavior are mixed, but some suggest that men and women who occupy the same role tend to behave similarly.” (footnote omitted)).

positions may be less diverse because they have chosen the path of corporate leadership and may have to “reject feminine stereotypes.”<sup>131</sup> The evidence is, however, mixed.<sup>132</sup>

[S]ocial scientists typically claim that in management positions such differences are minimized. It is believed that women who pursue the non-traditional career of manager reject feminine stereotypes and have needs, values, and leadership styles similar to those of men who pursue managerial careers. Consistent with the structural interpretation of organizational behavior, scholars predict that men and women who occupy the same leadership role will behave very similarly. However, others argue that gender differences continue to exert some influence, in such a way that men and women in the same organizational roles may behave somewhat differently. Accordingly, reviews of prior research reveal that whereas there are no overall differences in effectiveness between women and men leaders, there are some gender related differences for some behavior and skills in some situations. Hence, these gender differences may affect not the general effectiveness of the board but the performance of certain board tasks.<sup>133</sup>

Accordingly, the existence of distinct gendered attributes between men and women in the crowd of corporate directors appears to be situational.

Assuming, however, that women may bring different ideas and experiences to a corporate board of directors, some question whether they are able to maintain and employ those elements of diversity over time. If women, as early crowd theorists might predict, leave their individual attributes behind in joining up with the board crowd, then one of the three core conditions for the operation of crowd wisdom is lost. The literature is inconclusive on this issue.<sup>134</sup>

Some theorists predict that female corporate leaders have diverse attributes that survive membership in the crowd and observe that those traits may become group behaviors.<sup>135</sup> Yet others caution that

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131. Nielsen & Huse, *supra* note 109, at 138.

132. *Id.*

133. *Id.*

134. *See infra* notes 136–39.

135. Nielsen & Huse, *supra* note 109, at 138

From a team perspective, it can be expected that boards with higher ratios of women directors will have characteristics and behavior typically associated with women leaders. Such arguments are in accordance with upper echelons theory, which postulates that individual backgrounds of executives influence strategic choices made by the entire top management team and thus affect team and firm level outcomes. The ratio of women directors represents a central tendency of team (board) composition by aggregating individual

important gender differences may be selectively suppressed or subverted by board structures and processes.<sup>136</sup>

[S]ome studies suggest that the influence of minority directors on corporate boards is heavily shaped not only by the prior experience of the directors, but also the “larger social structural context in which demographic differences are imbedded.” The failure to include a critical mass of women or minorities may in some cases prevent the potential benefits of diversity. Those benefits may also be dampened by corporations’ well-documented tendency to appoint women and minorities who are least likely to challenge the status quo, or who are “trophy directors,” with too many board positions to provide adequate oversight.<sup>137</sup>

Overall, it would be useful to policy makers, regulators, legal counsel, and firm management to have a more refined understanding of the contexts in which women corporate leaders exhibit, retain, and employ the diverse ideas and experiences that support crowd wisdom when they become and act as part of a board of directors. The capacity for this kind of diversity exists, but its operation in practice is uncertain.<sup>138</sup>

### *B. Female Directors and Independence*

In identifying the corporate board of directors as a “small group” form of crowd, Surowiecki gives us immediate concern about the ability of board members to exercise independent judgment.<sup>139</sup> “[T]he influence of the people in the group on each other’s judgment is,” he maintains, “inescapable.”<sup>140</sup> But rather than take a wholly negative view of this reality, he notes both a downside and an upside to this intragroup influence: “On the one hand, it means small groups can make very bad decisions . . . . On the other hand, it also means that small groups have the opportunity to be more than just the sum of their parts.”<sup>141</sup> He illustrates his points about independent judgment (as well as cognitive diversity and coordinated decentralized decision-making) in small groups using a story about the deliberative process of the National Aeronautics and Space Administration

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(director) characteristics to the team (board) level. Thus, gender diversity can be used as a predictor of board level processes and effectiveness.

*Id.* (citations omitted).

136. Rhode & Packel, *supra* note 111, at 9.

137. *Id.* at 8–9 (footnotes omitted).

138. *Id.* at 9–10.

139. SUROWIECKI, *supra* note 11, at 176.

140. *Id.*

141. *Id.*

Mission Management Team with regard to the disastrous re-entry of the space shuttle *Columbia*.<sup>142</sup>

Some scholars also examine whether the presence of women on corporate boards of directors is likely to result in or encourage independent decision-making. One study, conducted through interviews of Scandinavian women, indicates that women may prepare better for board meetings, ask more questions, and rely less on the recommendations of corporate executives.<sup>143</sup> Another study, conducted in Canada, finds similar differences (as to inquisitiveness) in the decision-making behaviors of male and female directors.<sup>144</sup>

The male directors scored significantly higher on the use of normative reasoning than the females. This suggests that the male directors in our sample study prefer to make decisions using rules, regulations and traditional ways of doing business or getting along. Female directors, in contrast, seem to be significantly less constrained by these same parameters and thus are more prepared to rock the board boat than their male counterparts. . . .

. . . [T]he women directors prefer to function using a significantly higher level of complex moral reasoning than the men. This means that female corporate directors are significantly more inclined to work through decision making by taking the interests of multiple stakeholders into account in order to arrive at a fair and morally consistent decision. They will also tend to use cooperation, collaboration and consensus building more often—and more effectively—in order to make sound decisions. Their effectiveness stems from their predisposition to be more inquisitive and to see more possible solutions.<sup>145</sup>

The researchers effectively conclude that female corporate directors are effective independent decision-makers because they are inquisitive and have the capacity to identify different potential options.<sup>146</sup> These studies indicate that women on boards of directors make decisions using inquisitorial processes that avoid the operation of certain cognitive biases (such as confirmation bias and bandwagon effect), groupthink, and decision-making heuristics (including information cascades and other herding behaviors that impair or counteract independent judgment).<sup>147</sup>

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142. *See id.* at 173–76.

143. *See Huse & Solberg, supra* note 119, at 13.

144. *See* Chris Bart & Gregory McQueen, *Why Women Make Better Directors*, 8 INT'L J. BUS. GOVERNANCE & ETHICS 93, 96–97 (2013).

145. *Id.* at 97.

146. *Id.*

147. *See id.*

In addition, a Norwegian study produced interesting findings suggesting that female directors may be capable of having an indirect effect on the production and use of independent judgments in board decision-making.<sup>148</sup> The study finds that “women on boards influence key board processes, which in turn enhance or inhibit board effectiveness in strategic and operational control.”<sup>149</sup> More specifically, “boards with high ratios of women are more likely to use board development activities related to the introduction of working structures such as board work instructions, evaluations, and development programs. These structures, in turn, enhance board strategic and operational control.”<sup>150</sup> Accordingly, women may help ensure independent director judgments by fostering the adoption of board processes that limit the amount of influence individual board members can have on the votes of other board members. Among other things, this may mean instituting new operating rules that effectively prevent or impede management domination of board deliberations.<sup>151</sup> In this way, independence is connected to the third Surowiecki condition for the operation of crowd wisdom: decentralization.

### *C. Female Directors and Coordinated Decentralization*

Decentralization, as a condition to crowd wisdom, provides the optimal structure in which and processes by which crowd members with diverse ideas and experience can exercise independent decision-making.

The idea of the wisdom of crowds also takes decentralization as a given and a good, since it implies that if you set a crowd of self-interested, independent people to work in a decentralized way on the same problem, instead of trying to direct their efforts from the top down, their collective solution is likely to be better than any other solution you could come up with.<sup>152</sup>

Decentralization is characterized by individual, dispersed (rather than collective, concentrated) information gathering and decision-making.<sup>153</sup>

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148. Nielsen & Huse, *supra* note 109.

149. *Id.*

150. *Id.* at 145.

151. See Sharpe, *supra* note 88, at 1115 (“[T]he board’s decisions are not substantively independent, but instead a function of the CEO’s control and preferences.”).

152. SUROWIECKI, *supra* note 11, at 70.

153. See *id.* at 70–71 (In decentralized systems, “power does not fully reside in one central location, and many of the important decisions are made by individuals based on their own local and specific knowledge rather than by an omniscient or far seeing planner.”).

To be effective, however, decentralized crowd activities—and especially the generation of information significant to decision-making—must be aggregated (i.e., collected and processed).<sup>154</sup>

At first blush, gender appears to have little relationship to this important balance of decentralization and aggregation. However, the Norwegian study regarding gender and board processes described *supra* Part IV.B may provide a link here, too.<sup>155</sup> Because the results of the study indicate that “one of the mechanisms through which women contribute to board effectiveness is the use of board development activities[.]”<sup>156</sup> those results suggest that female directors have a potential role in establishing decision-making structures and policies in corporate boards of directors that foster crowd wisdom. In other words, women on corporate boards may have the ability to encourage the board’s adoption of operating principles characterized by decentralization and aggregation. Among other things, these principles may need to establish a deliberative culture that relies less heavily—or at least non-exclusively—on senior management inputs.<sup>157</sup>

#### CONCLUSION

Scholars and others have theorized, studied, and written about the role of, need for, desirability of, or case for increasing the number of female corporate directors, the number of firms with female corporate directors, and the percentage of women on corporate boards of directors.<sup>158</sup> Although progress has been made in all respects, many proponents of increased gender diversity have been frustrated by the rate of change.<sup>159</sup> Fresh ideas often seem hard to come by.

This Article is designed to provide a new perspective on women as corporate directors. It applies learning from crowd theory to the existing literature on women and corporate boards of directors to see what, if anything, may be learned. Specifically, the Article focuses attention on the ways in which women’s board membership and participation may contribute to the three conditions for crowd wisdom that have been synthesized from crowd theory: diversity, independence, and aggregation.

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154. *See id.* at 71–72.

155. *See* Nielsen & Huse, *supra* note 109, at 143–45.

156. *Id.* at 145.

157. *See* Sharpe, *supra* note 88, at 1114.

158. *See supra* Parts III & IV and corresponding notes.

159. *See* Dalton & Dalton, *supra* note 7, at 259; *supra* note 10 and accompanying sources and text.

Two principal salient observations emerge from this exercise. The first concerns the attributes that women may uniquely bring to a corporate board that supports crowd wisdom. The second relates to ways in which the advancement of board processes by female directors may contribute to crowd wisdom.

First, while women may bring distinct ideas and experience to boards of directors when they become board members, we do not yet have a clear picture of the nature or extent of those differences or how they may contribute to productive, efficient board decision-making. More empirical work—including interviews, surveys, and other qualitative research—can be designed and undertaken to refine and clarify the results of existing studies. This additional information may further inform board composition and operations.

Second, existing research indicates that women encourage productive board development activities—activities that may include, for example, “the introduction of working structures such as board work instructions, evaluations, and development programs.”<sup>160</sup> Because wise crowds incorporate independent judgment and decentralized, yet coordinated, information assembly and processing, women can constructively promote board wisdom by suggesting or supporting board structures and policies that incorporate or facilitate independence, decentralization, and aggregation (as well as other desired operational policies and procedures).

The crowd theory analysis undertaken in this Article also highlights the value of emergent literature on board processes and dynamics. Especially valuable, from the vantage point of those studying and concerned about gender diversity on corporate boards, is the portion of that literature that focuses in on optimizing women’s participation in board decision-making. As one pair of researchers notes:

[I]t is team processes and dynamics that have high explanatory power for the results of board work. Thus, it is not only necessary to appoint women to corporate boards, it is also essential to create favorable conditions for the board members to realize their potential. By focusing attention on board development activities and open debate while trying to minimize occurrences of conflict in the boardroom, board effectiveness can be greatly improved. Furthermore, as women directors may have differential impacts on different board task[s], it is necessary to a priori specify the nature of the board tasks and consider how appointing women with certain qualities and characteristics can help improve the board’s effectiveness in performing some of these tasks.<sup>161</sup>

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160. Nielsen & Huse, *supra* note 109, at 145.

161. *Id.* at 146.

This literature indicates that women have unique and identifiable value on corporate boards of directors, a value that should be preserved and encouraged.

[W]omen will be most effective in the boardroom if they do not try to model their behaviour after men. They will be more effective than their male counterparts if they are simply authentic and use their . . . talents to help their boards deal with the multifaceted social issues and concerns confronting them in these most complicated and complex times.<sup>162</sup>

Thus, it would be counterproductive for women to follow the crowd of corporate directors or to walk alone. Rather, as members of the corporate director crowd, women can and do bring important attributes to their participation and have unique and valuable contributions to make. These contributions are best made in the crowd of directors under conditions that foster the diversity they bring to the table, their ability to engage in independent thought and judgment, and the aggregation of inputs from the thoughtfully constructed decentralized decision-making processes that female directors may support and champion.

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162. Bart & McQueen, *supra* note 144, at 98.