

# THE GENDER TWIST AND CORPORATE RULE

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## I INTRODUCTION

This article focuses on providing a critical commentary of a law journal article written by Vijaya Nagarajan that posits the view that a gender change in the boardrooms of Australia would give an economic and social fillip to corporate Australia.<sup>1</sup> By presenting a critical analysis of Nagarajan's article a number of issues connected with proposals to revamp corporations will be raised. In effect, Nagarajan's article serves as a catalyst for opening up the space to critique the type of corporate reform program she champions. One of the issues that will be subjected to a forensic analysis in this article is Nagarajan's strange silence on the profit maximization ethos of the modern corporation and its impact on gender roles. It will be argued that by ignoring the interpenetration of corporate profit and gender Nagarajan undermines the attempt to produce a plausible reform program. If an examination of the profit imperative is elided any reform agenda is reduced to tinkering with the corporate power structure. Corporate feminism is a reformist doctrine posited on reconfiguring the upper strata of the corporation whilst leaving intact the economic pillars of a profit-making system that relies on the extraction of private profit from wage-earners. In effect, if conceptual confusion is the hallmark of a campaign to reform certain corporate features the upshot will be a framework of analysis that fails to touch on the structural foundations of the modern corporation. A misguided theoretical and methodological framework to corporate reform that suppresses key social and economic indicia runs the risk of proposing changes that consolidate the ranks of the corporate elite whilst making a marginal difference to gender inequalities.

This article opens with reference to Nagarajan calling for an increase in the number of women on domestic corporate boards. Nagarajan's article propounds a thesis being played out in numerous countries. For example, the British government is contemplating imposing quotas to speed up the appointment of women directors.<sup>2</sup> While in the US with the percentage of women on

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<sup>1</sup> Vijaya Nagarajan, 'Regulating for Women on Corporate Boards: Polycentric Governance in Australia' (2011) 39 *Federal Law Review* 257.

<sup>2</sup> Andrew Grice, 'Vince Cable tells City: Put more women in the boardroom before we force you' *The Independent* (London, 10 April 2013) <http://www.Independent.co.uk>

boards at 12.6 per cent the voluntary approach to boosting numbers is being promoted.<sup>3</sup> The centrepiece of this article is an exploration of the theoretical and political presuppositions of Nagarajan's article. Nagarajan's liberal methodological framework is scrutinized in order to provide an opportunity to measure the degree to which the quest for gender equality at the summit of the corporation impacts on the nature of a profitmaking system. After canvassing the conceptual model utilized in Nagarajan's article to drive forward the expansion of women at the apex of the corporate pyramid, space will be given to considering whether the achievement of gender equity at the peak of the corporation would produce a more inclusive market economy. In order to pursue this line of thought the inner logic of a market economy and how it has shaped the rule of a number of prominent women who have scaled the corporate heights will be examined. The tenure of these powerful boardroom executives will be set against the backdrop of the overarching forces that dictated the rise of the corporation and the nature of intra-corporate competition and its link to female empowerment in the corridors of power. Whether the desirable aim of breaking the glass ceiling in the corporate context would result in gender equality being honoured more in the breach than the observance is a guiding theme of this short article.

## II THE REBADGING OF CONCEPTS

In her article Nagarajan notes the degree of the gender gap in the Australian corporate boardroom. The figure of women holding 10.9 per cent of the directorships available in the leading 200 Australian publicly listed companies is noted.<sup>4</sup> The campaigning spirit of Nagarajan's article is exhibited by her clarion call to support the private and public bodies that are seeking to narrow the gender deficit in the boardroom. Advice about how to facilitate the success of regulatory steps designed to boost the number of women on corporate boards dominates Nagarajan's narrative. Nagarajan espouses the cause of corporate feminism but the concrete context this phenomenon takes place in and its likely outcome are of fundamental importance. The strategy propounded by Nagarajan for curing the gender imbalance at the peak of the corporation is termed polycentric governance. This multifaceted approach to reform boils down to the state collaborating with a myriad of private organs in order to

<sup>3</sup> Paul Hodgson, 'Women on Boards: The Good News, There are More. The Bad News, Not That Many' *Forbes* (New York, 3 August 2012) <http://www.forbes.com/sites/paulhodgson/2012/03/08/women-on-boards-the-good-news-there-are-more-the-bad-news-not-that-many/>

<sup>4</sup> Nagarajan, above, n 1, 255.

secure compliance with the objective of increasing the participation of women on corporate boards.<sup>5</sup> The parties that are already engaged in a dual relationship with government to increase the representation of women on boards are enumerated by Nagarajan and they include Woolworths, Westpac, Australian Institute of Company Directors, Business Council of Australia and the Australian Stock Exchange.<sup>6</sup> According to the author 'the notion of the state being at the centre of regulation has given way to a polycentred notion of governance where a range of actors are involved in different facets of the regulatory regime.'<sup>7</sup>

The difficulties Nagarajan has in comprehending the relationship between the corporate oligarchy and the state fatally undermine any attempt to explain power structures, and the barriers to ameliorating the gender deficit. Nagarajan's assumption is that power in corporate societies is fragmented and diffused among a constellation of forces. In effect, the liberal notion of atomistic and independent centres of power driving governance practices in a market society is the key to Nagarajan's call for corporate reform. But this insight has to be teased out of the article for the reluctance to engage openly in theoretical discussion ensures that the concept of polycentric governance is put in vague terms. The lack of a searching critique mars Nagarajan's framework of analysis. Unexamined concepts proliferate. The ahistorical treatment of data is one jarring flaw. That polycentric governance is pluralism by another name escapes Nagarajan's field of enquiry. Pluralist theory was in vogue in the 1960s and 1970s and was based on the suggestion that the taproot of power in contemporary market societies is not concentrated in a particular class but diffused between elite groups.<sup>8</sup> Whilst Nagarajan posits a range of discrete actors lobbying for gender equality in the boardroom she renders invisible the notion that these groups are an interlocking body that utilizes the state to promote the collective viewpoint of a particular class. Judged by Nagarajan's evidence the luminaries who are promoting the reshaping of corporate boardrooms are a tight knit group. The monopolistic business interests in banking and industry that Nagarajan depicts as calling for gender reform at the apex of the corporation are linked to lobby groups and other special interest organs that push a ruling class agenda. It is implausible to construe the Australian Institute of

<sup>5</sup> Ibid 279.

<sup>6</sup> Ibid 258, 270.

<sup>7</sup> Ibid 256.

<sup>8</sup> Robin Blackburn, 'A Brief Guide to Bourgeois Ideology,' in Alexander Cockburn and Robin Blackburn (eds), *Student Power: Problems, Diagnosis, Action* (Penguin, 1970) 189.

Company Directors and the Business Council of Australia as competing interest groups. Nor are they atomized members of a diffused and fragmented elite. They are an integral part of the united front that seeks to translate monopolistic business needs into policy. These intermediary bodies exist to transmit the strategic aims of the ruling oligarchy that occupies the commanding heights of the Australian economy. They are lobby groups intent on manufacturing government decisions that favour big business. Overseas studies highlight a similar phenomenon.<sup>9</sup> In the US there is a long history of business interest groups capturing state organs and exerting control over the political elite and thereby utilizing their position to skew legislation towards serving narrow economic interests.<sup>10</sup> Nagarajan's particular type of naïve empiricist pluralism collapses under the weight of the existence of a contemporary landscape pervaded by monopolies and their lobby groups that utilize the state to protect the social structure.<sup>11</sup> Monopolies through a number of channels are engaged in reproducing social and power relationships and they perform this function in league with state organs. Any talk about the state devolving regulatory doctrine to a farrago of atomistic agents is misleading. Furthermore, there is no balancing act or division of power between diffuse groups or a 'range of actors' on shaping state policies. Nagarajan makes an ingenuous reference to the state and its link to 'a range of actors' but there is an absence of coverage in her article of the nature and function of the state in a capitalist society. There is a dearth of theoretical consideration focusing on how state power is always linked to particular interests. The mutual pact between capital and the state is aimed at maintaining the economic order.<sup>12</sup> Quite simply, the personnel of the state owe their allegiance to the business class and not to the fragmented groups suggested in Nagarajan's atomistic concept of society. A pluralist model is an abstraction that mystifies the concentrated nature of power in a society ruled by corporations where the sovereign principle is the ownership of private property.<sup>13</sup> Policy on the gender composition of corporate boards is something that those at the commanding heights of the economy and their myriad agencies will guide. The existence of a glass ceiling in the inner circles of corporate

<sup>9</sup> Daniel A Farber, Philip P Frickey, *Law And Public Choice: A Critical Introduction* (University of Chicago Press, 1991) 17

<sup>10</sup> Ibid 19.

<sup>11</sup> Paul Mattick, *Economics, Politics and the Age of Inflation* (Merlin Press, 1978) 80.

<sup>12</sup> Ralph Miliband, *The State in Capitalist Society* (Quartet Books, 1977) 7. Also Bob Jessop, *The Capitalist State* (1983) 30.

<sup>13</sup> Miliband, above n 12, 4. Also Joseph A. Camilleri, Jim Falk, *The End of Sovereignty?* (Edward Elgar, 1994) 23.

Australia highlights that at this moment in history there is no common view within the ranks of capital on prioritizing this issue, but the fact that corporate heavy hitters are lobbying to advance the cause of bolstering the ranks of female directors is of crucial importance for they are the drivers of change. Also implicit in the corporate thrust to dissolve gender barriers in the boardroom is cognisance of the fact that this step forward would at best produce a restricted kind of equality that would pose little threat to the centralization of corporate power. The corporate form facilitates the reproduction of economic and political elites and female directors are hostage to the same structural dynamics as male directors. For her part Nagarajan posits that a boost in female participation on corporate boards would enhance democracy, narrow the gender gap and foster a climate for a more inclusive corporate governance and higher profitability.<sup>14</sup> Another potential bonus would be 'an enhanced corporate image for shareholders, employees and consumers.'<sup>15</sup> These aspirations are not insignificant. Certainly any erosion of the glass ceiling is to be applauded. However what is problematic is the lack of any conscious theoretical and methodological framework put forward by Nagarajan to support this appeal for revamping the chain of command of the corporation. How good intentions get transmitted to decisions of government policy is absent in Nagarajan's scenario. A raw and unacknowledged empiricism and liberalism is the closest the author comes to providing a theoretical perspective. There is a deficiency of evidence exhibited regarding the capacity to look through the political surface and view the economic and social substance of corporations before claiming positive social change of the sort projected by Nagarajan is possible. The shortage of close analysis of corporations and of a system that organizes production along lines that result in oppression and exclusion on gender lines mars Nagarajan's work. Nagarajan fails to generate thought and any understanding of the deep structures that facilitate corporate inequality. The unwillingness to engage in a theoretical discussion ensures that only an empiricist epistemology focusing on facts disconnected from their historical, social and economic context prevails. Nagarajan's unexamined assumptions produce a misleading view of corporations and the guiding forces that determine their evolution. At bottom, Nagarajan is promoting the liberal axiom of equality of opportunity and implying that if this operated in practice there would be a florescence of female directors. But whether closing the gender gap at the summit of society would alter the dynamics of the corporation and the nature of society is of

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<sup>14</sup> Nagarajan, above n 1, 257.

<sup>15</sup> Ibid.

crucial importance. Female directors are members of the ruling elite and if their entry to the inner circle is to be expanded based on the concept of equal opportunity it may well end up providing ideological cover for the strengthening of the bonds of capital. In the context of corporations the concept of equal opportunity is a thorny issue that requires excavation.

### III THE GULF BETWEEN APPEARANCE AND ESSENCE

All reasonable people must support any measure to reduce inequality wherever it occurs. On that basis the move to expand the ranks of female directors must be supported. The credo of equality of opportunity must be protected and enhanced. But this objective has to be matched with a sense of *realpolitik*. There has to be the realization that an equality ethos is already a cornerstone of a market society. Liberal individuals are already sovereign over themselves, their interests and property. Equality at the juridical and political plane is at a level far superior to past socioeconomic forms and its full attainment is not beyond the reach of the extant society.<sup>16</sup> Yet the formal equality assured in the juridical and political sphere of liberal societies is matched by steep economic inequalities and the burgeoning of female directors will not cure this phenomenon.<sup>17</sup> Formal equality is only a component part of the ensemble of social relations. Fundamentally people in market economies interact as bearers of economic relations and this shapes how they connect with each other.<sup>18</sup> Legal forms obscure the deep social and economic content expressed by social relations. Unpacking the gulf between the appearance of things and the essential relations of economic life is the key for understanding how boosting female participation at the board level will not narrow the gender gap in any qualitative fashion or breed responsible capitalism. Liberalism is a paradox, for while it celebrates the precepts of democracy and equality it simultaneously extends the dominance of those with economic power.<sup>19</sup> The wages system is the pivotal relationship that encapsulates the warring nature of liberal individualism. Wage labour is also at the epicentre of corporate life. A corporation is merely

<sup>16</sup> Ellen Wood, *Democracy Against Capitalism: Renewing Historical Materialism* (Cambridge University Press, 1995) 266.

<sup>17</sup> G Wearden, 'Oxfam: 85 richest people as wealthy as poorest half of the world' *The Guardian* (London, 20 January 2014) <http://www.theguardian.com/business/2014/jan/20/oxfam-85-richest-people-half-of-the-world>

<sup>18</sup> Karl Marx, *Capital I* (Penguin, 1979) 179.

<sup>19</sup> Richard Lichtman, *Essays in Critical Social Theory: Towards a Marxist Critique of Liberal Ideology* (New York, 1993) 150. Domenico Losurdo, *Liberalism A Counter History* (Verso, 2011) 309.

the shell within which labour relations operate. At a juridical level the wage contract is a reciprocal relationship that involves the worker voluntarily selling their labour power. This is an exchange relation characterized by equality and freedom.<sup>20</sup> Yet just below the surface coercion operates. This represents the underbelly of liberalism and the corporation. For beyond the parameters of the exercise of choice that contract law exalts, the worker relinquishes their property right over the labour power, direction of work and the product of labour.<sup>21</sup> The wages system is one of those deep structures that obscure the fact that below the level of monetary transactions and the contract of employment, as Adam Smith noted, is a process based on deducting profit from the produce of labour.<sup>22</sup> Smith was pointing out workers produce more in value than they are paid. All this operates behind the hand of free contract and juridical equality. It is the hidden abode of corporations. And every shareholder and director regardless of gender benefits from the alchemy that occurs when formal equality morphs into substantive inequality for they are privileged bearers of economic relations. They share from the underlying magic of market relations what Smith termed the profit deducted from employees. In the final analysis corporations render freedom of contract an illusion. Once corporations sell commodities on the market they realize sums of capital greater than the cost of the wage labour they employed and this is the source of Smith's profit thesis. An expansion of female directors will fail to make an impact on the laws of the market that are based on the limitless drive for profits. Programs to achieve greater representation of women on corporate boards will strengthen the hand of corporate feminism, but will have negligible impact beyond the apex of corporate pyramids. The existence of wage labour has a deleterious impact on issues such as equality, justice and fairness whilst disproportionately affecting women workers who congregate in low wage jobs. A recent study in the UK found three times more young women stuck in low paid and low skilled jobs than was the case twenty years ago.<sup>23</sup> Also even those women who break through the glass ceiling by climbing the corporate ladder can find their tenure of high office is limited by inexorable forces that shape their fate. The experiences of three women who have scaled the corporate heights and been

<sup>20</sup> David Harvey, *The Limits to Capital* (Blackwell, 1984) 28.

<sup>21</sup> Michael Lebowitz, *Following Marx: Method, Critique and Crisis* (Haymarket Books, 2009) 50.

<sup>22</sup> Ronald L. Meek, *Smith, Marx & After* (Chapman & Hall, 1977) 7.

<sup>23</sup> Press Association, 'More young women trapped in low-paid, low-skilled jobs' *The Guardian* (London, 1 November 2013) <http://www.theguardian.com/business/2013/nov/01/young-women-trapped-low-paid-skilled-jobs>

the beneficiaries of economic largesse cast light on the prospect of a surge in female directors reconfiguring gender relations and producing soulful corporations. In 2005 an Australian clothing company producing a range of iconic underwear and hosiery products was engaged in a systematic endeavour to lift productivity, raise profits and cut costs. A journalist on a tour of the Pacific Brands, Wentworthville factory in Sydney's West noted 'it is clear they have tried to squeeze out every efficiency from the production process.'<sup>24</sup> Pacific Brands were utilizing computer technology to quicken the pace of knitting and dyeing machines producing underwear, t-shirts and swimwear.<sup>25</sup> The motor force of the striving to lift the output per hour of every worker was clear to the Pacific Brands hierarchy. It was part and parcel of a campaign to achieve the 'sort of cost control and efficiency that the company has had to refine to survive against the behemoth that is the Chinese manufacturing sector.'<sup>26</sup> There was no sentiment involved in the intra-capitalist struggle for survival. The Pacific Brands head of manufacturing was blunt. If there was any slowdown in innovation, reduction of costs or slackening of the speed of production Pacific Brands local manufacturing base would close.<sup>27</sup> The head of manufacturing was adamant 'that the economics of manufacturing in Australia are constantly reassessed by the company as competition intensifies and Chinese manufacturing standards improve.'<sup>28</sup> In January 2008 Sue Morphet was anointed the chief executive of Pacific Brands. Within a year she and the rest of the board had come to the conclusion that there was 'no long-term sustainable advantage from local manufacturing as efforts to make its facilities cost efficient were no longer relevant.'<sup>29</sup> The belief was that domestic manufacturing was uncompetitive and as a result production was to be outsourced to China and 1850 workers were to be made redundant.<sup>30</sup> There had been a profit slump and the cost saving from shifting production off shore and axing local manufacturing was estimated at \$150 million a year.<sup>31</sup> In the period prior to Pacific Brands announcing its restructure and the sacking of its largely migrant woman work-

<sup>24</sup> G Newman, 'Flex and Flexibility' 33. *The Australian* (Sydney, 22 October 2005) <https://mail.google.com/a/mq.edu.au>.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> A Sharp, C Zappone, 'West End factory to close as Bonds goes offshore' *Brisbane Times* (Brisbane, 25 February 2009) <http://www.brisbanetimes.com.au/articles>

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.



force Morphet's annual package rose from \$685,775 to \$1.86 million.<sup>32</sup> This sum included incentive payments for axing jobs.<sup>33</sup> By 2011 the Pacific Brands share price was languishing as new problems surfaced. The launch of the Spanish multinational Zara chain in Australia impacted on Pacific Brands grip on the youth market and retailers such as Myer were circumventing Pacific Brands by going direct to Chinese manufacturers in order to get cheaper house-brand merchandise.<sup>34</sup> In 2012 Morphet fell on her sword as the annual net loss skyrocketed to \$450.7 million and sales fell by 18 per cent.<sup>35</sup> Morphet was blamed for choosing poor suppliers in China and not stemming the resultant drop in quality and sales of key brands such as Bonds and Holeproof.<sup>36</sup>

In March 2007 Cynthia Carroll became the chief executive of one of the world's top five mining multinationals. Anglo American has a portfolio of global mines. Many of the issues that beset Morphet enveloped Carroll. Chief executives of whatever gender make their own history but they do it under the umbrella of the logic of a capitalist system that operates according to compulsive forces. On a daily basis every capitalist manager must achieve a return on capital that is at least average for their industry or watch their firm perish. Thus every chief executive constantly confronts the potential liquidation of their business and career, and Carroll and her female peers are no different from their male counterparts regarding the life and death struggle that is waged every day. In Carroll's case in order to streamline the cost structure and boost the productivity of Anglo American she forced 26,000 compulsory redundancies but still failed to reach the profit levels deemed necessary by shareholders.<sup>37</sup> By 2012 cost blowouts on new projects and missed opportunities led to a loss of a third of Anglo's value and a plummeting share price.<sup>38</sup> One of Anglo's largest shareholders lost patience and criticised Carroll's 'poor decision mak-

<sup>32</sup> Australian Associated Press, 'Pacific Brands sacks 1800 while bosses pocket pay rises' *The Australian* (Sydney, 27 February 2009) <http://www.theaustralian.news.com.au>

<sup>33</sup> Ibid.

<sup>34</sup> B Butler, M Hawthorne, 'Rag trader stretched at the seams' *Sydney Morning Herald* (Sydney, 11 June 2011) <http://www.businessday.com.au-20110610-1fwy8.html>

<sup>35</sup> A Ferguson, 'Pacbrands battles to avoid a Billabong repeat' *Sydney Morning Herald* (Sydney, 22 August 2012) <http://www.smh.com.au/business/earnings-season/pacbrands-battles-to-avoid-a-billabong-repeat-20120822-24lr7.html>

<sup>36</sup> Ibid.

<sup>37</sup> J Kollewe, 'Anglo American chief Cynthia Carroll to step down next year' *The Guardian* (London, 26 October 2012) <http://www.guardian.co.uk/business>

<sup>38</sup> Ibid.

ing' and called for her 'swift replacement'.<sup>39</sup> The economic property owners of a corporation trump administrative figures like Carroll and 'after months of intense pressure from shareholders' she stepped down in October 2012.<sup>40</sup> Some of her defining problems were replicated by Marissa Mayer.

In 2012 the tech giant Yahoo! installed Mayer as its CEO. As the experience of Morphet and Carroll illuminates capitalism exists in a climate of creative destruction and by 2012 Yahoo! was in decline and needed to be revitalized as Google and Facebook were taking market share and advertising dollars from Yahoo!<sup>41</sup> To reverse the decline Mayer issued a decree banning employees from working at home and asserted that 'working side by side' at company headquarters would increase the quality of decisions and insights.<sup>42</sup> Analysts took a more realistic view and declared that the back-to-work edict was a ploy to cull staff by dismissing anyone unwilling to return to a disciplinary regime bent on increasing the productivity and competitiveness of Yahoo!<sup>43</sup> Mayer remained silent in the face of criticism that she was 'dissing working moms' by ordering them to back to the office.<sup>44</sup> Part of her silence is explicable when note is taken that Mayer had a nursery next to the executive suite to house her infant child.<sup>45</sup> She has also built an estimated fortune of \$300 million.<sup>46</sup> Moral homilies about Mayer's behaviour must not distract attention from the profit making institutional forces that shape her conduct. The objective and coercive institutions and social structures that dictated the pattern of Morphet, Carroll and Mayer's actions need illuminating. The way the social relations of business enmesh its agents and force them to execute its will must be the compass for judging those at the commanding heights of the economy. As Roberts notes when the manager of a large firm confronts the decision of sacking workers in order to restore profitability and stave off eventual bankruptcy the 'compulsion of a ruthless systemic logic' transcends any personal misgivings.<sup>47</sup> The

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> N Kumar, 'She's been at the forefront of the tech revolution but can Yahoo! CEO Marissa Mayer really get away with banning her staff from working from home?' *The Independent* (London, 1 March 2013) <http://www.independent.co.uk/news>

<sup>42</sup> J Brown, 'A world wide web of communication –but Yahoo tells its staff to get back in the office' *The Independent* (London, 26 February 2013) <http://www.independent.co.uk/news>

<sup>43</sup> Ibid.

<sup>44</sup> Kumar, above n 41.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Marcus Roberts, *Analytical Marxism: A Critique* (Verso, 1996) 25.

female head of a large enterprise can resist slashing the workforce by resigning but this would kill a corporate career for no discernible benefit as she would correctly surmise that if she faltered somebody else would be compelled to wield the knife.<sup>48</sup> The inner logic of a market economy compels entrepreneurs of whatever gender to focus on maximizing profits. This line of argument is endorsed by both left and right thinkers. The law-and-economics school guided by the axioms of neo-classical economics avers that efficiency considerations dictate that the control of the modern corporation must be exclusively allocated to shareholders otherwise, 'people who did not receive the marginal gains would be influencing corporate discretion, and the influence would not maximize the wealth of the participants as a group.'<sup>49</sup> And corporate law acts as an adjunct to the economic imperative by imposing a legal duty on directors to serve shareholders' interests. As the arch conservative Richard Posner has cogently put it: 'a profession's characteristic modes of thought might have economic causes.'<sup>50</sup> The fundamental mandate of the corporation is to make money and eschew 'ethical and social concerns.'<sup>51</sup>

There is a studied silence from those promoting the cause of female empowerment at board level to note that it is the law of the land for directors to be concerned only for their shareholders and 'not the community, or the workforce or whatever.'<sup>52</sup> In the contemporary world shareholders have largely evacuated the production process and professional managers and directors now administer corporations; but Pahl and Winkler's empirical study highlights that these professionals are even more intent on constantly improving shareholder profitability than the owners of capital who ceded administrative control over big business to a managerial elite.<sup>53</sup> In effect, every director is trapped in a Faustian bargain with the imperatives of capital and it is folly to depict an expanded role for women in administering corporations as a move towards a path-breaking and progressive reduction of the gender gap and a step towards corporate social responsibility.

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<sup>48</sup> Ibid.

<sup>49</sup> Frank Easterbrook, Daniel Fischel, *The Economic Structure of Corporate Law* (Harvard University Press, 1991) 69.

<sup>50</sup> Richard Posner, *Overcoming Law* (Harvard University Press, 1995) 35.

<sup>51</sup> Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (Constable, 2004) 38.

<sup>52</sup> Ibid 35.

<sup>53</sup> Raymond E Pahl, John T Winkler, 'The Economic Elite: Theory and Practice' in Philip Stanworth and Anthony Giddens (eds), *Elites and Power in British Society* (Cambridge University Press, 1975) 117-118.

The touchstone of corporate law is the entrenchment of property rights. Female directors and male directors are equally bound to the same legal rules that act to facilitate private profit. Every director regardless of gender is legally bound to ensure that the profit of an enterprise is channelled to shareholders. This common law axiom was cogently expressed by Bowen LJ. in *Hutton v West Cork Railway Co*. Bowen LJ stated: 'The law does not say there are to be no cakes and ale, but there are to be no cakes and ale except such as are required for the benefit of the company...charity has no business to sit at Boards of directors qua charity. There is however a kind of charitable dealing which is for the interest of those who practice it, and to that extent ...charity may sit at the Board, but for no other purpose.'<sup>54</sup> Bowen LJ. was not banning the company board from engaging in philanthropic gestures towards workers but any benefit had to also serve the owners of the company. The company existed to provide profits for shareholders and any sum expended on workers that was not linked to this imperative breached directors' duties. The British academic, Lord Wedderburn, observed that directors' fiduciary duties were formulated to ensure there was an analogy between the 'interests of the company' and the guaranteeing of profits to shareholders.<sup>55</sup> Statute law is also designed to synchronize with a profit-maximizing society. Corcoran is a mainstream scholar but she notes that the Corporations Law statute 'actively discourages corporate concern for social welfare when social welfare must be purchased at a cost to profit maximisation.'<sup>56</sup> The view that the modern corporation is a vehicle for maximizing the profits of its shareholders is further amplified by Milton Friedman, a right-wing Nobel Prize winning economist. Friedman declared: 'In a free-enterprise, private property system, a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires...to make as much money as possible.'<sup>57</sup> With the law and market systematically operating to deny the corporate boardroom the capacity to cultivate civic or ethical concerns it is unsurprising that both female and male directors

<sup>54</sup> *Hutton v West Cork Railway Co* (1883) 23 Ch D 654, 673. Also see *Parke v Daily News Ltd* [1962] Ch 927.

<sup>55</sup> Lord Wedderburn, 'The Legal Development of Corporate Responsibility' in Klaus J Hopt and Gunther Teubner (eds), *Corporate Governance and Directors' Liabilities* (de Gruyter, 1985) 5-6.

<sup>56</sup> Suzanne Corcoran, 'The Corporation as Citizen and as Government: Social Responsibility and Corporate Morality' (1997) 53 *Flinders Journal Of Law Reform* 53.

<sup>57</sup> Milton Friedman, 'The Social Responsibility of Business is to Increase its Profits' *The New York Times Magazine*, (New York, 13 September 1970).

are constrained from pursuing social goals. The law compels the upper strata of corporations of whatever gender to surrender to the logic of the market and its legal rules. An exploration of the hidden logic of the modern corporation reveals the full extent of the vapid nature of any personnel changes in the ruling elite being reflected in a move to genuine equity. The objective place of individuals in a network of ownership relationships not only categorizes their status but is the key to how a hegemonic system of power works. The individual behaviour of shareholders and the directors who administer capital is shaped by 'external coercive laws.'<sup>58</sup> The search for maximum profit is not a function of the personal idiosyncrasy of those owning and managing capital. Fundamentally the quest for maximum profit is driven by the competitive individualism of the market. The competition for sales compels each producer to market a product of equal quality at less cost.<sup>59</sup> The competition for sales compels every business to minimize costs and maximize profit.<sup>60</sup> Notable thinkers such as Keynes, Ricardo and Smith and numerous other less illustrious economists understood this guiding principle of a market economy.<sup>61</sup> Competitive advantage is only retained by those who plough profits back into company in order to expand faster than their competitors.<sup>62</sup> The economic logic of the market holds sway regardless of the biology of individuals. Every move by Morphet, Carroll and Mayer is only explicable when viewed through the conceptual lens of a competition for economic survival. To lose in the competitive battle is to ensure the destruction of capital, and the trio of entrepreneurs represented by Morphet, Carroll and Mayer were first and foremost bearers and executors of economic laws and ready to sacrifice anything to stay in the game and be ahead of the competition. Their gender was secondary and played no role in how they developed their strategic plans. Ultimately to be top dog productivity rates have to be intensified and workers' wages rise at levels well below the increase in productivity or better still remain stagnant or decline in real terms, and if successful this policy is translated into higher profit rates. Morphet, Carroll and Mayer understood and operated on this imperative. When Anglo American appointed Carroll's successor his mantra to the market was how he

<sup>58</sup> Harvey, above n 20, 28.

<sup>59</sup> David McNally, *Global Slump: The Economics and Politics of Crisis and Resistance* (Merlin Press, 2011) 74.

<sup>60</sup> Ibid.

<sup>61</sup> Michael Bleaney, *The Rise and Fall of Keynesian Economics* (Macmillan, 1985) 4, 17.

<sup>62</sup> McNally, above n 59, 74.

was going to turbo-charge productivity rates.<sup>63</sup> Carroll fell not because she was a woman but because she was found wanting as regards driving up output per hours and lifting earnings per share and this also applied to Morphet. Mayer will be judged by the same efficiency and profitability yardstick and if she fails to meet targets she will be toppled. The lessons of corporate history are clear. The social structure of power wins hands down every time against gender differences in corporate boardrooms and on the Stock Exchange.

#### IV CONCLUSION

This article has undertaken a critical analysis of Nagarajan's viewpoint that a surge in the number of Australian female directors would not only narrow the gender gap but provide traction to the corporate social responsibility agenda whilst potentially lifting profits. Raising the number of corporate female directors in Australia has international implications as the topic of breaking the corporate glass ceiling transcends borders. There is an international push to boost female board numbers but just what success in this venture would mean for a society where profit and private property are the sovereign principle is rarely touched upon. This study has highlighted that the economic logic of the market refutes the concept that a changing of the gender guard would reconfigure corporations. The spirit of coercion rules the corporation regardless of the gender composition of those at the commanding heights of the economy. At a visible level the labour market is a sphere of free contracting citizens but beyond its formal equality the income and the stratospheric salaries of directors is derived from squeezing labour and this is an imperative rule. Moreover, the personnel makeup of the corporate ruling elite is secondary to the inherent competitive pressure that ensures a competition for sales that compels every director to engage in a strategy of minimizing costs and maximizing profits. Corporate law facilitates profitmaking. It is a coercive instrument for it compels directors regardless of gender to focus on shareholders' demands to maximize dividends. Placing more women on corporate boards must be supported, but in practice it will have minimal influence on the internal structures that are the taproot of the market system, and the relations of day to day business. Corporate feminism will not pave the way for an inclusive capitalism and concrete equality.

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<sup>63</sup> M Chambers, 'New Anglo American CEO tells miners to raise bar on productivity' *The Australian* (Sydney, 10 January 2013) <http://www.theAustralian.com.au/business>