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OPINION

Workplace diversity & equality

Public shaming will not solve the lack of diversity on corporate boards

Public shaming only works if the information prods stakeholders to take action

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General Motors shareholders last week elected a slate of directors that includes more women than men. The automaker is just one of four members of the S&P 500 with a majority-female board, evidence that the shift towards gender parity remains disturbingly slow.

But there is no agreement on how to accelerate the process. Much effort focuses on disclosure. The US Securities and Exchange Commission in February required companies to disclose whether particular board candidates were selected by taking into account self-reported diversity characteristics, and Democrats in Congress are pushing a bill to force companies to reveal diversity data about boards and executives.

The point is to spotlight companies lacking diversity and encourage change. Let's call it what it is — public shaming. But 25 years as a corporate lawyer have taught me that this approach only works if the information that is disclosed grabs attention and prods stakeholders to action — simply disclosing information (however unflattering) does not move the dial.

After all, California legislation dating back to the 1990s required the state to prepare a list of women and minorities qualified to be board members. And in 2009, the SEC required nominating committees to disclose whether and how they considered diversity. But in 2017 an SEC advisory committee found that the 2009 regulations had failed to generate "information useful to stockholders, employees and customers in assessing board diversity".

There are any number of studies linking diversity in company boards to better economic results. Advocacy group Catalyst's 2007 landmark study identified a correlation between more women on corporate boards and stronger performance. Just last year, McKinsey found a similar link between gender and racial diversity in companies and financial performance.

Yet gender diversity remains stubbornly low in many places. Morningstar recently noted that women held only 23.7 per cent of board seats at the 500 largest companies in the Russell 3000 index and 13.6 per cent in the remaining 2500. In Australia, 30 per cent of board members are female, and the tally is 26.7 per cent for the FTSE 350.

So what will force change? Norway opted for the "rough justice" of quotas, requiring publicly traded companies to have at least 40 per cent female directors by 2008. Britain set targets — rather than quotas — for its largest companies to achieve 33 per cent gender parity in boards and senior management by the end of 2020. My home state of California has also taken a quota approach, following Norway and much of Europe. Public companies headquartered here must have one female board member this year and larger boards must have three female directors in 2021.

Quotas are not a silver bullet. Studies in Norway and elsewhere suggest that having more women on boards has not translated into more women in senior management. But they do drive faster progress, and my view is that more disclosure, though laudable, is unlikely to achieve that end.

Consider the related subject of gender pay gaps. In 2019, one year after the UK began requiring companies to disclose the difference between median male and female pay, the gap actually widened at more than 40 per cent of the reporting companies.

Some in the US advocate a more direct, penalty-driven approach on pay equity. Senator Kamala Harris, a presidential candidate, has proposed requiring companies with more than 100 employees to obtain a certification that they pay men and women equally for analogous work. Companies that fail to comply would be fined 1 per cent of their profits for every 1 per cent difference between men's and women's salaries.

There is no simple way to diversify boards. Yet unlike disclosure rules, quotas, however imperfect, at least advance the ball.

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