The Human Experience of Being-in-the-Board: A Phenomenological Approach

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A Phenomenological Approach

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1. Boardroom Experiences

The Board takes a bad decision (2005)

A publishing company is in a process of transformation into an information and media company. It is considering a transformative acquisition in the US, doubling the size of the company. It is a risky acquisition, also given the company's poor track record of integrating companies it has acquired. Shareholders may not be enthusiastic about the acquisition. On the other hand, if successful the company will take a big step in the transformation that is strategically desirable and possibly necessary for the company's survival. The Supervisory Board of the company meets to formally approve the merger agreement after which the company will announce its offer for the US company. Prior to the meeting of the Supervisory Board the Remuneration Committee meets to discuss bonuses and share vestingunder short term and long term incentives schemes. In the meeting of the Remuneration Committee the Chairman of the Supervisory Board and the Chief Executive Officer get into a fight on the disappointing financial results of the company in the previous year and their consequences for the bonuses and vesting under the LTI scheme. The fight becomes ugly and the Chairman and CEO hammer at each other, without coming to any sort of agreement. The Chairman ends the meeting because the rest of the Supervisory Board waits for the full Board meeting on the planned acquisition. The heated emotions of the Remuneration Committee spill over into the discussion of the acquisition. The other members of the Supervisory Board wonder what has occurred between the Chairman and the CEO. The CEO aggressively defends the acquisition against criticism of the Chairman on the intentions and capabilities of the CEO and the company to pull the acquisition off and successfully integrate the US company. The position that shareholders may take is not discussed. Nobody suggests to continue the discussion to another moment. The discussion ends in a stalemate but nonetheless the Supervisory Board approves the merger agreement and the public offer is announced the next day. Within weeks shareholders of the company severely start to criticise the offer and the company's management and the Supervisory Board for pursuing it. It becomes clear that the company will not get sufficient shareholder support which is required for doing the acquisition and the company decides to withdraw the public offer. The leadership of the company is in disarray. Two months later a consortium of private equity firms makes an offer for the company itself, which is successful in the end. All the members of the Supervisory Board and the CEO and other executives step down.

The Chairman panics (2017)

The CEO of a large hospital that has been formed last year as the result of a merger of three hospitals, informs the Supervisory Board in July that the first half year results are disappointing. Some re-organisation will be necessary but the CEO believes that the financial result at year end should be positive. The 72 year old Chairman of the Supervisory Board is very upset by the information of the CEO. During the meeting he challenges the CEO, not believing the results will still be positive at year. The Chairman is not satisfied with the answers of the CEO. Other members of the Supervisory Board stay silent during the meeting, it is no longer a board-wide discussion on the numbers and measures. In the days and weeks after the board meeting the Chairman initiates discussions with members of the staff of the hospital, challenging them on the numbers and telling them the hospital is in real danger of financial distress. The CEO is not consulted on these meetings but hears about it afterwards from his staff who are wondering what is going on. The CEO and the staff prepare detailed analyses of the financial situation and outlines of the plans to deal with it for the next board meeting. Still the Chairman is not convinced and in the meeting harshly intervenes when the CEO tries to explain the situation. The CEO does not understand what he is doing and it is the right of the Chairman to intervene and force the executive team to take tougher measures. After the meeting the CEO seeks to discuss with individual other members of the Supervisory Board to ask them to contain the Chairman. If they can not do so he would consider to involve the Health Inspection authority because the dysfunctional governance of the hospital is starting to threaten its continuity. Some Supervisory Board members respond rather dismissively, 'it is not my role', 'he is hard to deal with and he may have a point'. One member of the Supervisory Board feels that the situation is getting out of hand. He sets up a meeting with the Chairman and the CEO to see if some sort of agreement can be reached, but this discussion leads nowhere. The CEO discusses with other members of the Supervisory Board what needs to be done. They see the Chairman is overreacting and erratic but struggle to get to any decision on what to do about this. Asking the Chairman to resign is inconceivable for them, dismissing the CEO is going to create even more upheaval in the hospital. They see no immediate solution to this governance crisis. A further meeting of the Supervisory Board is called to discuss the situation. At the start of the meeting the Chairman surprises everyone by announcing that he will step down immediately. Nobody apparently understands the severity of the situation of the hospital and in such an environment he can no longer fulfil his role effectively. The crisis is averted, suddenly, without the Supervisory Board having been able to solve it itself.

The Board starts to reflect (2013)
The Board of a company in the tourist industry has a hard time having effective conversations on the consequences of digitalisation for the company and its business. The CEO is practically refusing to discuss the issues with the Board. He claims that the business is not truly changing in nature, that digitalisation will not have fundamental effects and if any change happens it will go slowly with enough time to adapt and implement new technologies in the business. The Board however is much more anxious. It sees the disruption in other industries and also in the company's sector, it cannot believe this will not become relevant for the tourist industry and it wonders whether the company should not take a leading role in the transformation that is going to happen. But the CEO, who has been very successful in steering the company through various crises over the last ten years, remains adamant and is not willing to embrace change, let alone lead it. Underneath these discussions the Board members sense a strong reluctance of the CEO to discuss any substantial business matter with the Board as the Board in his view is not up to speed, has little insight into what is really happening in the market. The Board also underestimates how hard is to keep the company going as it is in today's market; this requires a huge effort and this is the first job of the CEO. The non-executives discuss among themselves

what should be done. The Chairman suggests to make it the topic of the dinner discussion at the next off-site meeting of the Board. At that dinner the Chairman explains that he senses that the relation between the non-executives and the CEO are deteriorating over a substantial matter and he invites all the participants to reflect on what they see is happening in the Board, their own role in it and what they think is needed to improve matters. Somehow, outside of the standard meeting context, a reflective dialogue pursues where non-executives and CEO honestly share their observations and concerns. There is actually little discussion, they listen to what others have to say. Non-executives say in different ways they see a defensive CEO who digs himself into a position that was successful over the last decade but is not likely to help the company going forward. Not knowing where the company should be going to themselves, they feel unable to help the CEO out of this fix. The CEO says the he believes he can only engage in fruitful discussions with the Board when he has figured out for himself what is going on and what the company should be doing. As long he does not know what direction to take, the Board will only see him as indecisive, not knowledgeable and at the same time the Board cannot tell him where to go to with any self-confidence as it does not know itself. Starting to open up their respective uncertainties creates space for a first, tentative discussion of what the challenges for the company might actually be and what risks a possible disruption might create for the company. The Board decides that the CEO will lead a process of investigating what is happening in the industry and outside, involving Board members at various stages in the process and inviting them to spend real learning time together with the executive team.

2. Regulatory and Economic Approaches do not Explain Board Realities

These are just three examples of the reality in boardrooms I have witnessed personally over the years. In none of these cases there was any relevant or material weakness in the formal governance structures and procedures as applied by the companies involved. What was going on occurred within the boundaries of these formal governance arrangements. The reality of boards[1] essentially is a human practice, confined partially by systemic requirements following from binding regulation and semi-binding or aspirational governance codes. The duties and prescribed practices of boards as laid down in law focus primarily on formalities, processes and sanctions for example in the form of liability. Even after years of more intense corporate governance regulation, beyond setting the formal margins the law remains rather agnostic about what boards are or should be doing.[2] Economists have developed a more substantive view of what boards need to do, based on the objective of maximising efficiency. The agency theory has become leading in the financial-economic way of analysing corporate governance and the performance of boards. Assuming directors of companies to be rational self-interested agents who do not always have the same interests as shareholders as principals, economists analyse corporate law

[1] In this paper I use the concept of board to indicate the interaction between executives and non-executives of a company. This includes both one-tier boards and two-tier boards. For the purpose of this paper I make no distinction between the two.

[2] JAAP WINTER, ERIK VAN DE LOO, *Board on Task: Developing a Comprehensive Understanding of the Performance of Boards*, in MASSIMO BELCREDI, GUIDO FERRARINI (eds), *Boards and Shareholders in European Listed Companies,* Cambridge University Press 2013, p. 228; J. LORSCH, *Boardroom challenges, lessons from the financial crisis and beyond,* in J. LORSCH, *The Future of Boards: Meeting the Governance Challenges of the Twenty-First Century,* Harvard Business Review Press, p. 13.

mechanisms to find out whether they reduce agency costs or not. Furthermore, economic research has attempted to establish a link between the performance of the firm and aspects of the regulation of boards, in particular on board composition such as independence, expertise and diversity. Forbes and Milliken have pointed out that board demographics-firm performance research must remain inconclusive if the intermediating process of the operation of the board itself is not researched.[3] It is precisely that intermediating process of the operation of the board itself that remains untouched and unchartered by the regulatory and economic approach to corporate governance.

This space, the black box of the functioning of boards, essentially is one of human interaction and human experience. Considering the current stage of corporate governance development it becomes more and more important to understand this human interaction and human experience in the boardroom. The modern development of governance since, say the mid 1990s, typically follows a distinct pattern.[4] In the first stage of corporate governance development, governance 1.0, the focus is to generate awareness that proper governance structures and practices matter. Looking at the board specifically, the first developmental stage of corporate governance is about the awareness that non-executives have a relevant role to play in the governance of companies and that their role is not only to ratify the views and decisions of executives. The second stage, governance 2.0, often is triggered by corporate governance failures after the initial awareness is created. Apparently, awareness alone is not enough, more and more stringent rules are required. The focus of the new rule-making is on detailed rules specifying the monitoring role of non-executive directors towards executive directors, clarifying that a more committed, independent and qualified effort is expected of non-executive directors, who should be more involved in key areas of the governance, such as internal control and risk management, executive remuneration, relationships with (in particular) shareholders. Elements of the new regulation are transferred from soft law in codes to hard law in binding corporate or securities regulation. The board operation based on extensive and detailed work in board committees such as the audit and remuneration committee and higher standards for the composition of the board, are key elements of the new, imposed governance arrangements.

Once all the new governance arrangements are in place and applied, a new working balance needs to be established between non-executives and executives. Higher expectations in the public domain that come with the new requirements lead to an increased sense of responsibility of non-executive directors for the success of the company, or often more precisely, for avoiding failure of the company. Focusing on details of financial performance, internal control and risk management on the basis of lagging indicators related to financial reporting is not enough. The insight grows that key risks are generated by strategic decisions in the past and execution since. Looking in the rear-view mirror only is not enough to ensure the future success of the company. Boards need to look forward and in order to do so non-executives demand to be more deeply involved in the strategy setting and monitoring process. As a result they get closer to the business itself, rather than only dealing with and responding to (financial) outcomes. This is particularly relevant in current times in which technological revolutions (internet, big data,

[3] D.P. FORBES, F.J. MILLEKEN, *Cognition and corporate governance: understanding boards of directors as strategic decision-making groups,* Academy of Management Review 1999-24, pp. 489-205.

[4] This pattern can be seen when looking at the development of corporate governance in various countries, but also in the development of governance in other sectors such as healthcare, education, building societies, pension funds etc.

artificial intelligence, blockchain) are causing fundamental disruption of products, markets and business models of which we may only have seen the start. The roles that non-executives and executives play on the board need to be re-assessed in order to effectively deal with these new realities and for the board to be on task.[5] Board members typically are well versed in issues of business substance, of financial performance, investment, control and risk but often lack the ability and language to discuss roles and role perceptions. More often than not the re-balancing in the board triggers confrontation, irritation and frustration, which then, for want of effective role discussions, fuel substantive conflicts over business issues.

Role confusion, role conflicts and explicit role discussions are not the sole but an essential ingredient of the third stage of corporate governance development, governance 3.0. This stage is about making the arrangements work in practice. In governance 3.0 the human experience and human practice building take centre stage. The way people experience their world, the way the world occurs to them determines how they perform in that world.[6] Governance regulation 2.0 and theorized economic modelling are of little help to develop both, academically, our understanding of how people perform in this emerging board reality and why so, as well as, in practice, the mastering by boards of this reality. Regulation and economics do not explain how board members experience the board reality and cannot explain how, as a result, they make sense of their own role and that of others in this reality and act accordingly. They have little to offer that makes us understand why the board in the first example at the start of this paper is set up for failure in taking a destiny-changing decision, why the chairman panics and his colleagues freeze in the second example, and how the board in the third example manages to wrestle out of a fixed pattern of ineffective dialogue into a reflection that fundamentally alters the interaction between non-executives and the CEO and as a result the course of the company. If we want to understand governance 3.0, if board members want to master the governance they are responsible for, we need to start to understand the human experience in and of the board, what I will call the experience of being-in-the-board, and how this experience informs board members' performance. Ex ante attempts to design the board space through regulation and incentives can get us only so far, they are part of the world-as-experienced but often generate meaning that may lead to unintended behaviour.[7]

3. Phenomenology: Understanding and Structuring Human Experience

In this paper I seek to give a first attempt of a phenomenological account of the human board reality. Phenomenology is the study of phenomena, i.e. experiences of things or events as they appear in human experience. It seeks to understand the structure of our experience and the meanings things have in our experience. It studies the human experience from the subjective or first person point of view. From the original philosophers who have established the initial concepts of phenomenology the discipline has branched out in different core notions and objects

[5] On the concept of Board on Task and roles of non-executives and executives in their interaction extensively JAAP WINTER, ERIK VAN DE LOO, above n. 1.
[6] STEVE ZAFFRON, DAVE LOGAN, *The Three Laws of Performance,* Jossey-Bass, 2009. See also TIMOTHY WILSON, *Redirect,* Penguin Books 2013.
[7] See JAAP WINTER, *A Behavioural Perspective on Corporate Law and Corporate Governance,* in: JEFFREY N. GORDON, WOLF-GEORG RINGE (eds), *The Oxford Handbook of Corporate Law and Governance,* Oxford University Press 2018, pp. 159-183.

of study. There is not one method of phenomenological study.[8] Some core elements of the various phenomenological approaches stand out. Husserl was the first to identify phenomenology as a specific discipline of study and thought in his Ideas pertaining to a Pure Phenomenology and to a Phenomenological Philosophy (1913). He based part of his thinking on the work of Franz Brentano on descriptive psychology, seeking to describe mental phenomena such as perception, judgement, emotion and thinking. The structure of these forms of experience typically involves what Brentano and Husserl call 'intentionality', i.e. a directedness of the experience toward things or events in the world. Or put differently, the property of consciousness that it is a consciousness of or about something. We have no experience that is not related to something in the world (including thoughts and emotions as realities in the world). As Heidegger would later say in Being and Time (1927): Being is being in the world. We cannot separate ourselves from the world in which we live, we can only be by being in the world. We therefore necessarily interpret activities and the meaning that things we experience have for us by looking to our contextual relations to the things in the world. From Husserl on the phenomenological inquiry has been concerned to describe the essence of human experience. Husserl invented methods of reduction that would take out all preconceived theorising to see the pure, transcendental experience. However, as Heidegger explained that our being necessarily is a being in the world, it is an ultimately futile exercise. [9] The world is always already there when we experience it and it immediately generates meaning to us, consciously and unconsciously. Those who study phenomena as human experiences cannot exclude the world and all they know and believe about the phenomena they study. What we can do is to take the experienced reality itself as a starting point of study rather than assumptions, theories and judgements about this reality.[10]

To give an example, when a new board member for the first time walks into the boardroom and meets the new colleagues on the board, the reality of that board is already present to the new member. The new member will immediately construct meaning for herself from being-in-the-board, based on her internal conscious or unconscious assumptions, associations, perceived norms and conventions, other experiences, thoughts and emotions about the context of a board, and on her interpretations of the acts and behaviours of other board members, the dialogue with executives, the space of the meeting and all other aspects that emerge from that always already present world. The total sum of meaning of such being-in-the-board does not come into being gradually, it is there from the start. The experience and meaning of being-in-the-board may change over time, but there is experience and meaning from the start, immediately informing the board member on how to perform and conduct herself.

Before going into particular elements of the human experience of being-in-the-board, it is good to be aware of a core experiential feature that characterises many if not all forms of human practice, including the practice of boards. Through participation in a practice, practitioners, in our case board members, learn to relate to relevant circumstances spontaneously, that is to say non-deliberately. The world appears ready-to-hand, that is to say unproblematic, possessing a certain familiarity and transparency, calling for direct skilful handling without much deliberate thinking. There is an inherited background against which practitioners make sense of their particular tasks.

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[8] See for an account of the different branches and methods of phenomenological study https://plato.stanford.edu/entries/phenomenology/ .

[9] See also MAURICE MERLEAU-PONTY, *Phenomenology of Perception*, Routledge 2012 (English translation, p. xxvii: complete reduction is impossible.

[10] WENDELIN M. KÜPERS, *Phenomenology of the Embodied Organization,* Palgrave MacMillan, 2015, p. 11, 20.

They are aware of the background but their awareness is largely inarticulate and implicit in their activity. They practically cope with situations at hand, acting in a non-deliberate yet sensible manner. When there is a mild disturbance, the coping draws on similar ways of coping with similar issues in the past.[11] This pattern of non-deliberate yet sensible, practical dealing and coping with reality is certainly present in the practice of boards. There is a dominant discourse in boards through which the reality of the company is perceived and discussed. In many boards the discussion is almost exclusively geared to financial performance, controls and risk. Boards often perceive the company and its business only through this financial lens. Board members are trained and experienced to perceive and discuss the reality of the company in this way. The nature of the dialogue in the board is often analytical, an exchange of arguments based on factual information often expressed in numbers. Boards spend little time reflecting on what occurred or may occur, becoming observer of their own practice and their own role. Non-factual information expressed in doubts, intuitions and emotions is discussed only rarely in the board and quickly discarded. This dominant board discourse and practice lead boards to struggle with effectively discussing issues of culture and values for want of conceptual understanding and language.[12] Recent new versions of the UK and Dutch corporate governance codes require boards to adopt values for the company and promote a culture that is aligned with the company's purpose.[13] This will require more than a superficial adaptation of the dominant practice of many boards.

4. Structural Elements of the Human Experience of Being-in-the-Board

Boards are composed of individual human beings and every board constitutes a unique combination of characters, skills, competences, virtues, values, drives, fears and joys that generates board specific dynamics. Boards also operate in different contexts, such as the context of a listed company with dispersed ownership or with a controlling shareholder, a non-listed company with family owners or with private equity owners, etc. The specific board dynamics and contexts have a huge influence of how board members perceive the reality of being-in-the-board and how they construe meaning to inform them on what to do and how to do it. There are however common elements to every board that structure the experience of its members and the meaning they create for themselves of being-in-the-board. It would go beyond the limits of this contribution to expand on these elements in detail but I will give a short indication of how various elements inform the experience of board members. It is by no means intended as a complete account of the human experience of being-in-the-board.

1. *Episodic nature of the board*

Boards typically meet a limited number of times during the year. For an average board the number of meetings, including separate committee meetings and an annual off-site, this may involve some 10 to 12 moments of interaction between executives and non-executives. While

[11] HARIDIMOS TSOUKAS, *Strategic Decision Making and Knowledge: A Heideggerian Approach,* in: PAUL C. NUTT, DAVID C. WILSON (eds), *Handbook of Decision Making,* Wiley 2010, p. 393-394.
[12] ERIK VAN DE LOO, JAAP WINTER, *Corporate Culture is an Alarmingly Low Priority for Boards,* Insead Knowledge November 10, 2017, https://knowledge.insead.edu/leadership-organisations/corporate-culture-is-an-alarmingly-low-priority-for-boards-7676.
[13] The UK Corporate Governance Code 2018, entering into force on January 1, 2019, Principle 1 B and Provision 2. The Dutch Corporate Governance Code 2016, Principle 2.5 and Provision 2.5.1.

executives work in a continuous flow of information, attention and discussion within the organisation and the business, non-executives check in and out of the board interaction constantly. When they have checked out they are no longer inside the reality of the company, moving on to other realities. When they check in again, they have to revive their memories from previous discussions and, as we know, people remember and then interpret previous discussions differently. This in itself generates a level of uncertainty and misalignment among non-executives, whereas executives have the ability to constantly calibrate and coordinate their respective perceptions of what is happening. This leads to the notion, as it is often expressed in board reviews, that "the non-executives are not a team". A sense of weakness in the relationship with executives may follow. Also, for executives the corporate reality has moved on since the last meeting, follow-up actions have been taken, new, different and unexpected events and information have occurred and emerged which they have internalised and to which they to some extent have adapted. Non-executives experience a punctuated reality of the company, executives experience the corporate reality as a continuous flow which may generate very difference experiences and perceptions of that reality. The gap between these different types of experiences needs to be bridged during board meetings. It creates potential disturbances in the quality of the dialogue between executives and non-executives, in the way they perceive their roles and the nature of their relationship in terms of power and conformity and in the way they have access to and interpret information relevant to the business.

2. Ambiguous hierarchy

Partly due to the episodic nature of the board and of the engagement of non-executives, the relationship between executives and non-executives in terms of power is ambiguous. In some form or other non-executives hierarchically are situated above executives. Non-executives have a crucial formal or practically decisive role in determining who are the executives through selection and nomination. They also are expected to assess the performance of executives and to take measures when they believe the performance is sub-par, which may ultimately lead to dismissal. They practically determine how executives are remunerated, adopting the remuneration policy and schemes and deciding whether executives have reached targets under variable pay schemes. Non-executives select, assess and reward executives. All of this generates a formal hierarchical position of non-executives over executives. At the same time executives know much more, have richer and more timely and accurate information about the company, its business, products and markets (see information asymmetry below). And, resulting from the episodic character of the board, executives have a more acute awareness of the reality of the company and its business through experiencing this reality in a continuous flow. The hierarchical position of non-executives over executives to some extent is undermined by their weaker understanding and awareness which makes them dependent upon what executives share with them. This generates an ambiguous environment of mutual influence and exercise of power, which may under circumstances lead to conflict and frustration.

3. Role diversity and role confusion

The roles of non-executives and executives on the board differ. One striking feature of today's corporate governance regulation is that the role of non-executives is only defined in very general terms. Boards, and non-executives are often searching for their role in the interaction with executives.[14] It is not at all clear how close non-executives should get to the substance of the executives in their role. Emphasising the monitoring role of non-executives towards executives which is the key of governance regulation in the 21st century, may generate an experience of adversity, of polarisation. This hinders constructive dialogue on transformative, strategic directions for the company. When in governance 3.0 non-executives venture closer and closer into discussing and having views about real business issues, role confusion and role conflicts quickly surface. On the other hand, when executives invite non-executives to discuss serious business dilemmas this may generate new anxieties and uncertainties for non-executives as they feel to be too far removed from the business to be confident in their views on such dilemmas. Often board members interpret their own role and that of others on the board differently. They act according to their own perceptions of the various roles and typically do not realise that other members may have different perceptions. Boards are not trained and have no experience in discussing this role confusion and role conflict.[15] This may severely distract the board as a whole to deal with fundamental board matters.

4. Information asymmetry

Partly because of the episodic nature of the engagement of non-executives there is an information asymmetry with the executives who are involved in the business of the company constantly. Non-executives to a large extent depend on executives and the information they provide for their understanding of the business and its challenges. No amount of regulation of non-executive independence will mitigate this dependency, in fact independency rules may have the counterproductive effect that no person with any personal understanding of the company and its business can act as a non-executive director. The information and understanding dependency of non-executives may make it difficult for them to challenge the executives who they are supposed to monitor. They may feel uncertain about their own lack of understanding and knowledge. They may also over-estimate how much the executives themselves truly understand and the quality and relevance of the executives' understanding. The asymmetry may also work the other way round. Executives are often so absorbed in the daily affairs and challenges of the company that they struggle to be open to information and insights from outside the company, the typical information and insights that non-executives may provide given their experience in current and previous roles elsewhere. The focus of executives on the often overwhelming complexity of their own particular situation may severely diminish their ability to value the information of a different nature and source that non-executives bring to the table and may lead them to discard such information as irrelevant.[16]

5. Risk and reward asymmetry

An asymmetry of a different kind is the asymmetry between executives and non-executives in how they experience their personal risks and rewards related to the performance in their role. The success of the company is usually seen as the executive's success, both in terms of public

[14] See WINTER, VAN DE LOO, n. 2 above.

[15] WINTER, VAN DE LOO, above n. 5.

[16] Here we enter the realm of bias and hereustics that guide our mental processes to come to quick interpretations and conclusions. Kahneman refers to the focusing illusion, or What You See Is All There Is, DANIEL KAHNEMAN, *Thinking Fast and Slow,* Allen Lane 2011, p. 403. See also MAX H. BAZERMAN, DON MOORE, *Judgement in Managerial Decision Making,* John Wiley 2009 (7th ed), p. 49.

exposure and reputation, as well as remuneration through variable pay schemes. Non-executives have little or no personal upside as a result of the success of the company, apart from their personal satisfaction of having contributed to that success. In many countries non-executives are still expected not to receive remuneration in a form that is dependent on the performance of the company.[17] At the same time, non-executives do share in the downside risk with executives. A corporate failure badly reflects on the reputation of non-executive directors. The threat of personal liability after a corporate failure or some form of misconduct is often as real for non-executives as it is for executives. Even though the out-of-pocket risk may actually be limited, law suits that may lead to liability or in which otherwise corporate conduct is judged come with substantial negative reputational and psychological consequences.[18] The risk and reward asymmetry may lead to fundamental discrepancies in awareness and interpretation of risks inherent in the business and of specific decisions or behaviours. Particularly when the regulatory focus on the monitoring role of non-executives becomes a dominant element in the perception non-executives have of their role, this may lead to an overly risk-aversive attitude. Executives on the other hand may not sufficiently appreciate the risk appetite of non-executives as sensible for the company, in light of their own financial incentives to take risks.

6. *Dialogue*

The very nature of the interaction in the board is dialogical. The board interaction is discursive, it is an exchange of information, of arguments and points of view, partly to make sense of the situation of the company and its business, partly to take decisions that commit the company to certain actions. Dialogue takes place in and through language. As I pointed out above, there is a dominant discourse in boards, geared to financially represent and understand the performance of the company and to understand its risks and ensure sufficient control. Other aspects of conducting the business, that cannot be expressed in terms that are inherent to the dominant language, are hard to bring into the dialogue. They often do not stick as relevant for the board dialogue, their dialogical viscosity is minimal. Also, the dominant language is the product of an organisational believe that management, and on top of management the board, can rationally and deliberately design and direct the company as an organisation through vision, strategic objectives and targets and can design and apply monitoring forms of control to ensure that the vision and strategic objectives are realised.[19] It leaves little scope for the irrational, emotive and unpredictable aspects of the reality within the organisation and its place in the world. Boards may as a result not be aware of crucial factors and circumstances that determine the success of the business in the world and that affect the quality of the organisation that is needed to be successful or fundamentally under- or overestimate factors and circumstances they are aware of.

7. *The unsaid*

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[17] See explicitly DUTCH CORPORATE GOVERNANCE CODE 2016, Principle 3.3.

[18] JAAP WINTER, *Beoordeeld door Anderen. Het Werkelijke Risico voor Bestuurders en Commissarissen,* in: VAN SOLINGE, VAN BEKKUM, KREILEMAN, SCHUIJLING, *Aansprakelijkheid van Bestuurders en Commissarissen*, IvO nr 140, Wolters Kluwer 2017, p. 41-52.

[19] RALPH D. STACEY, *Complexity and Organizational Reality, Uncertainty and the Need to Rethink Management after the Collapse of Investment Capitalism,* Routledge 2010, ch 1 and 2.

Part of language is what is not said but communicated, often without awareness.[20] This unsaid includes assumptions, associations, expectations, disappointments, resentments, appreciations, regrets etc. These unsaid stories in our mind may be powerful drivers of behaviour. Others witnessing the behaviour will produce their own interpretations of that behaviour, making assumptions about the actor's unsaid assumptions etc. that trigger this behaviour, and then act on the basis of their own interpretation and assumptions. A spiral of the unsaid may develop that generates a sea of meaning that consciously and unconsciously informs board members on how to behave. When this behaviour becomes ineffective and starts to hinder board dialogue, decision making and performance, board members will struggle to address the core of the problem, precisely because so much of it is unsaid. In board interventions when there is a breakdown of relations or other major disruption the key challenge is to bring to the surface this unsaid reality of assumptions in its various shapes and forms, and how individual board members have been guided by this reality and have reinforced it through patterns of behaviour.

8. Uncertainty

The dominant language in the boardroom is not only geared to financial outcomes, controls and risks, but is also part of a management believe as taught in business schools of rational and purposeful design through which the company as an organisation can be steered successfully. Uncertainty plays only a minor role in this management believe, as something that can be dealt with by rational risk management. The experience of everyday life in the company is actually very different. Stacey makes the case of the dominant discourse prior to the financial crisis that fully hit in 2008, a discourse that until the very end suggested all was under rational and deliberately designed control. It was not, and no one suspected a global financial crisis would follow and what that would look like.[21] The rational management believe of deliberate strategic target setting, monitoring and controlling outcomes and risks covered up and generated perhaps a sense of control over an inherently uncertain and unpredictable reality, consisting of historical combinations of factors, interdependence of individual actors, feedback of patterns and emerging knock-on effects that make it impossible to predict any future trajectory. For non-executive directors the uncertainty is even bigger as they have less insights than executives into all relevant factors that may, interdependently, produce future trajectories of development. And additionally, they do not lead the company themselves but only determine who are the executives who do so and have dialogues with them to influence them in their steering of the company. They are far removed from the action. Non-executives will make sense of the intrinsic uncertainty differently from how executives interpret the uncertainty while being-in-the-action of steering. These different perceptions of uncertainty and the levels of realistic steering and control feed into and are enforced by asymmetric risk and reward perceptions.

9. Time is limited and structured

Board meetings last a finite amount of time as non-executive directors do not and are so far not expected to have unrestricted time available for their role. The typical board meeting is a structured meeting with a set starting and closing time. An agenda directs the board to the issues that need to be discussed and decided, often with indications of how much time is supposed to

[20] ZAFFRON, LOGAN, above n. 6, p. 39.
[21] RALPH D. STACEY, above n. 19.

be spent on each item. People expect to be able to leave after the pre-determined closing time, flights and cars have been booked, other meetings or activities are waiting. With the intensity of the monitoring role of non-executives rising over the last decades, a substantial part of the agenda is often taken up by corporate hygiene matters such as reporting, audit, control and risk matters. When issues come up and trigger more attention of board members time pressure builds up quickly, destroying the predetermined expected structuring of the time available. Boards and their chairman may apply different techniques to mitigate the time pressure, some more successfully than others, the reality remains that time pressure and time structuring confines the ability of the board to explore and reflect on issues. The reality of many boards is that explorative and reflective practices can only be developed outside of the normal board meeting, in off-sites, over dinners etc, or when board members perceive the reality as a deep crisis that requires near full-time attention and availability. Generating effective dialogue in a time-pressured and time-structured board meeting is becoming more and more difficult. This limits the type of contributions board members can make in meetings and severely confines the dialogue of boards in meetings.

10. (Lack of) Reflection

The dominant, financially geared discourse in boards, based on assumptions of certainty and predictability, the emphasis on the monitoring role of non-executives, the time-pressured and structured nature of meetings all lead to the dialogue in the board structurally lacking reflective quality. There is so much to do that boards find little or no time to consider, question, doubt, challenge their own way of operation. Board members easily succumb to practically coping, skilfully yet non-deliberately, not being able to step out of the dance being performed to get to the balcony in order to observe the dance and question whether it is the right dance for what is needed now, whether the dancers are in tune with the music etc.[22] Similarly the regular board setting makes it hard to ponder, explore, question board members' different perceptions of key aspects of the company and its business and the world out there, without necessarily formulating opinions, taking positions, drawing conclusions and setting up action plans. Some non-executives will still be able to make reflective interventions, but others will not and the board as a whole will struggle to become reflective. The experience of being-in-the-board in its normal condition is one of non-reflective, more or less formulaic discourse along prescribed paths that do not allow too many and repeating deviations. Even when substantial business decisions are at stake or fundamental strategic challenges need to be face, this dominant non-reflective way of being may take over, causing the board to miss out on essential doubts, concerns, challenges of assumptions and appreciations of the inherent uncertainty involved in the decision that may be crucial for sound decision making.

Board members make sense of the complexity of these structural elements that constitute the board reality in their own, individual ways, determined by their personal character, drives, values, virtues, experiences, world views etc and influenced by the group dynamics processes that they generate. The board reality that each of them experience and interpret through being-in-the-board may be very different. Each then behaves in ways that make sense in light of the meaning

[22] RONALD HEIFETZ, ALEXANDER GRASHOW, MARTY LINSKY, *The Practice of Adaptive Leadership,* Harvard Business Press 2009, p.33.

they have construed for themselves of this complex board reality. At least part of this construed meaning of being-in-the-board is unconscious. Often board members are not aware that others do not share (elements of) the particular meaning that is present to them. That, combined with the lack of conceptual frameworks that reveal the way people construe meaning out of being-in-the-board and how this impacts their performance through patterns of behaviour and with the lack of practical experience with reflecting on the meaning and behavioural patterns so construed and enforced, leads to structural and collective ignorance of board members of their experience of being-in-the-board and therefore what drives their performance as board members. Boards would benefit hugely from developing a reflective practice of uncovering, sharing and discussing their mutual experiences of being-in-the-board. This could help to avoid, mitigate and solve conflicts in the board, would facilitate boards having effective dialogues on complex dilemmas or issues that would otherwise be too hot to handle or that are simply ignored unconsciously and would allow boards to develop sense-making and dialogical practices that brings out the best of what the members can contribute given their different backgrounds, experiences and abilities. Academically, becoming aware of the crucial role of the human experience of being-in-the-board for the performance of the board should lead to very different types of research, in search of the nature, variations and processes of construction of meaning out of being-in-the-board and of how that experience drives behaviours in the board and ultimately board performance. In a world where serious questions are raised on whether Artificial Intelligence can start to replace human activities in the workspace,[23] including replacing us in the boardroom,[24] we had better become aware, consciously aware of what the essence of the human experience of being-in-the-board truly is and what quality and value we realistically can expect from it.

[23] YUVAL NOAH HARARI, *Homo Deus,* Penguin Random House 2015.
[24] See for example https://www.brinknews.com/will-ai-board-members-run-the-companies-of-the-future/ . See also J.B.S. Hijink, Robots in de boardroom, Ondernemingsrecht 2019/3, p. 10-17.