TURNER:: Hello and welcome back to Wisconsin Law in Action, a podcast where we discuss the new and forthcoming scholarship with University of Wisconsin law school professors. I'm your host, Kris Turner and my guest today, a returning guest, is professor Yaron Nili. Welcome back professor Nili.

PROF. NILI:: Thank you Kris. Good to be back.

TURNER:: The pleasure's all mine. Professor Nili was our first podcast guest and is back now to discuss his newest article that he coauthored professor Darren Rosenblum. The article is called Board Diversity by Term Limits and it was published in the Alabama Law Review. Before we dive into the article itself, let's refresh everyone's memories. Tell me a little bit about your professional background and your research interests.

PROF. NILI:: Yeah, I research corporate governance, corporate law. I've done my advanced degrees focusing on corporate governance, worked in a law firm in New York for a couple of years and I think I've several big strands of research. One of them really relates to the board of directors in both compensation, which this article really falls within that scope. Then I have another set of articles that is more focused on show the activism, show the voting and things like that and hopefully we can talk about one of those projects in the future too.

TURNER:: I hope so too. I have a feeling that we will do so. Yes. I like this. We're going to keep on having you coming back and coming back a lot more.

PROF. NILI:: I'm going to accrue miles and then redeem them for a book from the library.

TURNER:: Okay. You just have to return the book eventually. Okay. Let's pivot to this paper then. You said it's about corporate boards. Your paper is proposing a new policy that could introduce diversity into corporate boards. What are term limits and how do they work?

PROF. NILI:: Maybe just to take one step back. This is somewhat of a followup up project on the article I wrote a couple of years ago, on what I called substantive gender diversity. I've started to look at boards quite a few years ago and project to discuss term limits and then had a second project that really focused on the issue of gender diversity in boards and the roles that women take in the boardroom. That article really focused on the specific roles that women take, but also from working on the data there, it was clear that the number of women of boards is still not at the level that is appropriate, in my view at least. The combination of those two topics, term limits and gender diversity, were interesting because one of the key problems when you talk to people in the field about why don't we see enough women getting both positions. One of the things that hindering that progress is the fact that not enough directors leave their positions.

PROF. NILI:: Being a director is a very lucrative position. You get, obviously the networking and their organization is important, it's also pretty well compensated for the amount of time that you need to put into it. That's something that is very desirable and directors tend to stay in their position for a long time. If directors don't leave, then not enough boardroom positions that open and obviously even if you want to promote more women, it's going to be hard if there's a bottleneck of entry into the boardroom environment. That's kind of sparked the idea of looking at the connection between refreshing the board, through term limit devices and whether that would lead to a better and more diverse boardroom, both for gender, but also for other attributes as well, not to take away from... That is an important facet of their board as well.

TURNER:: One of the ways that we could potentially introduce that diversity is the term limits. What are some of the debates about the merits of terms?

PROF. NILI:: Yeah, term limit, just to kind of conceptualize it in the corporate setting, is not much different than what we are talking about in the political sphere. The question is, should we allow directors to serve on boards until they want to leave, until they retire or should we have some sort of a cap on the number of years that a director can serve? In theory, directors need to and in practice too, they need to be reelected every year, but the reality is that directors, because the way the corporate governance system is set up, those directors are usually uncontested, which means that directors that want to stay on board are putting the name for re-election and will be pretty much guaranteed to be reelected to the board. The question is, should a company force directors out of the boardroom after a specific amount of time?

PROF. NILI:: You can think about it in various ways. You can have a more strict term limit, with basically saying, let's say, the director needs to leave after 10 years of service. That director is not eligible to run for another board. You can have a more flexible policy, but the basic notion of term limit, which is basically limiting the amount of time of some directors on the board to allow new directors to come in and replace them.

PROF. NILI:: Now this has benefits and disadvantages. Clearly the benefits are related to the ability to bring new voices into the boardroom, right? A director that serves for a long time may become more complacent, may become less interested in actually doing their job, more focused on other stuff. Bringing new and fresh blood is important on that front. I have a project, it kind of highlights this concern as far as the independence of directors. The directors that say for longer might be less independent than directors that are less connected to the current board and the current executives. It also allows you, especially in the evolving economy and technological fields, to bring people a much more, maybe more suited to kind of help the board guide the company into this changing landscape. The ability to bring new blood is also important on the expertise level.

PROF. NILI:: The other side of the coin, obviously, is that if you force people out of the board, you might lose very qualified people, right? If you have a very strict, rigid term limit regime, then you have maybe like your best director ever and then you need to let them go because of this bright line requirements. That's a cost and companies often raise that cost when they... I think only a few let them go and lose that institutional memory that has costs too.

TURNER:: It seems like a very fine line to walk. Do you have any examples about how this could be balanced?

PROF. NILI:: You may force some directors to leave after that specific amount of time and maybe you give the company an option to retain some of them, but sacrifice something else. For instance, I mentioned that you can possibly have a designation where a director that serves over a specific amount of time can remain on the board, but can't be counted as an independent director or can remain on the board and can't serve on some of the specific committees. Then you can find this happy median where the company doesn't have to let go people they view as their best directors ever, but they do have to let go some directors and allow for refreshments. You can find a balancing act that really bridges the gap between those concerns and benefits of refreshment.

TURNER:: For the empirical part of your study, what did your data show? What did your research show about gender diversity and just boards in general?

PROF. NILI:: What we were trying to understand is what is really the connection between transitioning the board and the improvement of diversity. There was a sense and people were talking about it, but I don't think there was enough data to support it, that if boards have more transition and bring more people in, that will improve with diversity. That's an assumption that is not necessarily correct. You can have a scenario with a lot of directors are leaving, but we still bring the same people in. The data I've showed that basically we found correlation between the transition on the boards, so boards that's have more refreshment also improve the diversity. We specifically also seen boards that had what we called a tenure shock. If a significant number of directors have left the board, let's say in 2005, then in 2007 we saw a significant improvement in the diversity of the board. It's not exactly causation, but it gives us a better sense that a shock to the composition of the board can improve the diversity of the board. There's a theoretical logic behind it. If the board, if you think about a board as this kind of body that has this prior, if we started this unfortunate process, it might be easier to bring new voices that would have been not considered under the preexisting structure of the board.

TURNER:: This paper arrives in the wake of the MeToo movement. How did this movement inform any of the research or the goal of your paper?

PROF. NILI:: Yeah, I think my interest in gender diversity actually started before the MeToo movement, but I think the MeToo movement is really helped harness public attention towards the issue of gender diversity all over the , but also in corporate America and corporate boards more specifically. I think that has lead significant institutional investors like mutual funds that control big stakes in all of the public companies in the United States, State Street, BlackRock, Vanguard, they've all indicated they are expecting companies to improve the diversity of their boardrooms. I think that it can't be disconnected from what we are seeing as far as the connection between refreshment and diversity. As I mentioned, a board can refresh itself as much as it needs or as much as it wants, but it doesn't necessarily mean that you'll have more women on the board. Now, when you have both this kind of more refreshment and this pressure to appoint more women to the boardroom, they cannot walk in tandem to improve the diversity of the boardroom. You need two ingredients. On the one hand you need to have enough open spots to allow for women to get the positions, but you also need to have this public atmosphere and demand to have companies that would have not considered women, to consider women and appoint them to the boardroom.

TURNER:: That kind of puts me right into the next question because this brings into the normative aspect of the paper you were talking about. From a policy standpoint, how would the implementation of term limits work at different levels? Either at an industry level or a company level or even a state or a country?

PROF. NILI:: Yeah, that's a great question. I think traditionally in corporate law we don't see a lot of federal involvement. I would say that's very unlikely. We do see some state law action on the issue of gender diversity in boardrooms. California is the most notable state where they have mandated a specific number of women on companies' boards. They are starting with one, but the transition period, in a couple of years, they'll require large companies to have at least three women on the board. This is currently being challenged on constitutional grounds, so we'll see how this plays out. Illinois also adopted something similar pretty recently. New Jersey is considering something. Massachusetts is considering something. We see a number of states who are trying to legislate the number of women on boards. To our view, one thing to consider is maybe looking a little bit less in a way of mandating a specific number, but rather monitoring the gateways.

PROF. NILI:: If a state adopts some sort term limit regime, requiring companies to consider a refreshment, that in itself can create a more, I would say holistic and kind of more company sensitive way to improve the diversity of the board without mandating it top to bottom. I think state's can adopt term limits. Obviously, investors can pressure companies to have term limits. We have data in the paper, there are not a lot of companies that have term limits currently, but there are a handful of companies that have adopted term limits and they could serve as a good example of how investors can ask companies to consider adopting some sort of a mechanism to ensure that directors don't overstay both positions. That's something that we can potentially see increasing in the future too.

TURNER:: While you were conducting your analysis and gathering all this data, were there any surprises that came out during the research or writing process?

PROF. NILI:: I was surprised to see the curiosity of the use of term limits by companies. I looked at it probably, I would say 10 years ago and the number was low, but when I came back to it, the number was still very low and I had the sense that might change over time and it didn't, unlike some other corporate governance areas. To me... One of the goals of this project is to highlight this tool that investors and companies have, that they can use in order to improve the governance of companies. Term limits shouldn't be disqualified, obviously not suitable for every company and a specific structure can be tailored to the specific needs of each company, but this is something that I think we should see more companies considering.

TURNER:: It's a very familiar tool. Everyone obviously knows term limits in the political sphere and it's surprising to me that there isn't more of this in the corporate world, but it just seems like it's something that hasn't been introduced for whatever reason.

PROF. NILI:: Yeah, I think this argument of losing very good qualified directors had a lot of sway and still has a little this way. I think as I mentioned, I think one of the ways to kind of overcome that is to understand that term limits don't have to be as rigid as they are pretend to be and we can find a middle way where we are balancing this concern with the benefits of term limits and finding a happy middle, so to speak.

TURNER:: This is perfect. You're leading right into this next question. How do you envision term limits being implemented so that they encourage board diversity?

PROF. NILI:: Yeah, I guess my answer is that I'm a big proponent of letting companies and investors tailor it themselves. There's different axis that they can consider. The length, the requirement, whether it's all the board, a specific portion of the board. Do we want to focus on specific committees of the board, like the audit committee and the compensation committee and say there you can't have a tenure of more than a specific amount of years? There's a lot of flexibility and that's the beauty of term limits. In my view, you don't have to have one size fits all. We can really tailor it specifically to the industry, specifically to the company. I think the benefit is not just diversity. Obviously diversity will... I did not show that diversity is likely to improve if companies adopt term limits, but it also will improve other facets of the company. Likely to improve the independence of the board. It is likely to introduce a new generation of directors that might be more connected to the needs of the company, in the ever changing environment. There's a lot of other benefits to term limits in addition to diversity. I think this project highlights the specific impact on diversity, but we shouldn't forget the other benefits that term limits may have on companies.

TURNER:: Right, the calcification of some corporate boards where it seems like people have been on there forever and it's hard to get new blood in there sometimes is another-

PROF. NILI:: Yeah, there are a lot of boards where you don't see a lot of transition. On the average, I think only 5% of the directors change position. There's only 5% of new positions of directors a year so it's a very small number. Even if you had all of those positions filled by diverse people, it will take a lot of time to get corporate America to have a significant change. If we increase the number of positions that open every year, we obviously will be able to do it quicker and more efficiently.

TURNER:: Great. Where can people find out more about your work?

PROF. NILI:: Yeah, people are invited to either going to my faculty profile and there's a link to the SSRN where all of my academic studies are published. Also, they can email me if they have any specific questions.

TURNER:: Great. You're on Twitter as well?

PROF. NILI:: I am on Twitter.

TURNER:: All right. @YNili, is that it?

PROF. NILI:: Correct.

TURNER:: Oh, I should know that off the top of my head.

PROF. NILI:: I'm impressed.

TURNER:: I'm impressed with myself, thank you.

TURNER:: Well, as always we'll be sure to link to all Professor Nili's scholarship on our podcast page as well, just to make things a little bit easier that way. A big thank you to Professor Nili for joining me again today. I hope we can have you return again and again and again. I'm looking forward to having you back again. Today we discussed professor Nili's newest paper Board Diversity by Term Limits that he coauthored with Professor Rosenblum and was published in the Alabama Law Review.

TURNER:: As always, thanks to everyone out there for listening and subscribing to the Wisconsin Law in Action podcast. Professor Nili's scholarship can be found on his SSRN page and in the University of Wisconsin law school repository, which is linked on his faculty profile as he mentioned. As I mentioned earlier, links to Professor Nili's scholarship is posted along with this podcast at wilawinaction.law.wisc.edu.

TURNER:: You can subscribe to the Wisconsin Law in Action podcast in the Apple iTunes store, Stitcher or Google play or find our full archive at wilawinaction.law.wisc.edu.

TURNER:: Thank you for listening. Join us next time as Professor Tonya Brito sits down with me to discuss her newest article about the child support debt bubble. Until then, happy research.