

## Chapter 8

# Discussion Report Part 2: Managerial Research I: Conceptual and Qualitative Analyses

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Ilse Matser/Rachel Heeringa/Jan Willem van der Vloot van Vliet: Family Governance in Practice: Lessons Learned from a 100-Year-Old Entrepreneurial Family Firm

Lena Jungell: Managing Dispersed Ownership within the Owning Family: The Role of Family Governance

Hermut Kormann: Analysis of Critical Incidents for the Design of the Governance System<sup>1</sup>

The exchange of views about Matser's contribution began with the intervention of a legal scholar who said that Matser had mentioned that the management team in her case consisted of family and external managers. He wanted to know how the family respected the roles of the non-family managers. Matser reported an event that happened a few years ago where the family had decided something urgent overnight and had forgotten their own guidelines, which stated that they had to inform the rest of the management and the supervisory board. That incident was an important learning. Today, they focused more on their own

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<sup>1</sup>As the chapter by Botero and Fediuk was not presented during the conference, it was not part of the discussions.

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### Family Firms and Family Constitution, 135–139



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rules and followed them strictly. They also recognized the value of the non-family members in management and supervisory board and that their experience could be beneficial for the business. Thus, the non-family members were more involved nowadays.

A managerial academic remarked that Matser had stated that the family constitution documents were only rarely used and that the process had been more important in her case study than the document. She wanted to know whether there had been any non-family members involved in the development of the family constitution. Matser confirmed her former statement; the family constitution had only been used a few times in critical situations. One non-family member had been involved in the development of the family constitution. A management scholar and consultant asked whether any non-family members knew about the family constitution. Matser replied that all non-family members in management and on the supervisory board were aware of the family constitution.

A managerial scholar referred to Matser's presentation where she had mentioned that the family discussed their constitution on an annual basis. He asked what the result of such discussion were. A revision? Matser reported that the family combined a family meeting with the shareholder meeting once a year and that it was in this context in which the family constitution was shortly discussed. Amendments of the constitution during the last 20 years were rare. A legal scholar dwelled upon that subject and asked what the rule for amendments in the family constitution was. Matser answered that such a rule existed, but she was not sure about its exact nature at the moment. In addition to that, the legal scholar was interested in the constitution's association with other documents, whether there were only referrals. Matser answered that an overlap of the constitution with other documents existed and that there were also referrals to other documents in the constitution (and vice versa). The consistency of all links had been checked by a lawyer.

A managerial scholar and practitioner concluded the discussion of Matser's presentation with an anecdotal remark: Some families had rules that no member brought his lawyer to family meetings in order to avoid conflicts. The involvement of lawyers was not always wanted.

The discussion continued with an exchange between Lena Jungell and Hermut Kormann. Reacting to Jungell's presentation, Kormann stated that, regarding family governance, there is yet not enough experience of whether the instructions work at all. In his understanding, the intention of the governance instruments is that the shareholders make a contribution and are involved in the business, but sometimes management is not even happy that everyone is involved. Jungell replied, that, so far, family governance is the best solution. It was about education from the beginning on, to keep the people busy, to get enlightened owners. When people were willing to accept legal rules, they knew the boundaries and how they could participate. Kormann responded that the document itself is the end status. Jungell chose a slightly different emphasis, stating that the document lives parallel to the family.

Next, a legal consultant rose to speak and asked Jungell, firstly, what she does to live family governance, and, secondly, what she does to avoid divergence

between governance and practice? Jungell began her answer by underlining that first you have to define governance and differentiate between owner family and business family. If only two members of a large owning family worked in the business, it was from her perspective an owning and not a business family. Touching directly upon the legal consultant's first question, Jungell recommended behave and try to find ways to clarify how the family can own the company in the best possible way without being a problem for the business. She recounted an experience from her family business that is in the food industry. They made the experience that members of her owning family called the non-family CEO when they saw a TV spot they did not like. This should not happen from her point of view; the family had to let the non-family managers do their work. The legal consultant then added the question of how her family avoids divergence between governance and practice? Jungell reported that their family constitution is more like a code of conduct, and that they have articles of association. Thus, it was very clear, and the rest was more social stuff.

After that, a managerial scholar made an intervention with regard to Jungell's presentation. He said that synthesizing the literature on family governance is a good area for working. Another interesting way to have a look at the literature would be to approach family governance with the questions: what is family governance (form) versus what is the purpose of family governance (objective)? This differentiation would be helpful from his point of view as some researchers in family governance talked about form, some about purpose. He continued that one could visualize this distinction by setting up a  $2 \times 2$  matrix, in the rows differentiation between narrowly and broadly and in the columns between nature and purpose. He was convinced that it would help all interested in family business, if one pulled the information for the definition of family governance together. The managerial scholar then strongly recommended the booklet of Dennis Jaffe "Governing the family enterprise: The evolution of Family Councils, Assemblies and Constitutions" published in 2017. He stated that he is also fascinated about to know the different views regarding the effectiveness of family governance across different generations; questions to raise are "Why this path? How can we live and breed it?" For him that is the heart of the effectiveness.

A legal scholar stated that all participants know that family and business are interrelated, so there is the question of cohesion, e.g., in case a member of the owning family wanted to extract money and others wanted to invest it. This setting reminded him of the issue of club goods/collective goods from economics. In that area, it was tried to establish social mechanisms to keep public goods working. From his point of view, this structure is similar to family firms and their influencing rights. He suggested that it might be worth to transfer some thoughts from this economics perspective to the family governance research area.

After that, a discussion on family firm heterogeneity began, initiated by a managerial scholar. She said to Jungell that family business research has to think about the context and the complexity of the family. Maybe, one could take the research niche to do research about family shareholders who play no active role in the business while other family members play an active role by working in the

company. More generally, she pointed out that there are different types of groups within owning families and that the employer–employee relationship within the company should also be considered. Another managerial scholar asked how this could look like, whether she recommended orientation to the three-circle model? She replied that the three-circle model most probably would not be rich enough. She said that family members play different roles within the family and within the business. There were a lot of cousins, sisters, etc. to consider. Generations mattered as well. The intervening managerial scholar agreed that this is a good idea to do research on. He added that taking into account heterogeneity more strongly might provide more transparency in which settings family constitutions are particularly valuable. Making the link back to the first intervention, the first managerial scholar concluded this part of the discussion with the hint that this research should be linked to the purpose aspect of family governance.

Closing the discussion of Jungell's presentation, a legal scholar added that, from a legal point of view, the divergence between the written form and the practice always has to be considered as to whether the family did implicit amendments of the written form.

Turning to Kormann's talk, the legal scholar remarked that the Failure Mode and Event Analysis (FMEA) was very close to what lawyers do, trying to anticipate all eventualities. Kormann agreed, but stated that the FMEA is more advanced in malfunctions in performance. The legal scholar continued that in law one knows that there are always incomplete contracts because it is simply too costly to write complete contracts. As a solution, lawyers would include focal principles, e.g., the duty of loyalty (from company law) which shall give orientation how to resolve future conflicts. It was impossible to anticipate all eventualities. The longer the contract, the lesser effective it was; the salience diminished, so there would be reasons for standardization. Kormann countered that from his point of view shareholder contracts must be tailor-made. He could not believe that there is a standard contract for this. In engineering, e.g., it was known that there are a thousand things that can happen to an airplane, however, only six of them bring an airplane down. Therefore, Kormann deemed it very important that there is an exit structure so that the company can survive also if a shareholder exits. Kormann underlined that the shareholders themselves have no experience; they cannot learn or derive a model from a single case. He accepted that there are no complete contracts, and for recurring issues there had to be standards. The legal scholar agreed that it was a plausible way to make use of collective experience to set up a model for the articles and then adapt them accordingly for the specific case.

A legal practitioner stated that he finds Kormann's differentiation between the need of security versus safety very interesting. This was a dilemma and a challenge in contract design as well as that there was on the one hand a closed-shop strategy and on the other hand the flexibility needed to find the best solution for the company. From his perspective, lawyers could be a good support when it comes to the family governance level as they had more experience with crucial exit situations than the owners themselves.

A managerial scholar mentioned to Kormann that the layers he had described for the governance levels reminded his doctoral student and him of the Three-Lines-of-Defence model for the different governance, risk and compliance elements in organizations. The doctoral student added that also with the Three-Lines-of-Defence model there is this difficult balance between security versus safety and flexibility that Kormann mentioned in his presentation. Too strict forms of Governance, Risk Management, Compliance (GRC) elements would hinder the business and slow down processes. Kormann fully agreed with this parallel with the Three-Lines-of-Defence model and appended that especially risk management misses to come down to a concrete operational level.