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Corporate Management Should All Be Feminists

Joan MacLeod Heminway†

“It’s nice to say ‘I wish my board had more gender diversity.’ But if you want it, you have to go out and make it happen. . . . You have to find a way to get past the usual way of doing things.”¹

“Culture does not make people. People make culture. If it is true that the full humanity of women is not in our culture, then we can and must make it our culture.”²

I. Introduction

The title of this essay may alienate some readers, including the very people who may benefit from it most—corporate directors and officers. Specifically, the title directs the reader to a potentially uncomfortable normative conclusion, using what may be an off-putting “f” word. The word “feminist” has specific discomfoting, even negative, connotations for a certain percentage of the population.³ I know. I used to be part of that populace. If you have

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1. Moira Forbes, *Will Corporate Boards Remain A Boys’ Club?*, FORBES (Nov. 30, 2015), <https://www.forbes.com/sites/moiraforbes/2015/11/30/will-corporate-board-s-remain-a-boys-club/?sh=5b88c5c3f08b> [https://perma.cc/8SRA-X4LG] (quoting Shelly Lazarus, Chairman Emeritus, Ogilvy & Mather).

2. CHIMAMANDA NGOZI ADICHIE, *WE SHOULD ALL BE FEMINISTS* 46 (2014).

3. *See, e.g., id.* at 8 (explaining that the feminist labeling of the author by a friend “was not a compliment”); *id.* at 9 (noting advice given to the author that she not label herself a feminist, “since feminists are women who are unhappy because they cannot find husbands”); *id.* at 11 (observing that the “word *feminist* is so heavy with baggage, negative baggage”); Gargi Bhattacharya & Margaret S. Stockdale, *Perceptions of Sexual Harassment by Evidence Quality, Perceiver Gender, Feminism, and Right Wing Authoritarianism: Debunking Popular Myths*, 40 L. & HUM. BEHAV. 594, 604 (2016) (mentioning “the negative stereotype of feminists”); Deborah L. Rhode, *Appearance as a Feminist Issue*, 69 SMU L. REV. 697, 698–99 (2016) (describing several negative perceptions of feminists).

read this far, however, I encourage you to forge on. This essay is less about feminism (although it *is* about feminism) than it is about effective, efficient corporate management in the United States.

A. Corporations and Their Management

Efficacious corporate management is important because corporations are major engines of economic production. They also occupy important social roles in communities and individual lives as gateways to health insurance, as charitable donors, as partners in construction and service projects, and more. And, whether we like it or not, corporations also are political actors. Corporations' widely acknowledged activities in these three arenas have the capacity to enhance, eliminate, and otherwise alter economic, social, and political policies and institutions.⁴

Under state law common throughout the United States, by default, a corporation is managed by or under the direction of a specific decision-making body: a board of directors.⁵ Yet, despite the

4. See generally, e.g., Jennifer S. Fan, *Woke Capital: The Role of Corporations in Social Movements*, 9 HARV. BUS. L. REV. 441, 493 (2019) (“[C]orporations need to determine how they will use their legal, political, economic, and social clout in a particular social movement.”); Catherine L. Fisk, *The Once and Future Countervailing Power of Labor*, 130 YALE L.J. 685, 687 (2021) (identifying “the concentrated economic, social, and political power of corporations and employers”); Jonathan Kolieb, *Advancing the Business and Human Rights Treaty Project Through International Criminal Law: Assessing the Options for Legally-Binding Corporate Human Rights Obligations*, 50 GEO. J. INT’L L. 789, 790 (2019) (“Corporations . . . have accrued sufficient socioeconomic and even political and military power that their conduct and business decisions have the potential to adversely impact the human rights of millions of people, including along their supply chains, amongst their employees and customers, and in the communities surrounding their operations.”); Dalia T. Mitchell, *From Vulnerable to Sophisticated: The Changing Representation of Creditors in Business Reorganizations*, 16 N.Y.U. J. L. & BUS. 123, 162 (2019) (observing that, in the wake of World War II, “corporations were embraced as dominant economic, social, and political institutions”); Michael R. Siebecker, *A New Discourse Theory of the Firm After Citizens United*, 79 GEO. WASH. L. REV. 161, 164 (2010) (noting “the growing influence of corporations in all aspects of economic, social, and political life”); Lua Kamál Yuille, *Corporations, Property, & Personhood*, 97 DENV. L. REV. 557, 578 (2020) (mentioning “[t]he sociocultural, political, and economic functions of corporations”).

5. See, e.g., DEL. CODE ANN. tit. 8, § 141(a) (2021) (“The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation.”); TENN. CODE ANN. § 48-18-101(b) (2021) (“All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the charter.”). The Model Business Corporation Act, a corporate statute prototype on which many U.S. corporate laws are based, is worded in similar fashion, providing that:

Except as may be provided in an agreement authorized under section 7.32, and

prominence of the board's management role as defined by statute, many construe management and managers to include only corporate officers and others with day-to-day leadership, decision-making, or supervisory responsibilities. One academic commentator offers the following by way of explanation:

Boards' focus on high-level tasks, with a particular emphasis [on] monitoring and strategy, can generally be contrasted with the tasks managers perform. . . . [T]he law . . . offers only minimal guidance on the role and tasks of managers. To start, there is no legal definition of a "manager." In fact, the term is sometimes broadly used as a label for both directors and other high-level decisionmakers within corporations.⁶

This essay uses that broad label, defining corporate management and managers to include a corporation's board of directors as well as its senior officers.⁷ However, the most particular focus of the diversity, equity, and inclusion thrust of this essay is corporate boards of directors.

As a result of the corporation's role in larger economic, social, and political spheres, the management and control authority of a corporate board of directors includes decision-making that influences those spheres. Various theories of the corporation recognize the corporation's role in society;⁸ corporate social

subject to any limitation in the articles of incorporation permitted by section 2.02(b), all corporate powers shall be exercised by or under the authority of the board of directors, and the business and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of the board of directors.

MODEL BUS. CORP. ACT § 8.01(b) (AM. BAR ASS'N 2016).

6. Martin Petrin, *Corporate Management in the Age of AI*, 2019 COLUM. BUS. L. REV. 965, 976 (footnotes omitted). Professor Petrin describes the board's management role as follows:

This general reference to "management" by the board would, by itself, represent a misleading or at least highly inaccurate description of what modern boards do. It is only the DGCL's additional reference to corporations being managed "under the direction" of the board that provides a more accurate reflection of contemporary governance. Public companies are rarely managed by the board. Rather, the board transfers significant managerial responsibilities to officers and managers. In turn, the board supervises management and only retains for itself a limited number of high-level managerial tasks.

Id. at 972 (footnotes omitted); *see also* Jeffrey M. Lipshaw, *The False Dichotomy of Corporate Governance Platitudes*, 46 J. CORP. L. 345, 362–63 (2021) ("[T]he role of the board of directors is ambiguous. The board can be viewed purely as the shareholders' means of monitoring the managers. Or the board can be viewed as participating in the active management of the firm.").

7. *Accord* Robert J. Rhee, *Corporate Ethics, Agency, and the Theory of the Firm*, 3 J. BUS. & TECH. L. 309, 312 n.20 (2008) (referencing "[t]he managers, broadly defined as the board of directors and officers").

8. *See, e.g.*, Eric C. Chaffee, *The Origins of Corporate Social Responsibility*, 85 U. CIN. L. REV. 353, 356–57 (2017) (explaining why, under a collaboration theory of

responsibility (also known as CSR) recognizes greater corporate obligation—and, at times, accountability—in that context.⁹ A given corporation's role in society is largely determined by its management, including its board of directors (as the highest-order corporate manager). Indeed, the structure and composition of a corporate board of directors may determine the corporation's social consciousness and impact the board's decision-making. Notably, policy makers and researchers have identified director independence, gender, race, and LGBTQ+ status as board composition factors that warrant study.¹⁰

the corporation, the corporation has an obligation to behave in a socially responsible manner); Fan, *supra* note 4, at 448–49 (2019) (noting, quoting Kent Greenfield, that “stakeholder theory ‘challenge[s] the American corporation to broaden its role in society and enlarge the obligations it owes beyond the bottom line’”); Matteo Gatti & Chrystin Ondersma, *Can A Broader Corporate Purpose Redress Inequality? The Stakeholder Approach Chimera*, 46 J. CORP. L. 1, 14 (2020) (“Stakeholder theory, sometimes described as a communitarian approach, holds that managers and directors could and should cater to the interests of and to maximize the value allocated to employees, creditors, customers, suppliers, local communities, the environment, and society as a whole.”); Cynthia A. Williams, *Corporate Social Responsibility in an Era of Economic Globalization*, 35 U.C. DAVIS L. REV. 705, 716 (2002) (“[P]rogressive scholars contend that directors ought to consider the impact of their decisions on a wider range of constituents than shareholders, and thus ought to consider the implications of their actions on employees, consumers, suppliers (in some cases), the community, and the environment.”).

9. See, e.g., Jay Butler, *Corporate Commitment to International Law*, 53 N.Y.U. J. INT'L L. & POL. 433, 451 (2021) (“CSR’s primary focus relates to a company’s voluntary commitments and cultivation of internal value systems for reorienting its behavior. Further, CSR is inclusive of both socially beneficial aims as well as legally obligatory norms.”); Tom C.W. Lin, *Executive Private Misconduct*, 88 GEO. WASH. L. REV. 327, 349 (2020) (“CSR programs are initiatives businesses take to positively impact a wide range of local, national, and international stakeholders beyond just their shareholders and employees.”); Jennifer J. Riter, *An Exploration of the Extractive Industries Transparency Initiative as a Model for Incorporating Collaborative Accountability into Collective Global Governance*, 40 U. PA. J. INT'L L. 839, 857 (2019) (“[A] number of corporate entities are furthering their means of self-monitoring through voluntary participation in sector-specific public-private partnerships. These collaborative attempts take the CSR model one step further and promote systemic community development . . .”).

10. See, e.g., Sanjai Bhagat & Bernard Black, *The Non-Correlation Between Board Independence and Long-Term Firm Performance*, 27 J. CORP. L. 231, 239–63 (2002) (reporting on a study of board independence); Sanjai Bhagat & Bernard Black, *The Uncertain Relationship Between Board Composition and Firm Performance*, 54 BUS. LAW. 921, 944–50 (1999) (providing the results of an examination of board independence); Lisa M. Fairfax, *Clogs in the Pipeline: The Mixed Data on Women Directors and Continued Barriers to Their Advancement*, 65 MD. L. REV. 579, 589–607 (2006) (offering an analysis of women and boards of directors); Marleen A. O'Connor, *The Enron Board: The Perils of Groupthink*, 71 U. CIN. L. REV. 1233, 1306 (2003) (“[S]cholarship suggests that reform proposals should discourage groupthink by promoting more diversity on boards in terms of gender, race, class, ethnicity, age, national origin, sexual orientation, and socio-economic background, as well as expertise and temperament.”); Darren Rosenblum & Daria Roithmayr, *More Than A Woman: Insights into Corporate Governance After the*

B. Diversity and the Corporate Board of Directors

The focus on board structure and composition has prompted studies, deliberation, and writing (including books, articles, and legislative and regulatory drafting) on the lack of diversity on corporate boards of directors (and, most notably for purposes of this essay, the boards of U.S. public companies), especially in the past twenty years.¹¹ This essay focuses in on gender diversity, equity, and inclusion specifically. Although the essay speaks in terms of men and women, its overall contentions and the suggestions that emanate from them also may relate to people whose genders do not conform to these binary distinctions.

Many also have engaged in research and writing about the rationale for increased gender diversity on boards of directors—why it may be beneficial for women to have a greater presence in the corporation’s central management body. Arguments for increasing the number and percentage of women on corporate boards have included (among others): their actual or potential role in increasing profitability or shareholder value;¹² their potential utility in adding

French Sex Quota, 48 IND. L. REV. 889, 900 (2015) (describing empirical and theoretical studies and analysis of board composition focused on sex); Shaker A. Zahra & Wilbur W. Stanton, *The Implications of Board of Directors’ Composition for Corporate Strategy and Performance*, 5 INT’L J. MGMT. 229 (1988) (studying the financial impact of racial diversity on boards of directors).

11. See, e.g., Seletha R. Butler, *All on Board! Strategies for Constructing Diverse Boards of Directors*, 7 VA. L. & BUS. REV. 61, 65 (2012) (“The boards of directors of public companies in the United States are far from heterogeneous.”); Alexander M. Nourafshan, *From the Closet to the Boardroom: Regulating LGBT Diversity on Corporate Boards*, 81 ALB. L. REV. 439, 441–42 (2018) (“White men hold roughly seventy percent of board seats among Fortune 500 companies.”); Steven A. Ramirez, *A Flaw in the Sarbanes-Oxley Reform: Can Diversity in the Boardroom Quell Corporate Corruption?*, 77 ST. JOHN’S L. REV. 837, 838 (2003) (noting “the relative absence of diversity at the highest levels of the American corporate governance structure”); Deborah L. Rhode & Amanda K. Packel, *Diversity on Corporate Boards: How Much Difference Does Difference Make?*, 39 DEL. J. CORP. L. 377, 379 (2014) (“Close to three-quarters of members of corporate boards of the largest American companies are white men.”); Janis Sarra, *Rose-Colored Glasses, Opaque Financial Reporting, and Investor Blues: Enron as Con and the Vulnerability of Canadian Corporate Law*, 76 ST. JOHN’S L. REV. 715, 724 (2002) (“The Enron directors were in a position to prevent many of the failures in governance that occurred. The fact that this did not occur is in part a function of board culture and lack of diversity in representation on the Board.”); Amy Deen Westbrook, *We(re) Working on Corporate Governance: Stakeholder Vulnerability in Unicorn Companies*, 23 U. PA. J. BUS. L. 505, 533 (2021) (“The technology sector, where most unicorns are found, long has been criticized for its ‘boys’ club’ mentality, with regard to both investment and operations. Founder dominance often exacerbates and is exacerbated by the lack of gender diversity on unicorn boards. Most unicorns lack even a single woman director.”).

12. See, e.g., David A. Carter, Betty J. Simkins & W. Gary Simpson, *Corporate Governance, Board Diversity, and Firm Value*, 38 FIN. REV. 33, 51 (2003) (concluding that “[a] critical factor in good corporate governance appears to be the relationship

distinctive views to product, service, employment, and other operational decisions;¹³ the basic premise that boards of directors should mirror the various constituencies and communities served by the corporations they manage;¹⁴ the potentially positive role of diversity in governance and collective decision-making (including the so-called ‘wisdom of the crowd’);¹⁵ and ‘doing the right thing’ by

between board diversity and shareholder value creation”); Cristian L. Dezsö & David Gaddis Ross, *Does Female Representation in Top Management Improve Firm Performance? A Panel Data Investigation*, 33 STRATEGIC MGMT. J. 1072, 1084 (2012) (finding that firms generate more economic value with at least one woman in top management); Yaron Nili, *Beyond the Numbers: Substantive Gender Diversity in Boardrooms*, 94 IND. L.J. 145, 160 (2019) (“A growing body of studies has linked gender-diverse boards and improved corporate performance.”). It should be noted that the actual profit and shareholder-wealth effects of adding female members to a board of directors is unclear. *See, e.g.*, Jeremy Galbreath, *Is Board Gender Diversity Linked to Financial Performance? The Mediating Mechanism of CSR*, 57 BUS. & SOC’Y 863, 864 (2018) (“Are women on boards of directors positively linked to financial performance? Although there is some confirmatory evidence, other studies have yielded negative or neutral results.” (citations omitted)); Corinne Post & Kris Byron, *Women on Boards and Firm Financial Performance: A Meta-Analysis*, 58 ACAD. MGMT. J. 1546, 1546 (2015) (“Despite a relatively large body of literature examining the relationship between female board representation and firm performance, the empirical evidence is decidedly mixed.”); *id.* at 1563 (“[O]ur results suggest that board diversity is neither wholly detrimental nor wholly beneficial to firm financial performance.”).

13. *See, e.g.*, Kristin N. Johnson, *Banking on Diversity: Does Gender Diversity Improve Financial Firms’ Risk Oversight?*, 70 SMU L. REV. 327, 355 (2017) (“[S]uccessful implementation of board diversity strategies requires a thoughtful exploration of the specific talent, background, unique perspective, and experience that women bring to the executive suite or boardroom.”); Kaitlin D. Wowak, George P. Ball, Corinne Post & David J. Ketchen Jr., *The Influence of Female Directors on Product Recall Decisions*, 23 MFG. & SERV. OPERATIONS MGMT. 895 (2020) (identifying various ways in which women respond to product recalls and related decision-making differently from men).

14. *See, e.g.*, Janis Sarra, *Class Act: Considering Race and Gender in the Corporate Boardroom*, 79 ST. JOHN’S L. REV. 1121, 1142–43 (2005) (noting support for “proposals to encourage companies to pursue diversity on corporate boards that ‘mirror[s] the diversity of the workforce and society’ thereby bringing a variety of qualified viewpoints to corporation decision making”); Erica Hersh, *Why Diversity Matters: Women on Boards of Directors*, HARV. SCH. PUB. HEALTH (July 21, 2016), <https://www.hsph.harvard.edu/ecpe/why-diversity-matters-women-on-boards-of-directors/> [<https://perma.cc/DE3H-5UVE>] (“[D]iverse boards often better mirror customer and client bases.”).

15. *See, e.g.*, Nili, *supra* note 12, at 162 (“Empirical evidence on board processes and socio-psychological research on small-group dynamics have supported the argument that diverse boards are associated with better decision-making and governance.”); Jie Chen, Woon Sau Leung, Wei Song & Marc Goergen, *When Women Are on Boards, Male CEOs Are Less Overconfident*, HARV. BUS. REV. (Sept. 12, 2019), <https://hbr.org/2019/09/research-when-women-are-on-boards-male-ceos-are-less-overconfident> [<https://perma.cc/6F9C-GU6W>] (“Having women on the board results better [sic] acquisition and investment decisions and in less aggressive risk-taking, yielding benefits for shareholders.”); Joan MacLeod Heminway, *Women in the Crowd of Corporate Directors: Following, Walking Alone, and Meaningfully Contributing*, 21 WM. & MARY J. WOMEN & L. 59, 85–86 (2014) (concluding that women’s board

treating qualified women fairly and equitably.¹⁶ The International Finance Corporation offers a cogent statement of the business case for women in business management.

A growing body of research shows a range of business benefits associated with gender diversity on boards and in senior leadership—and with a robust pipeline of female management talent. Benefits include improved financial performance and shareholder value, reduced risk of fraud and corruption, increased customer and employee satisfaction, greater investor confidence, and enhanced market knowledge and reputation. Studies also point to the positive influence of gender-diverse management and boards on a company's sustainability profile.¹⁷

Research and popular press publications repeat these and other related and intersecting arguments for increased female membership on public company boards of directors.¹⁸ This essay

membership and participation may contribute to pre-conditions for crowd wisdom); Rhode & Packel, *supra* note 11, at 393–401 (identifying reasons why diversity may enhance board decision-making and monitoring functions); Cindy A. Schipani, *Improving Board Decisions: The Promise of Diversity*, 39 L. & INEQ. 295, 302–07 (2021) (identifying and exploring how board membership diversity may help boards in better monitoring executives).

16. See, e.g., Nili, *supra* note 12, at 159 (“Advocates . . . rely on moral or social justifications in their push for gender diversity on the board. Their case is premised on the intrinsic notion that increasing diversity is the ‘right thing to do,’ predominantly because the efforts to improve diversity are aimed at correcting the lingering effects of discrimination.” (footnote omitted)); Cristina Banahan & Gabriel Hasso, *Across the Board Improvements: Gender Diversity and ESG Performance*, HARV. L. SCH. F. ON CORP. GOV. (Sept. 6, 2018), <https://corpgov.law.harvard.edu/2018/09/06/across-the-board-improvements-gender-diversity-and-esg-performance/> [<https://perma.cc/C9VM-FLP6>] (“[T]here is the normative argument based on equity and fairness, which suggests that women and men should have an equal opportunity to attain leadership positions, including corporate board memberships.”).

17. *Women on Boards and in Business Leadership*, WORLD BANK GRP. (Nov. 2019), https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+cg/topics/women+on+boards+and+in+business+leadership [<https://perma.cc/6YRB-JMVF>].

18. See, e.g., Akshaya Kamalnath, *Corporate Governance Case for Board Gender Diversity: Evidence from Delaware Cases*, 82 ALBANY L. REV. 23, 24–41 (2018) (summarizing identified benefits of diverse boards); Sudheer Reddy & Aditya Mohan Jadhav, *Gender Diversity in Boardrooms – A Literature Review*, 7 COGENT ECON. & FIN. 1, 2 (2019) (reviewing “the evolution of literature on board gender diversity in areas related to corporate governance and corporate finance”); Kim Elsesser, *The Truth About Women's Impact On Corporate Boards (It's Not Good News)*, FORBES (June 23, 2016), <https://www.forbes.com/sites/kimelsesser/2016/06/23/the-truth-about-womens-impact-on-corporate-boards-its-not-good-news/?sh=503df2db5ecb> [<https://perma.cc/8S6M-ZNDP>] (“Greater profits, greater CEO pay and enhanced problem-solving are just a few of the claimed advantages of increasing the number of women on a company's board of directors.”); Anna Meyer, *New Report: Companies With Diverse Boards Out Performed Their Peers During the Pandemic*, INC., <https://www.inc.com/anna-meyer/diversity-board-directors-covid-pandemic.html>

does not add content to the business case for increased gender diversity on boards of directors. It assumes that increased gender diversity is a desired corporate objective.

The very fact that rationales for greater female participation on boards of directors are obligatory as a predicate for change reflects a history of gender inequality and a presumed basis or justification for any inequity—in other words, the apparent need for rationales suggests an underlying assumption that women do not or may not belong on corporate boards in greater numbers or proportions. Certainly, boards of directors of publicly held corporations have historically been, and some continue to be, a “Boys’ Club.”¹⁹ If women were treated and seen as co-equals with men in this context, the need for rationales for female board nominations, appointments, and participation would not exist, and work would begin immediately to increase the inclusion of women on corporate boards.

C. Sexism, Anti-Sexism, Feminism, and Corporate Management

The need to justify female inclusion on corporate boards of directors signifies the existence of sexism. Like feminism, sexism—whether overt or inadvertent—has uncomfortable denotations and connotations in and outside corporate governance.²⁰ Accordingly, just as one may deny being a feminist, one may deny being a sexist—in each case to avoid scrutiny or disparagement.

Arguably, however, it is not sexist *individuals* who stand in the way of meaningful progress in the gender diversification of

[<https://perma.cc/MFF4-RNLA>] (“[C]ompanies with more than 30 percent of board seats occupied by women delivered better year-over-year revenue in 11 of the top 15 S&P 500 sectors than their less-gender-diverse counterparts.”).

19. See, e.g., sources cited *supra* note 11; see also Danielle Hartley, *Corporate Boardrooms and the National Football League: A Gender Diversity Marriage Made in Corporate Governance Heaven*, 98 DENV. L. REV. 197, 198 (2020) (“To speed up progress regarding gender diversity on corporate boards, it is necessary to implement new, mandatory rules rather than waiting for the old boys’ club to organically progress toward true gender diversity.” (footnote omitted)); Jena McGregor, *The Boardroom is Still an Old Boy’s Club*, WASH. POST (Sept. 25, 2013), <https://www.washingtonpost.com/news/on-leadership/wp/2013/09/25/corporate-boardrooms-are-still-old-boys-clubs/> [<https://perma.cc/Y4BG-ZVCW>] (observing that, in corporate boards of directors, “the old boy’s club is still very much alive. Not only did first-time racial minorities and women get significantly less mentoring than their white male peers, but that lack of guidance had a real impact . . .”).

20. See Deborah L. Rhode, *The Subtle Side of Sexism*, 16 COLUM. J. GENDER & L. 613, 613 (2007) (“Sexism is not a term often encountered in polite company. In conventional usage, it conveys discrimination based on sex and seems to require some conscious action. Yet there is also a subtle side of sexism: a cluster of social expectations and practices that reinforce sex-based inequality.”).

corporate boards of directors. Rather, it likely is unchallenged sexist *policies* and *ideas*—programs, processes, and conceptions that engrain behaviors and exclude women (whether explicitly or implicitly) from full, equal corporate board membership (not mere numerical equality, but the attainment of equal influence). This essay argues that exposing and dismantling these policies and ideas is essential to making lasting, effectual progress in diversifying corporate boards of directors.

The identification and reversal of sexist policies and ideas are time-consuming and challenging tasks. They require more than management team members—directors and officers—who do not understand themselves to be sexist. They require a change in mindset and corporate management culture. They require members of corporate management that are affirmatively anti-sexist. Although definitions of anti-sexism may differ,²¹ this essay labels anti-sexism as feminism and feminism as anti-sexism. Feminists, in this conception, are anti-sexists.²² This essay contends that corporate management should all be feminists. They should step up, speak up, and take action to change the existing gender deficit on U.S. corporate boards.

21. See Sara Mills, *Caught Between Sexism, Anti-Sexism and Political Correctness: Feminist Women's Negotiations with Naming Practices*, 14 DISCOURSE & SOC'Y 87, 90 (2003) (“[I]t is not possible to say clearly what constitutes sexism, anti-sexism or ‘political correctness’ . . . [S]exism, anti-sexism and ‘PC’ are now all contested terms and have a range of meanings for different people.”).

22. Definitions of feminism and feminist also vary. See, e.g., Ann Bartow, *Some Dumb Girl Syndrome: Challenging and Subverting Destructive Stereotypes of Female Attorneys*, 11 WM. & MARY J. WOMEN & L. 221, 233 (2005) (“Feminism does not have a universally recognized governing body, and ‘feminism’ is not a brand or trademark with a fixed social or commercial meaning. Investigations into what feminism is, or should be, have fueled debates and created rich bodies of varied scholarship.”); Mary E. Card, *Founding Mothers: The Women Who Raised Our Nation*, ARMY LAW., March 2005, at 99, 99 n.11 (“The term ‘feminist’ is used throughout this paper. ‘[A] precise, or even meaningful, definition of feminism has perplexed many lexicographers, writers both female and male, and feminists themselves.” (citation omitted)); Cheryl B. Preston, *This Old House: A Blueprint for Constructive Feminism*, 83 GEO. L.J. 2271, 2285 (1995) (observing, with respect to the word feminism, that “[a] single word, even one with eight letters, is a very small gate to keep intellectual explorers out of a garden—indeed, a garden full of flowers, as well as some weeds and thorns”). However, broad definitions may coalesce around similar concepts. See ADICHIE, *supra* note 2, at 47 (citing the following dictionary definition: “a person who believes in the social, political, and economic equality of the sexes”); Card, *supra*, at 99 n.11 (“[F]or the purposes of this paper, feminist is defined as a person who believes in political, economic, and social equality for women and in eradicating gender discrimination.”).

II. Two Influential Texts

Two primary texts, read together, support my assertion that corporate directors and officers should be feminists. Each text has received popular acclaim over the past few years in one context or another. One manuscript addresses feminism and the other focuses on anti-racism. Neither addresses public company board composition directly.

A. *We Should All Be Feminists*

The first text, Chimamanda Ngozi Adichie's book-length essay entitled *We Should All Be Feminists*,²³ gives this essay its title. In her essay, Adichie defines a feminist, in aspirational fashion, as "a man or woman who says, 'Yes, there's a problem with gender as it is today and we must fix it, we must do better.'"²⁴ Under this definition, corporate managers who recognize and commit to remedying gender inequities on corporate boards are feminists.

But Adichie's book implies more: her essay underscores the importance of gendered perspectives and gender consciousness. She begins the essay with a formative story about a conversation she had with a dear childhood friend, Okoloma—the first person to label Adichie a feminist.²⁵ That conversation catalyzes Adichie's quest to find a personal understanding of feminism and the essence of a feminist.

Thus, Adichie comes to her definition of feminism experientially. Her essay not only illuminates her own awakening to the importance of gender and feminism but also acknowledges the discomfort of others with discussions of both concepts.²⁶ Focusing on the perspectives of men specifically, she offers a pair of key insights: men do not commonly think about gender, and "that is part of the problem."²⁷ If corporate directors and officers, largely men, do not have a regular awareness of gender, they may be less likely to identify biases in their assumptions or to question the non-obvious roles gender and gender stereotypes play in their decision-

23. See ADICHIE, *supra* note 2.

24. *Id.* at 48.

25. *Id.* at 7–8.

26. *Id.* at 40–42.

27. *Id.* at 42.

making.²⁸ Adichie concludes that men need gender awareness to be able to challenge the status quo.²⁹

B. How to Be an Antiracist

The second text, Ibram X. Kendi's *How to Be an Antiracist*,³⁰ is a book about racism and anti-racism that furnishes this essay with ideas for implementing feminism as anti-sexism that are complementary and supplementary to those of Adichie. In his book, Kendi defines racism and anti-racism by reference to a person's response to a racially discriminatory or biased policy or idea. Specifically, Kendi explains racism as "a marriage of racist policies and racist ideas that produces and normalizes racial inequities."³¹ He defines a racist as "[o]ne who is supporting a racist policy through their actions or inaction or expressing a racist idea."³² Kendi describes an antiracist as "[o]ne who is supporting an antiracist policy through their actions or expressing an antiracist idea."³³ The undefined use of "racist" and "antiracist" in definitions derivative of those same terms is unsatisfying (although, perhaps, unavoidable on some level). Kendi's monograph ultimately illuminates the definitions and the terms "racist" and "antiracist" contextually. Kendi notes that neither racism nor antiracism is a permanent condition for any individual; the same person may be a racist in one context and an antiracist in another.³⁴

These teachings of Kendi's book resonate with the teachings of Adichie's essay. If one substitutes notions of sexism for racism and feminism for antiracism in much of Kendi's text, the resonance becomes apparent. For example, gendered translations of the

28. See Lorrie L. Luellig, *Why J.E.B. v. T.B. Will Fail to Advance Equality: A Call for Discrimination in Jury Selection*, 10 WIS. WOMEN'S L.J. 403, 435–36 (1995) ("While men and women both absorb some amount of sexism from living in our culture, women are more likely to identify their entrenched sexist assumptions. Because sexism is so pervasive in our society, the ability to check peoples' judgments against outside reality is severely inhibited."); Rhode, *supra* note 20, at 617–18 ("[S]ocial science research documents the role of 'cognitive' or 'unexamined' bias in accounting for gender inequality. Such biases build on group-based stereotypes and have influences that are often outside individual awareness. . . . These group-based stereotypes predispose individuals to perceive information in ways that conform to pre-existing associations.").

29. ADICHIE, *supra* note 2, at 42–43.

30. See IBRAM X. KENDI, *HOW TO BE AN ANTIRACIST* (2019).

31. *Id.* at 17.

32. *Id.* at 22.

33. *Id.*

34. See *id.* (analogizing the labels "racist" and "antiracist" to "peelable nametags that are placed and replaced based on what someone is doing or not doing, supporting or expressing in each moment. These are not permanent tattoos").

concepts quoted in the immediately preceding paragraph yield the following definitions:

- Sexism is a marriage of sexist policies and sexist ideas that produce and normalize gender inequities.
- A sexist is a person who is supporting a sexist policy through their actions or inaction or expressing a sexist idea.
- A feminist is a person who is supporting an anti-sexist policy through their actions or the expression of an anti-sexist idea.
- Neither sexism nor anti-sexism is a permanent condition for any individual; the same person may be a sexist in one context and an anti-sexist in another.

Under Kendi's definitional rubric, as translated for use in defining feminists and feminism (rather than antiracists and antiracism), feminists must recognize a gender problem and commit to fixing it. This is consistent with Adichie's ultimate definition of a feminist.³⁵ However, by suggesting that a feminist must act to achieve or voice a corrective plan or conception, Kendi's definition of a feminist extols anti-sexist action or expression. In this way, Kendi's ideas build in a consonant manner on Adichie's evolved perception of the feminist persona.³⁶

Kendi advocates a focus on antiracism as the key means to limit and eliminate racism, an end-goal that he admits has almost no prospect of complete success. Nevertheless, he refuses to completely abandon hope.

What gives me hope is a simple truism. Once we lose hope, we are guaranteed to lose. But if we ignore the odds and fight to create an antiracist world, then we give humanity a chance to survive, a chance to live in communion, a chance to be forever free.³⁷

35. See *supra* text accompanying note 24.

36. It bears noting that Kendi does discuss feminism in his book, most prominently in Chapter 14, which focuses on gender. See KENDI, *supra* note 30 at 181–92. Among other things, Kendi avers that:

To be feminist is to reject not only the hierarchy of genders but of race-genders. To truly be antiracist is to be feminist. To truly be feminist is to be antiracist. To be antiracist (and feminist) is to level the different race-genders, is to root the inequities between the race-genders in the policies of gender racism.

Id. at 189.

37. *Id.* at 238.

The commitment to antiracist behavior underlying this statement of faith echoes Adichie's commitment and call to feminist action. "All of us," Adichie argues, "women and men, must do better."³⁸

III. Being a Feminist Corporate Manager

It is the job of corporate management to "do better" in creating a culture of gender diversity, equity, and inclusion in the firm. A corporate culture of gender parity holds promise to increase the internal pipeline of female leaders who can rise through management (or otherwise ascend) to board seats. An anti-sexist culture is also likely to enable a corporation to identify and attract appropriate, successful, sustainable outside talent for its board of directors more naturally and easily.

What can we learn from Adichie and Kendi that represents affirmative action that corporate management can take to increase board diversity? Several matters of focus for directors and officers seem apparent from an analysis and assessment of these authors' writings. These focal points include increasing gender awareness, committing to anti-sexist policies and ideas, and adopting or advocating anti-sexist policies or ideas. Collectively, they require that corporate management should all be feminists, as that concept is defined by Adichie in her essay (and, to a lesser and more indirect extent, Kendi in his book). Although the suggested course of conduct is stated here as a series of three gender-specific actions, these prescriptions also may be adapted for use in enhancing board diversity in other aspects.

A. Increase Gender Awareness

First, members of corporate management should increase their gender awareness. This first step requires continuing education and communication. Corporate directors and officers should seek out information about gender in informing themselves as a predicate to decision-making, oversight, and (in general) the exercise of corporate management and control. They should listen with an open mind to those who offer gendered viewpoints relevant to those responsibilities. And they should inquire where they fail to understand and endeavor to reach understanding.

The dialogue will not be stress-free. Adichie aptly notes that "[g]ender is not an easy conversation to have. It makes people uncomfortable, sometimes even irritable. Both men and women are resistant to talk about gender, or are quick to dismiss the problems

38. ADICHIE, *supra* note 2, at 48.

of gender. Because thinking of changing the status quo is always uncomfortable.”³⁹

Although diversity trainings have a mixed record of success (depending on the success measurement used and the type of training assessed),⁴⁰ gender awareness may be heightened through appropriately supported, targeted, ongoing management education programs. For example, “men may have an important role in promoting equality since they are less likely to elicit backlash and resistance. . . . [T]asking male managers with proactively promoting gender-equitable policies may lead to more buy-in by men.”⁴¹ Yet, the presence of women, including as discussion leaders, may be helpful in promoting anti-sexist norms.⁴²

39. *Id.* at 40.

40. See, e.g., Susan Bisom-Rapp, *An Ounce of Prevention Is a Poor Substitute for a Pound of Cure: Confronting the Developing Jurisprudence of Education and Prevention in Employment Discrimination Law*, 22 BERKELEY J. EMP. & LAB. L. 1, 44 (2001) (“While the desire to find a ‘quick fix’ for the problem of employment discrimination is understandable, that educational efforts positively affect entrenched bias is a hypothesis that has yet to be proven.”); Tristin K. Green & Alexandra Kalev, *Discrimination-Reducing Measures at the Relational Level*, 59 HASTINGS L.J. 1435, 1438 (2008) (“[E]vidence on whether diversity training actually works to reduce bias is mixed, and some studies suggest that it may activate rather than reduce bias.”); Soohan Kim, Alexandra Kalev & Frank Dobbin, *Progressive Corporations at Work: The Case of Diversity Programs*, 36 N.Y.U. REV. L. & SOC. CHANGE 171, 198 (2012) (“While diversity training has been the flagship practice in many corporations’ equal opportunity programs, it has not been shown to increase workforce diversity.”); Cynthia Lee, *Race, Policing, and Lethal Force: Remediating Shooter Bias with Martial Arts Training*, 79 LAW & CONTEMP. PROBS. 145, 162 (2016) (“Some research suggests that diversity training programs aimed at improving attitudes toward people from different racial or ethnic minority groups do not work and can actually exacerbate attitudes, particularly when individuals are required to attend such trainings.” (footnote omitted)); Nancy Levit, *Megacases, Diversity, and the Elusive Goal of Workplace Reform*, 49 B.C. L. REV. 367, 373 (2008) (“[D]iversity training programs that stress tolerance and inclusion on the basis of various identity characteristics may not create appreciable results in terms of changing workforce demographics and practices”); Deborah L. Rhode, *From Platitudes to Priorities: Diversity and Gender Equity in Law Firms*, 24 GEO. J. LEGAL ETHICS 1041, 1069–70 (2011) (“A large-scale review of diversity initiatives across multiple industries found that training programs did not significantly increase the representation or advancement of targeted groups.”); Sara Rynes & Benson Rosen, *A Field Survey of Factors Affecting the Adoptions and Perceived Success of Diversity Training*, 48 PERSONNEL PSYCH. 247, 263 (1995) (“[O]ur results confirm previous speculation that both the adoption and perceived success of diversity training depend on the broader organizational context, particularly top management support.”).

41. Justine Tinkler, Skylar Gremillion & Kira Arthurs, *Perceptions of Legitimacy: The Sex of the Legal Messenger and Reactions to Sexual Harassment Training*, 40 LAW & SOC. INQUIRY 152, 169 (2015).

42. See *id.* Specifically, one study of policy training found that:

[W]hen a female narrates the policy training, male participants evaluate men and women as equally competent and status worthy. While this effect may, in part, be due to subjects not wanting to appear sexist in the presence of a woman,

B. Increase Commitment to Anti-Sexist Policies and Ideas

Second, corporate managers should commit to anti-sexist policies and ideas.⁴³ This requires overcoming inertia with specific feminist conduct. In his book, Kendi lists a series of steps to being an antiracist. Those steps, transmuted into gender terms, include:

- Ceasing to use “I am not a sexist” or “I can’t be a sexist” as a defense of denial,
- Admitting the definition of “sexist” as a person who supports sexist policies or expresses sexist ideas,
- Confessing any sexist policies supported and sexist ideas expressed,
- Accepting the socialized source of those sexist policies and ideas,
- Acknowledging the definition of an anti-sexist as someone who is supporting anti-sexist policies or expressing anti-sexist ideas,
- Struggling for anti-sexist power and policy within one’s sphere of influence,
- Struggling to remain at the anti-sexist intersections of sexism and other bigotries, and
- Struggling to think with anti-sexist ideas.⁴⁴

These steps represent a personal path to developing a commitment to anti-sexist policies and ideas.

Although this individualized personal commitment is significant in its effects on corporate directors and officers themselves, the ultimate goal is collective commitment to a feminist approach. As one commentator notes:

[A] feminist approach can do more than look at issues of gender and discrimination; feminist thinking can provide the framework by which business law itself can be revamped for the benefit of all. Feminist analysis cannot only uncover inherent problems, but it can also provide the medium and basis for remedying those ills of business culture that cause society and all its members to suffer.⁴⁵

it still points to a mechanism for positive change. If women discourage men from expressing overtly sexist attitudes, then policy training communicated by women can be one way to develop workplace norms that proscribe sexist attitudes and behaviors.

Id.

43. Accord Rhode, *supra* note 20, at 640 (“A key factor in equalizing opportunities is a commitment to that objective, which should be reflected in organizational priorities, policies, and reward structures.”).

44. See KENDI, *supra* note 30, at 226.

45. Barbara Ann White, *Feminist Foundations for the Law of Business: One Law*

Thus, although commitments to anti-sexist policies and ideas are personal and individual, their aggregate impact may be quite broad—even moving beyond their intended effects on diversity, equity, and inclusion in the corporation.

C. Adopt or Advocate Anti-Sexist Policies and Ideas

Third, corporate directors and officers should adopt or advocate anti-sexist policies and ideas. This third step is critical; it is where the management activities of directors and officers are focused on broader culture and climate change in the firm. This more active phase of the corporate management feminist revolution (such as it is) presents several challenges, three of which are noted in the succeeding paragraphs: the hidden—even subversive—nature of some corporate sexism, the effort that may be required to change the way in which corporate managers conduct their affairs, and the potential for directors and officers to be distracted or derailed from their promise to forward anti-sexist policies and ideas.

1. Challenges

For one thing, sexist programs, processes, and conceptions may not be obvious. Although policies and ideas that expressly sort people by gender and gendered employment-related outcomes (including, for instance, unexplained gender pay gaps) offer clear signals that sexism may exist in a corporate culture, other sexist policies or ideas may be less discernible. In fact, the absence of clear procedures, instructions, criteria, or metrics for hiring, appointment, retention, rewards, or other corporate undertakings may be or result in sexism. “[C]ourts have concluded that, just like an explicitly sexist pay and promotion policy, a policy that lacked any guidelines could knowingly result in women being discriminated against in violation of Title VII.”⁴⁶ In addition, corporate management may adopt an anti-sexist program or process that is a mere façade—a pretense designed or used to hide sexist practices.⁴⁷

and Economics Scholar's Survey and (Re)view, 10 UCLA WOMEN'S L.J. 39, 55 (1999).

46. Sergio J. Campos, *The Uncertain Path of Class Action Law*, 40 CARDOZO L. REV. 2223, 2265 (2019).

47. See Pádraig Floyd, *Wells Fargo Accused of Holding 'Fake Interviews' to Pad Diversity Efforts*, AGENDA (May 23, 2022), https://www.agendaweek.com/c/3615894/463374?referrer_module=searchSubFromAG&highlight=diversity [<https://perma.cc/99FN-39XV>].

Moreover, introducing greater gender consciousness into management structures, conduct, and decision-making may be difficult. Corporate boards of directors and officers construct and acculturate themselves to behavioral norms for the purpose of conducting their work.⁴⁸ Although many of these norms are tailored to the specific firm,⁴⁹ some are more general. For instance, it has been observed that “corporate America has developed a CEO-centric culture in the boardroom. Corporate boards of directors have developed a set of behaviors in which deference to, and rubber-stamping of, CEO decision-making is the norm.”⁵⁰ Adding new elements to the decision-making and oversight activities of corporate managers disrupts these norms directly and indirectly.

In addition, the process of formulating, proposing, discussing, and determining to make policy and idea changes is likely to test the ongoing commitment of corporate managers to anti-sexist policies and ideas.⁵¹ Among other things, there is a general awareness of gendered patterns of thought that relate to expected male and female traits that are somewhat entrenched and may be hard to address and change. Specifically, observers note a

[M]ismatch between the qualities traditionally associated with women and those associated with professional success. These stereotypes of femininity leave women stuck in a double bind. What is assertive in a man seems abrasive in a woman, and female leaders risk seeming too feminine or not feminine enough. On the one hand, they may appear too “soft”—unable or unwilling to make the tough calls required of those in positions of power. On the other hand, they may appear too tough—strident and overly aggressive or ambitious. Attitudes toward self-promotion reflect a related mismatch between leadership and femininity. Women are expected to be nurturing, not self-serving; entrepreneurial behaviors viewed

48. See Alicia Alvarez, Susan Bennett, Louise Howells & Hannah Lieberman, *Teaching and Practicing Community Development Poverty Law: Lawyers and Clients As Trusted Neighborhood Problem Solvers*, 23 CLINICAL L. REV. 577, 597 (2017) (“It would come as no surprise to lawyers who work with the board of directors of any major corporation that boards develop informal decision making norms that are unique to their organizations and that evolve over time and reflect the culture of their organization.” (quoting Micahel Useem, *How Well-Run Boards Make Decisions*, HARV. BUS. REV. (Nov. 2006), <https://hbr.org/2006/11/how-well-run-boards-make-decisions/ar/1>)).

49. *Id.*

50. R. William Ide, *Post-Enron Corporate Governance Opportunities: Creating a Culture of Greater Board Collaboration and Oversight*, 54 MERCER L. REV. 829, 839 (2003).

51. Cf. Athena Mutua, *Why Retire the Feminization of Poverty Construct?*, 78 DENV. U. L. REV. 1179, 1198 n.108 (2001) (“Anti-sexist initiatives in the context of patriarchal societies seem to engender resistance and intra-community strain in and of themselves.”).

as appropriate in men are often viewed as distasteful in women. Indeed, some executive coaches have developed a market niche in rehabilitating “bully broads,” female managers who come across as insufficiently feminine.⁵²

These mismatched attributes and the related expectations that corporate management brings to in-role genders constitute sexist ideas that must be acknowledged and renounced.

Although this point is easily made, the goal is not effortlessly reached. Stereotypes of this kind often are socialized into people over a significant number of years and are supported or amplified by cognitive biases.

[C]ognitive biases compound the force of traditional stereotypes. People are more likely to notice and recall information that confirms their prior assumptions than information that contradicts those assumptions; the dissonant data is filtered out. For example, when employers assume that a working mother is unlikely to be fully committed to her career, they more easily remember the times when she left early than the times when she stayed late.⁵³

It is important for corporate managers to hold each other accountable for their commitment to anti-sexist policies and ideas in the face of deeply rooted perceptions about gender.⁵⁴ The gender awareness of each director and officer will become important to adhering to management’s commitment to anti-sexist policies and ideas and fulfilling corporate management’s overall feminist mission.

2. Anti-Sexist Policy Adoption or Advocacy

Policy adoption or advocacy must proceed with knowledge of these and other challenges and with strategies and tactics for overcoming them. In searching for and correcting sexist policies, members of corporate management should think broadly and deeply, engaging their gender awareness and holding steadfast in their commitment to anti-sexism as they seek out obvious and non-obvious programs and processes that may have sexist attributes or impacts. Ideally, all employment-related and appointment-associated policies should be scrutinized for what they provide—and

52. Rhode, *supra* note 20, at 621 (footnotes omitted).

53. *Id.* at 624.

54. *See id.* at 640–41 (“Decision makers need to be held responsible A necessary first step is commitment from the top. An organization’s leadership needs to both acknowledge the importance of diversity and equality and make progress in achieving them a factor in employee evaluations and compensation.” (footnote omitted)).

for what they fail to provide⁵⁵—and policy initiatives should be assessed for their impact.⁵⁶

Significantly, existing policies that are or appear to be facially gender-neutral may inadvertently screen out suitable, qualified women from consideration at one or more key junctures because of female-correlated factors. Key policies ripe for reconsideration in this regard include: employee and executive hiring guidelines; management succession plans; rubrics and procedures relating to employee performance evaluations;⁵⁷ mentoring and other employee support initiatives;⁵⁸ and criteria for employee advancement, recognition, and benefits.⁵⁹ Among other things, it is important that hiring, appointment, and all positive and negative personnel actions and decisions be based on demonstrated knowledge, skills, and performance criteria apposite to the role served or to be served, rather than, e.g., a specific pedigree, personal relationship, or affinity.⁶⁰ Honest reevaluations of these policies

55. *See id.* at 638 (“[P]ractices that affect workplace opportunities should . . . be subject to scrutiny.”).

56. *See id.* at 641 (“[O]rganizations need concrete assessments of results. A management truism is that organizations get what they measure. Too few organizations adequately measure gender equity.”). Specifically,

[e]mployers should compile information on recruitment, hiring, promotion, retention, and quality of life. Decision makers need to know whether men and women are advancing in equal numbers and whether they feel equally well supported in career development. Where possible, employers should assess their progress by comparing their programs with those of similar workplaces as well as with the best practices identified by experts.

Id.

57. *See, e.g., id.* at 638 (“Decision makers should screen written assessments for stereotypical characterizations, develop objective, outcome-related criteria to supplement subjective evaluations, and review assignments to ensure equal opportunities for career development.” (footnote omitted)).

58. *See, e.g., id.* (“Mentoring practices require . . . attention. Many organizations need formal support structures that can keep talented women, particularly women of color, from falling through the cracks. Well-designed initiatives that evaluate and reward mentoring activities can improve participants’ skills, satisfaction, and retention rates.” (footnote omitted)); *id.* at 638–39 (“Women’s networks in workplaces, professional associations, and minority organizations can also be helpful. . . . Affinity groups for women of color . . . can be especially critical in reducing participants’ sense of isolation and providing concrete strategies for dealing with subtle biases.”).

59. *See id.* at 639–40 (noting that policy changes of this kind “will require a redefinition of workplace structures to take into account female as well as male life patterns At a minimum, this means ensuring that employees who seek temporary adjustments in hours or schedules do not pay a permanent price” (footnote omitted)).

60. *See* Stefanie K. Johnson & David R. Hekman, *Women and Minorities Are Penalized for Promoting Diversity*, HARV. BUS. REV. (Mar. 23, 2016), <https://hbr.org/2016/03/women-and-minorities-are-penalized-for-promoting-diversity> [<https://perm.a.cc/96J4-HTMS>] (“It is well known that people tend to favor and promote those who

almost certainly will require the abandonment or modification of deep-seated, sexist conceptions, including those relating to traditional gender roles in and outside the firm.

3. Anti-Sexist Idea Adoption or Advocacy

The adoption or advocacy of anti-sexist ideas also must recognize and meet the challenges of a feminist approach, including those previously identified here—non-obvious sexism, difficulties in bringing gender into existing behavioral norms, and the entrenched nature of sexism (even in the wake of a commitment to anti-sexism). A questioning attitude borne of management's mindfulness about gender and anti-sexist commitment is essential to the task. Entrenched ideas that require reassessment include the belief that there is a scarcity of women qualified to serve as directors and the conviction that nominating committees and directors always or generally value and select the "best qualified person" for director vacancies and open board positions, regardless of gender. These ideas often are intertwined and may be fueled by cognitive bias.

[P]eople share what psychologists have labeled a "meritocratic worldview" or "just world" bias. People want to believe that in the absence of special treatment, individuals generally get what they deserve and deserve what they get. Perceptions of performance are frequently adjusted to match observed outcomes. If women, particularly women of color, are underrepresented in positions of greatest prominence, the most psychologically convenient explanation is that they lack the necessary qualifications or commitment. These perceptions can, in turn, prevent women from getting assignments that would demonstrate their capabilities, establishing a self-fulfilling cycle.⁶¹

Corporate management needs to thoroughly inspect the reasons for identified gender inequity through its lens of gender awareness and with a firm commitment to anti-sexism. Directors and officers must not rely on glib, rote explanations for a lack of gender diversity in their corporations and on their boards of directors.

Other sexist conceptions that present barriers to sustainably diverse corporate boards include the view that workplace family

are similar to them—and that this in-group bias is problematic because it reinforces stereotypes and inequality."); Arthur Levitt Jr., *If Corporate Diversity Works, Show Me the Money*, WALL ST. J. (Jan. 20, 2021), <https://www.wsj.com/articles/if-corporate-diversity-works-show-me-the-money-11611183633> [<https://perma.cc/WAH6-LVNM>] ("Searches for directors are formally structured, but in the end they depend on informal social networks where friends recommend each other. In my experience, many such searches are closer to a social-club recruitment process than a serious contemplation of someone's task-specific skills.").

61. Rhode, *supra* note 20, at 624.

care options⁶² are accommodations and the conviction that they are exclusively for the benefit of women.

Although these initiatives are often described as “accommodations” for women’s “special” needs, this description miscasts both the problem and the solution. Many of the obstacles that women face stem from the traditional assumption that “normal” workers are employed, full-time and full-force, for their entire working lives. What women need is not accommodation, but equal recognition. . . . [F]amily and quality of life concerns need to be seen not just as women’s issues, but also as organizational priorities. Options like parental leave and flexible schedules should be gender-neutral in fact as well as in form, and men should be encouraged to take advantage of them.⁶³

The noted concept of equal recognition is especially critical to changing sexist ideas. It builds from increased gender awareness and is reinforced by a commitment to anti-sexist policies and ideas. Only when corporate managers can appreciate a gender other than their own and pledge effort to acknowledge and respect gender difference through ideas (as well as policies) can they generate the viable, lasting cultural changes needed to create and sustain diversity, equity, and inclusion on U.S. corporate boards of directors.

IV. Conclusion

This essay does not raise new arguments for increasing gender diversity on corporate boards of directors or elsewhere. Those arguments exist and are evaluated routinely by policy makers, academics, and corporate constituents, including corporate directors and officers. Rather, this essay assumes a genuine desire on the part of U.S. corporate management to increase gender diversity on their boards of directors.

The core idea, as the essay’s title suggests, is that all corporate management should be feminists. That notion, including the embedded definition of feminism, derives from two texts—an essay on feminism and a book on racism. Read together, these texts allow for an exploration of feminism, writ large, and policy-oriented (if not policy-driven) economic, social, and political equality.

Ultimately, this essay engages a somewhat limited exploration—one undertaken in the corporate managerial context—

62. *See id.* at 639 (“Best practices and model programs are readily available on matters such as flexible and reduced schedules, telecommuting, leave policies, and childcare assistance.” (footnote omitted)).

63. *Id.* at 639–40.

that may have broader implications outside the firm. Specifically, the essay affirms the idea that corporate directors and officers must develop and maintain a new attitude and approach for women to become and remain ordinary course, wholly participatory, and productively engaged members of corporate boards of directors (the core decision-making body of corporations—critically important economic, social, and political institutions). This change in mindset requires focused action on the part of corporate management. Specifically, corporate managers must increase their gender awareness, commit to anti-sexist policies and ideas, and adopt or advocate anti-sexist policies and ideas.

The insights proffered in this essay are not intended to be mutually exclusive of other approaches to advancing gender diversity, equity, and inclusion in the corporate board context. In particular, it should be noted that California has enacted legislation, signed into law by the governor, that mandates specified gender and racial or ethnic compositions for certain public company boards of directors.⁶⁴ In addition, in August 2021, the U.S. Securities and Exchange Commission approved a rulemaking request from the Nasdaq Stock Market that generally requires each Nasdaq-listed firm (subject to certain exceptions) either to include two diverse directors (one female and one from a specified racial, ethnic, sexual orientation, or sexual identity group) or explain why

64. See CAL. CORP. CODE § 301.3 (2021); A.B. 979, 2019–2020 Leg., Reg. Sess. (Cal. 2020). Almost ten years ago, the California legislature also enacted a law providing that “[t]he Secretary of State shall develop and maintain a registry of distinguished women and minorities who are available to serve on corporate boards of directors.” CAL. CORP. CODE § 318. On the eve of the publication of this essay, in May 2022, a Los Angeles Superior Court judge ruled that California’s statute mandating gender diversity on public company boards of directors violates the equal protection clause of California’s constitution. See Amanda Gerut, ‘*Train Has Left the Station*’ — *California Board Diversity Ruling to Be Appealed*, AGENDA (May 20, 2022), https://www.agendaweek.com/c/3613584/463634?referrer_module=searchSubFromAG&highlight=diversity [<https://perma.cc/SL5B-GZLW>]; Jody Godoy, *California Law Requiring Women on Company Boards Struck Down*, REUTERS (May 16, 2022), <https://www.reuters.com/legal/legalindustry/california-law-requiring-women-company-boards-struck-down-2022-05-16/> [<https://perma.cc/C4AJ-6AJD>]; Alisha Haridasani Gupta, *Another California Board Diversity Law Was Struck Down, but It Already Had a Big Impact.*, N.Y. TIMES (May 19, 2022), <https://www.nytimes.com/2022/05/19/business/california-board-diversity-women.html> [<https://perma.cc/4W2V-87P7>]. Other legal challenges have also been brought against the California mandate (and against a parallel, later adopted California statute requiring public company board representation from other under-represented populations). See Virginia Milstead, *Rulings in 2022 Could Bring Clarity on California and Nasdaq Board Diversity Mandates*, SKADDEN (Jan. 19, 2022), <https://www.skadden.com/insights/publications/2022/01/2022-insights/litigation/rulings-in-2022-could-bring-clarity> [<https://perma.cc/HWA5-G8MD>]. Thus, at this writing, the validity of the statute remains unclear.

it does not have a board of directors with membership conforming to those requirements.⁶⁵ Feminist corporate management will be better able to comply with mandates of these kinds through their gender consciousness, anti-sexist commitment, and support for anti-sexist policies and ideas. Moreover, legislative and regulatory initiatives of the kind forwarded in California and by the Nasdaq Stock Market may serve as catalysts for anti-sexist management introspection and action.⁶⁶ Indeed, law has the capacity to change the behavioral norms of corporate management.⁶⁷

As a general matter, it is hoped that this essay will refocus at least some broader academic and practical discussions of gender—and other elements of difference, for that matter—in the corporate board context on structures, systems, and processes rather than on counting female directors (or other directors of difference) or on analyzing and specifying the particular roles they may serve in corporate governance.⁶⁸ In doing so, the essay seeks to change not only the beliefs of corporate management, but also those of external corporate constituents and the public at large. By changing perspectives and attitudes over time, market and societal reactions to the presence of women on corporate boards should normalize. For example, to the extent that capital markets currently penalize firms

65. SEC. AND EXCH. COMM'N, RELEASE NO. 34-92590, SELF-REGULATORY ORGANIZATIONS; THE NASDAQ STOCK MARKET LLC; ORDER APPROVING PROPOSED RULE CHANGES, AS MODIFIED BY AMENDMENTS NO. 1, TO ADOPT LISTING RULES RELATED TO BOARD DIVERSITY AND TO OFFER CERTAIN LISTED COMPANIES ACCESS TO A COMPLIMENTARY BOARD RECRUITING SERVICE (August 5, 2021), 86 FR 44424. The validity of the Nasdaq board diversity rules is being challenged in a legal action brought in the U.S. Court of Appeals for the Fifth Circuit. See Breanna Bradham & Patricia Hurtado, *Nasdaq Board-Diversity Plan Challenged in Court as 'Unfair'*, BLOOMBERG (Aug. 18, 2021), <https://www.bloomberg.com/news/articles/2021-08-18/nasdaq-s-board-diversity-plan-challenged-in-court-as-unfair> [<https://perma.cc/E528-KP3R>]; Milstead, *supra* note 64.

66. See Amanda Gerut, '*Significant Movement*' in *Adding Women to Boards*, AGENDA (Aug. 17, 2020), https://www.agendaweek.com/c/2845193/353183?referrer_module=searchSubFromAG&highlight=significant%20movement%20women%20boards [<https://perma.cc/TB47-64Q8>] (noting optimism "that the surge of women joining boards over the past year—and in the next 18 months as the next phase of California's diversity law comes into force—will beget more diversity as more women are appointed to non-gov committees and can scour their own networks for diverse candidates").

67. See, e.g., Peter C. Kostant, *Team Production and the Progressive Corporate Law Agenda*, 35 U.C. DAVIS L. REV. 667, 685–86 (2002) ("[T]he rich narratives contained in Delaware court opinions that describe how boards should behave have profoundly shaped norms of director behavior.").

68. See Nili, *supra* note 12, at 152 ("Gender diversity discourse . . . must look beyond the numbers of female directors on the board . . ."). It should be noted that Professor Nili specifically advocates a closer inspection of the substantive roles that women play on corporate boards. *Id.* I do not disagree with this premise, but this essay asks the reader to extend the discourse one step further.

that add female directors to their boards (even if only for a discreet period of time),⁶⁹ that observed effect eventually should abate.

The exhortation of corporate managers to embrace feminism is intended to be provocative and is designed to both disrupt the status quo and have a lasting impact on corporate culture and climate. This disruption is a necessary component of the feminist approach. As Adichie notes in her essay,

If we do something over and over again, it becomes normal. If we see the same thing over and over again, it becomes normal. . . . If we keep seeing only men as heads of corporations, it starts to seem “natural” that only men should be heads of corporations.⁷⁰

This essay urges that directors and officers change what they do and change what they see—in order to effectuate change in what we all see. Corporate management should all be feminists.

69. See, e.g., Isabelle Solal & Kaisa Snellman, *Women Don't Mean Business? Gender Penalty in Board Composition*, 30 ORG. SCI. 1220 (2019) (finding, in a study of 1,644 U.S. public companies that corporations appointing women to their boards of directors suffer a decline in their market value for two years after the appointment).

70. ADICHIE, *supra* note 2, at 13.