



LAW & INEQUALITY

UNIVERSITY OF MINNESOTA LAW SCHOOL

Introduction

Foreword by June Carbone

Interview of Naomi Cahn, June Carbone & Nancy Levit, Moderated by Claire Hill & Matthew Bodie

The Role of Monetary Incentives

The Homo Economicus Model of Work Describes Men More than Women, But Only in WEIRD Cultures

Thomas Talhelm, Danila Medvedev & Yin Li

Tournament Incentives and the Triple Bind for Working Women

Amalia R. Miller & Carmit Segal

Stereotyping

An Economic, Psychological, and Linguistic Explanation of (Some Reasons) Why Women Don't Get a Fair Shake

Claire A. Hill

A Quadruple Bind? How Romantic Partner Dynamics May Hold Women Back at Work, Especially in the "Winner Take All" Economy

Melissa Vink

Lawlessness

The Lawless Workplace

Matthew T. Bodie

Interview of Renee Jones by June Carbone

Remedies

On Triple Bind Remedies in Fair Shake and Gender Bias Remedies in Psychological Science

Eugene Borgida & Nicholas M. Alia

Exploring Mutable Characteristics and Discriminatory Perceptions in Justice Systems

Daniel Chen

Conclusion

Conferences, Lightbulbs, and Gender

June Carbone

MINNESOTA JOURNAL OF LAW & INEQUALITY

ARTICLES

Introduction

Foreword..... 1

June Carbone

Interview of Naomi Cahn, June Carbone & Nancy Levit 5

Moderated by Claire Hill & Matthew Bodie

The Role of Monetary Incentives

The Homo Economicus Model of Work Describes Men More than
Women, But Only in WEIRD Cultures 29

Thomas Talhelm, Danila Medvedev & Yin Li

Tournament Incentives & the Triple Bind for Working Women... 53

Amalia R. Miller & Carmit Segal

Stereotyping

An Economic, Psychological, and Linguistic Explanation of (Some
Reasons) Why Women Don't Get a Fair Shake 67

Claire A. Hill

A Quadruple Bind? How Romantic Partner Dynamics May Hold
Women Back at Work, Especially in the "Winner Take All"
Economy 83

Melissa Vink

Lawlessness

The Lawless Workplace..... 99

Matthew T. Bodie

Interview of Renee Jones 111

June Carbone

Remedies

On Triple Bind Remedies in Fair Shake and Gender Bias
Remedies in Psychological Science..... 119

Eugene Borgida & Nicholas M. Alia

Exploring Mutable Characteristics and Discriminatory Perceptions
in Justice Systems 131

Daniel Chen

Conclusion

Conferences, Lightbulbs, and Gender 139

June Carbone

VOLUME XLIII SPRING 2025 SPECIAL ISSUE
THE UNIVERSITY OF MINNESOTA LAW SCHOOL

Cite as: LAW & INEQ.

Copyright © 2025 by *Minnesota Journal of Law & Inequality*

Minnesota Journal of Law & Inequality is published twice a year at the University of Minnesota Law School.

Back issues and volumes are available from William S. Hein & Co., Inc., 24 East Ferry Road, Buffalo, New York 14209.

Law & Inequality invites manuscripts addressing issues of inequality in law and society. We welcome articles from professors in law and other disciplines and practicing attorneys and judges in all areas of law. We accept articles in traditional legal format and also welcome pieces in less traditional forms—e.g., fiction, essays, letters. Please submit manuscripts electronically in Microsoft Word 2007 or newer. For more information about submissions, visit <https://lawandinequality.org/submissions/>.

Articles are considered for their focus on issues of inequality, substantive merit, professional interest, appeal to readers both within and outside the legal profession, clarity of expression, timeliness, and style. The Editorial Board of *Law & Inequality* reserves the right to condition acceptance of articles for publication upon revision of material to conform to our criteria and subjective review for substantive accuracy.

Opinions expressed in *Law & Inequality* are those of the contributors and are not the views of *Law & Inequality*, its editors and staff, or the University of Minnesota Law School.

Address all correspondence to *Law & Inequality*, University of Minnesota Law School, 229 19th Avenue South, Minneapolis, Minnesota 55455. Email: lawineqj@umn.edu.

ISSN 0737-089

MINNESOTA JOURNAL OF LAW & INEQUALITY

VOLUME XLIII

EDITORIAL BOARD

EDITOR-IN-CHIEF
FARIZA HASSAN

EXECUTIVE EDITOR
ZINAIDA CARROLL

ARTICLES EDITORS
NAS LAVAL †
RYAN CLEMMONS
CHEYENNE PETRICH

MANAGING EDITORS
COLE EDICK †
KRISTIN BOYNTON *
SYDNEY KOEHLER
MARGARIT Y. MARGARITOV
WILLIAM M. RAUSCHENBERG

MANAGING & RESEARCH EDITOR
ANTHONY ALAS †

NOTE & COMMENT EDITORS
BILL YANG †
ADRIAN F. CHAN
SOPHIE HERRMANN
NOELLE SPERRAZZA
CASSANDRA J. WHALL *

ONLINE EDITORS
PIERCE ROSE †
MEG KEISER
ELIZABETH MANSFIELD
LUCY MORAN

SYMPOSIUM EDITORS
ALEXANDER LINDENFELSER †
WYATT LUTENBACHER †

† *LEAD EDITORS*
* *SENIOR EDITORS*

STAFF MEMBERS

CLAIRE ALBRECHT	JEMS GUIRGUIS
EMILIANA ALMANZA LOPEZ	ZENA HAMILTON
JAXON ALSTON	SAFIYYAH KHAN
ALEJANDRA ARBOLEDA	NOAH MADOFF
DESMOND BASSETT	KAVYA MAHESH
CLAIRE CAVANAGH	HAYDEN MARSHALL
SPENCER CULBERTSON	PATIENCE MCHENRY
CLAIRE DOSEN	LIDDY PATTERSON
DAWN DUDLEY	JESSICA PAYNE
JANE GENSKE	SVETLANA "AIKA" RIGUERA
EMILY GIESE	REEVES SINGLETON
CLAIRE GIROD	KAYLIE VASQUEZ
TESS GLENZINSKI	GABRIELLA WILLIAMS

FACULTY ADVISOR
JUNE CARBONE

ALUMNI ADVISORY BOARD

LICA TOMIZUKA, *PRESIDENT*, JENNIFER CORNELL, *SECRETARY*
CATHARINE MACKINNON, *EMERITUS*
REBEKAH BAILEY, JANE BINDER, SCOTT CRAIN, JENNY GASSMAN-
PINES, MARGARET KAPLAN, MEREDITH LEAKE, NICHOLAS LIENESCH,
AARON MARCUS, HEATHER REDMOND, JOSEPH W. STEINBERG,
DAVID SWENSON, RICHARD WEINMEYER, BOJAN MANOJLOVIC

Introduction

June Carbone[†]

This Special Issue compiles a rich, interdisciplinary analysis of “Women at Work,” that is, the role of women in today’s workplaces, the persistence of gender disparities, the multi-faceted causes, and the interrelationship between women’s fate and other proposals for business reform. Professor Claire Hill organized this conference to reflect upon, complement, and amplify, a recent book, *Fair Shake: Women and the Fight for a Just Economy* (Simon & Schuster, 2024), by Naomi Cahn, June Carbone, and Nancy Levit. The Issue starts with an interview of the authors. In the interview, the authors describe how they came to write the book and their surprise in discovering that, in investigating workplaces that disadvantaged women, they saw the same patterns again and again. Those patterns involve a shift from a system of institutionalized power to personalized power, much more competitive workplaces that pit employees against each other, and outsized rewards for those who can break the rules and get away with it. With greater lawlessness and less accountability, gender disparities increase. The authors situate what has happened to women within the larger transformation of the American economy and argue that only collective action, through strengthening unions and reinvigorating the rule of law, can produce systematic reform.

The next section of the Issue addresses the relationship between monetary rewards and gender disparities. In *The Homo Economicus Model of Work Describes Men More than Women, But Only in WEIRD Cultures*, Thomas Talhelm conducted a cross-cultural empirical study to test the impact of different incentives on men and women. He found that in Western cultures, money had a greater motivating effect for men than women in comparison with psychological incentives, but that the opposite was true in non-Western cultures such as China, with men responding more strongly than women to social incentives and less strongly to monetary rewards. He concludes that cultural differences shape these results, suggesting that the differences are malleable. Complementing the Talhelm study, Amalia R. Miller and Carmit

[†]. Robina Chair in Law, Science and Technology, University of Minnesota Law School.

Segal, in *Tournament Incentives and the Triple Bind for Working Women*, also conduct an empirical analysis of the role of monetary incentives in increasing gender disparities in the workplace. They summarize the literature on “tournament” incentives that introduce high-stakes rewards pitting employees against each other, noting that the literature generally finds that such incentives increase worker effort but undermine cooperation and mentorship. The authors then summarize their own extensive empirical work, demonstrating that men increase effort to a greater degree than women in response to monetary incentives, and when given a choice of tournament style compensation versus flat rate rewards, men are more likely than women to choose the competitive incentives, at least with respect to higher stakes prizes. The authors note that the effects of competitive workplaces tend to be mutually reinforcing. Tournament-like workplaces tend to reward greater dedication to the job, and both the longer hours and the more intense competition tend to increase male dominance in such jobs. In addition, they discuss the potential impact of rule breaking in compounding the effects and complicating the potential for reforms.

The third section of the Issue considers the role of gender stereotyping in increasing workplace disparities. Claire Hill, in *An Economic, Psychological, and Linguistic Explanation of (Some Reasons) Why Women Don't Get a Fair Shake*, discusses the role of “prototypes,” “proxies,” and other mechanisms people necessarily use to make decisions and more broadly, to organize their worldviews. Prototypes involve concepts like “Santa Claus,” identified with related traits such as white beards. Proxies indicate that a concept is applicable, such as a luxurious car suggesting that its owner is wealthy. Proceeding without prototypes and proxies is unimaginable. But considering “women” as prototypes or using traits such as height to indicate leadership aptitude significantly disadvantage women. Drawing on the linguist Deborah Tannen’s work, Hill provides the fascinating example of conversational conventions, which differ for men and women. Individual men and women ignore these conventions at their peril because leadership potential is often judged in terms of the ability to navigate these social interactions, and because others—such as stock market traders—may make decisions to buy and sell based on gendered “tells” that suggest greater or lesser CEO confidence in their companies. Adding to this section, Melissa Vink, in *A Quadruple Bind? How Romantic Partner Dynamics May Hold Women Back at Work, Especially in the ‘Winner Take All’ Economy*, explores a different aspect of gender stereotyping: the role of intimate partner

dynamics in shaping workplace experiences. Instead of focusing on the workplace in isolation, she considers the relative earning capacity of romantic partners in affecting work performance. Much of the literature on women's disadvantages in the workplace describe a "second shift" in which women, typically paired with higher earning men, assume greater domestic responsibilities. Vink's article, in contrast, discusses the challenges women face when the women are more successful or have greater social status than their male partners. She shows how these relationships are often harshly judged, particularly in more gender traditional cultures, triggering backlash, and how gender stereotypes affect both career decisions and relationship success. She describes the impact of these negative attitudes as a "fourth bind," limiting women's career opportunities and choices.

The fourth section explores the role of lawlessness, that is, the ability to break the rules—including both the formal law and ethical custom—in shaping workplace cultures. Matthew T. Bodie's, *The Lawless Workplace*, captures the ways that "American managers enjoy relatively unbridled flexibility in designing shop-floor policies unique in modern democracies." This makes American companies more dynamic and profitable than many of their international counterparts. The lawlessness, however, also contributes to inequality in American society, privileging those who, like Elon Musk, thrive on chaos and have economic or relational advantages that allow to prosper. Bodie points out, however, that the net effect "contribute[s] to a disordered society and a sense of powerlessness for those who are not the winners." An interview with Renee Jones, former Director of the SEC's Division of Corporation Finance, illustrates the shift. She has a new book, on "untamed unicorns," coming out that describes how start-ups with billion-dollar valuations are able to stay private much longer, limiting their transparency and oversight, and furthering the lack of accountability in tech and finance.

The final section proposes solutions. Daniel Chen, in *Exploring Mutable Characteristics and Discriminatory Perceptions in Justice Systems*, provides an illuminating exploration of the role of artificial intelligence (AI), in detecting and potentially countering judicial bias on the basis of gender, race and other characteristics. Chen shows, for example, that his existing research documents that "judges with higher gender slant are more likely to reverse decisions by female district judges, less likely to assign opinion authorship to female judges, and less likely to cite female judges' opinions," and

rule less favorably to women in gender-related cases. He suggests that the AI techniques he is pioneering could be used more systematically to identify gender bias in all kinds of decision-making—and in appropriate cases, to use AI systems to guide fairer decision-making. Eugene Borgida's and Nicholas M. Alia's *On Triple Bind Remedies in Fair Shake and Gender Bias Remedies in Psychological Science* then suggests social science remedies that work in increasing women's full workplace participation. The authors propose a three-step solution. First, the injustices of the winner-take-all economy (WTA) need to be made visible to trigger public outrage. Second, these injustices need to be linked both to the persistence of gender discrimination and counterproductive results for society as a whole. Third, women should have access to platforms "to voice their own experiences with being penalized by the WTA economy." Borgida and Alia emphasize that social science research has been effective in identifying the reforms that work, and these techniques can be applied to system-level as well as individual reform.

Taken together, these pieces present a far-reaching examination of women's continuing limitations within the workplace and the possibilities for reform. The conclusion to the Issue starts with the old joke: "How many psychologists does it take to change a light bulb? Only one, but the lightbulb has to want to change." The Issue demonstrates that the causes of—and solutions for—the lack of gender equality in the workplace are increasingly well understood. What is less well understood is how women's fates are tied to not only historic discrimination and continued stereotyping but also to a new winner take all corporate dynamic that makes women the canaries in the coal mine for a radically unequal and unjust system.

Interview of Naomi Cahn, June Carbone, and Nancy Levit, Moderated by Claire Hill and Matthew Bodie

This conversation occurred at the start of the conference on “Women at Work” on Thursday, October 24, 2024, from 1:45 to 2:45 p.m. The conference, sponsored by the University of Minnesota Law School, was inspired by the new book, Fair Shake: Women & The Fight to Build a Just Economy, by Naomi Cahn, June Carbone, and Nancy Levit. The co-authors were interviewed by two members of the University of Minnesota School of Law faculty, Claire Hill and Matt Bodie. What follows is the conversation, edited for clarity. Questions to the panelists are in italics, while their responses are in regular type.

Claire: I’ll start with a few questions. What motivated you to write the book? How does the book fit in with what I will, I believe uncontroversially, characterize as a remarkable body of scholarship? What are you thinking about now, and where do you think your interests in this area will take you?

Nancy: We have known each other for decades and have been writing together over the years. Our scholarship has centered on inequalities in the family, the workplace, and the market.¹ We talk quite a bit among the three of us about gender, sex discrimination, and the gender-based wage gap. In fact, we had originally named the book “Shafted.” Simon and Schuster said, “That’s too phallic.” We said, “Duh.” So . . . “Fair Shake” it is.²

When we started our research more than seven years ago, we were hopeful that women were closing the gender-based wage gap. However, we dived into the data more deeply and realized that the apparent gains were not really gains for women, but the result of

1. See, e.g., NAOMI CAHN & JUNE CARBONE, RED FAMILIES V. BLUE FAMILIES: LEGAL POLARIZATION AND THE CREATION OF CULTURE (2010); JUNE CARBONE & NAOMI CAHN, MARRIAGE MARKETS: HOW INEQUALITY IS REMAKING THE AMERICAN FAMILY (2014); NANCY LEVIT & ROBERT R.M. VERCHICK, FEMINIST LEGAL THEORY: A PRIMER (2nd ed. 2016); Naomi Cahn, June Carbone & Nancy Levit, *Women, Rule-Breaking, and the Triple Bind*, 87 GEO. WASH. U. L. REV. 1105 (2019); Naomi Cahn, June Carbone & Nancy Levit, *Gender and the Tournament: Reinventing Antidiscrimination Law in an Age of Inequality*, 96 TEX. L. REV. 425 (2018); June Carbone & Nancy Levit, *The Death of the Firm*, 101 MINN. L. REV. 963 (2017).

2. NAOMI CAHN, JUNE CARBONE & NANCY LEVIT, FAIR SHAKE: WOMEN AND THE FIGHT TO BUILD A JUST ECONOMY (2024).

blue-collar men losing ground from about the 1990s onward.³ Even though women are the more educated sex in terms of bachelor's degrees (earning more than men since 1982), master's degrees (earning more than men since 1987), and doctorate degrees (earning more than men since 2006),⁴ wage gaps have not only persisted, but widened for women with more advanced degrees.⁵ A number of studies, one in particular by Goldman Sachs in 2019, show that if present trends continue, the gender-based wage gap will not be closed for another one hundred years.⁶

We noticed an interesting parallel trend: the skyrocketing of CEO salaries. Back in the 1950s, the comparison rate for CEO to average-worker salaries was about 20 to 1. As of September 2024, the Economic Policy Institute reported that this comparative ratio is now a whopping 290 to 1.⁷ Evidence suggests that the dramatic increase in CEO salaries is connected to the widening gender pay gap for more educated women. These trends are not unrelated. The gender-based wage gap and the slow advancement of women in the highest levels of different professions⁸ relate to the structure of

3. See, e.g., James Anthony, *Blue Collar Job Blues—Are We Losing Our Blue Collar Workers*, FINANCES ONLINE (Nov. 12, 2024), <https://financesonline.com/blue-collar-blues-are-we-losing-our-blue-collar-workers/> [https://perma.cc/UN22-68LJ]; Abe Unger, *What's Happening to the Blue Collar Male and Why Does It Matter*, CENTRE FOR MALE PSYCHOLOGY (Oct. 5, 2021), <https://www.centreforalepsychology.com/male-psychology-magazine-listings/whats-happened-to-the-blue-collar-male-and-why-does-it-matter> [https://perma.cc/925B-UFUZ].

4. *Women in the Workforce: United States*, CATALYST (Aug. 29, 2022), <https://www.catalyst.org/insights/2022/women-in-the-workforce-united-states> [https://perma.cc/UZB5-34LP].

5. Elise Gould & Katharine deCourcy, *Gender Wage Gap Widens Even as Low-Wage Workers See Strong Gains*, ECON. POL'Y INST. (Mar. 29, 2023), <https://www.epi.org/blog/gender-wage-gap-widens-even-as-low-wage-workers-see-strong-gains-women-are-paid-roughly-22-less-than-men-on-average/> [https://perma.cc/3BH6-FM3Z].

6. Amanda Hindlian, Sandra Lawson, Sonya Banerjee & Hui Shan, *Closing the Gender Gaps 2.0: Fresh Data Show More Work to Do*, GOLDMAN SACHS (Oct. 23, 2019), https://www.goldmansachs.com/pdfs/insights/pages/gender-pay-gap-2_0-f/report.pdf [https://perma.cc/F3F3-AGFW].

7. Josh Bivens, Elise Gould & Jori Kandra, *CEO Pay Declined in 2023*, ECON. POL'Y INST. (Sept. 19, 2024), <https://www.epi.org/publication/ceo-pay-in-2023/> [https://perma.cc/U4K4-CCAX].

8. See, e.g., Alice A. Tolbert Coombs & Roderick K. King, *Workplace Discrimination: Experiences of Practicing Physicians*, 97 J. NAT'L MED. ASS'N. 467, 470 (2005) (reporting survey responses regarding female physicians and gender discrimination in "the form of career advancement obstacles and disrespectful or punitive actions."); Shruti Rana, *Promoting Women's Advancement in the Judiciary in the Midst of Backlash: A Comparative Analysis of Representation and Jurisprudence in Key Domestic and International Fora*, 127 DICK. L. REV. 693 (2023); Meredith Somers, *Women Are Less Likely than Men to Be Promoted*, MASS. INST. TECH. SLOAN SCH. MGMT. (Apr. 12, 2022), <https://mitsloan.mit.edu/ideas-made-to>

workplaces and various practices in the new economy that promote the exorbitant increase in CEO pay.

This is the heart of the book: the new economy celebrates those who can break the rules and get away with it. Companies have embraced a “winner-take-all” (WTA) tournament in which the corporate executives prize certain qualities among their managers and promote fierce competition among managers who are then rewarded for delivering what the CEOs want. These CEOs are using the companies as essentially extraction devices for their own wealth. Take the situation of the richest person in the world. In April of 2024 Tesla’s board of directors sought approval for a \$47 billion compensation package for CEO Elon Musk.⁹ Within less than two weeks, and on a much quieter scale, Tesla announced it needed to terminate about 14,000 workers (roughly 10% of its global workforce).¹⁰ One month later, Tesla announced a recall of more than one hundred thousand vehicles because of product safety concerns—these were quality issues Musk admitted he ignored in his efforts to beat production expectations.¹¹ When the Delaware Chancery Court ruled that the board of directors breached its fiduciary obligations by approving this compensation plan because Musk essentially controlled the board, Musk shifted Tesla’s home state to Texas.¹²

The winner-take-all economy that we describe in *Fair Shake* is significantly gendered. In WTA workplaces, managers use

matter/women-are-less-likely-men-to-be-promoted-heres-one-reason-why
[https://perma.cc/BSM5-ZT5K].

9. Jack Ewing, *Tesla Seeks to Revive Musk’s \$47 Billion Pay Deal After Judge Says No*, N.Y. TIMES (Apr. 17, 2024), <https://www.nytimes.com/2024/04/17/business/tesla-elon-musk-pay.html> [https://perma.cc/DV3R-ZT6T].

10. *Tesla Announces It’s Laying Off More Than 10% of Its Global Workforce*, NPR (Apr. 16, 2024), <https://www.npr.org/2024/04/16/1244991217/tesla-announces-it-s-laying-off-more-than-10-of-its-global-workforce> [https://perma.cc/5ZLX-TAXH].

11. Jeremy Tanner, *Tesla Recalls 125K Vehicles from Four Models over Safety Issues*, KGET (May 31, 2024), <https://www.kget.com/news/business/product-recalls/tesla-recalls-125k-vehicles-from-four-models-over-safety-issue/> [https://perma.cc/85QV-HNBN]; see Chris Isidore, *Elon Musk Admits Tesla Has Quality Problems*, CNN (Feb. 3, 2021), <https://www.cnn.com/2021/02/03/business/elon-musk-tesla-quality-problems/index.html> [https://perma.cc/AK5N-4AEQ].

12. See *Tornetta v. Musk*, 310 A.3d 430, 497 (Del. Ch. 2024); Natasha Solo-Lyons, *Your Evening Briefing: Elon Musk Officially Shifts Tesla’s Incorporation to Texas After Vote*, BLOOMBERG LAW (June 14, 2024), <https://www.bloomberg.com/news/newsletters/2024-06-14/bloomberg-evening-briefing-elon-musk-moves-tesla-incorporation-to-texas> [https://perma.cc/ZM4A-QE6G].

competition to pit people against each other in order to achieve whatever short term ends the managers want and they care very little for employees who are harmed in the process.¹³ Managers play favorites: “they identify with the workers who have the same traits they see in themselves, and they ‘exclude or harass historically disadvantaged groups,’ including men who are not traditionally masculine or who won’t play the same games.”¹⁴ In these WTA workplaces, women are excluded, marginalized, and often harassed.

Practices in the winner-take-all corporate sphere are those that are linked to bullying, hostility, and sexist climates that increase gender disparities at work.¹⁵

Naomi: I will say that as disappointed as we were that we could not call the book “Shafted,” another reason for calling it “Fair Shake,” was to start—end—on something of a more hopeful note by saying that there is a reconstructive project. There is a lot of doom and gloom, but it’s not all doom and gloom. So, at the end of the book, we do have proposals for structural changes, ranging from changing the marginal tax rate to promoting community. And, in interviews and podcasts, we have also developed suggestions for what individuals can do in their own workplaces, including the importance of mentoring.¹⁶

I also want to go back a little bit to the origin story. We approached this book from different, but overlapping, perspectives: Nancy teaches employment discrimination, Nancy and June co-authored a wonderful piece in the *Minnesota Law Review* that helps set the stage for some of what became the book,¹⁷ and then, as Nancy generously said, June and I have written numerous articles

13. Jack Welch, *Rank-and-Yank? That’s Not How It’s Done*, WALL ST. J. (Nov. 14, 2013), <https://www.wsj.com/articles/8216rankandyank8217-that8217s-not-how-it8217s-done-1384473281> [<https://perma.cc/DD8Y-QT67>] (bragging that his management system, dubbed “rank and yank,” could get employees to do whatever management wanted); see also Richard Bernstein, *Books of the Times; Winning the Business Game with a Few Basic Principles*, N.Y. TIMES (Sept. 14, 2001), <http://www.nytimes.com/2001/09/14/books/books-of-the-times-winning-the-business-game-with-a-few-basic-principles.html> [<https://perma.cc/7P63-UAXG>] (describing Welch’s emphasis on cost-cutting at the expense of workers).

14. CAHN ET AL., *supra* note 2, at 78.

15. Jennifer L. Berdahl Peter Glick & Marianne Cooper, *How Masculinity Contests Undermine Organizations, and What to Do About It*, HARV. BUS. REV. (Nov. 2, 2018), <https://hbr.org/2018/11/how-masculinity-contests-undermine-organizations-and-what-to-do-about-it> [<https://perma.cc/7QJB-VC6R>].

16. See, e.g., Emma Goldberg, *They Say It’s a Woman’s World Now. The Workplace Tells a Different Story*, N.Y. TIMES (July 19, 2024), <https://www.nytimes.com/2024/07/19/books/review/women-workplace-business-books.html> [<https://perma.cc/9R9T-9KXM>].

17. Carbone & Levit, *The Death of the Firm*, *supra* note 1.

and books that bring together the family, gender, and the economy.¹⁸ So, the book brings together our overlapping and differing areas of expertise. The combination of the three of us builds on each of our individual strengths. I think we've come to that realization through working on the book, related articles, and publicity for the book. We started it at a time when Hillary Clinton was running for President, just to give you a little bit more of an idea of the gestation of the book. We thought, "Oh, gee! If Hillary becomes President, maybe what we're writing will just be a wonderful history, and everything will have changed."

That—obviously—is not what happened. To put where we are in perspective, the book looks at the origins of the progress narrative. There was, indeed, a trajectory of decreases to the gender pay gap, and the enactment in the early 1960s of the Equal Pay Act, and Title VII of the Civil Rights Act appear to have made a difference. Our question was, why did progress stall?¹⁹ What had changed? Women have always been expected to be caretakers, and that hasn't changed. Notwithstanding that, there was an upward improvement over the course of several decades, but the rate of changing became much slower, beginning in 1990.²⁰ So, something beyond expectations for women's roles had changed, and it was answering that question of what changed that really got us moving forward eight years ago as we started writing this book.

Matthew: In terms of the relationship between what you're talking about and the job market, the standard non-malevolent explanation for differential employment outcomes is that women have to take a break for caregiving at home, and women choose

18. See, e.g., Cahn & Carbone, *supra* note 1; Naomi Cahn & June Carbone, *It's Still About the Economy: A Response to "The Republican Marriage Advantage"*, IFS BLOG (Dec. 3, 2024), <https://ifstudies.org/blog/its-still-about-the-economy-a-response-to-the-republican-marriage-advantage-> [<https://perma.cc/W3N5-UVHW>]; Naomi Cahn & June Carbone, *Supporting Families in a Post Dobbs World: Politics and the Winner Take All Economy*, 101 N.C. L. REV. 1549 (2023); June Carbone & Naomi Cahn, *The Triple System of Family Law*, 2013 MICH. ST. L. REV. 1185 (2013); Naomi Cahn & June Carbone, *Which Ties Bind: Redefining the Parent-Child Relationship in an Age of Genetic Certainty*, 11 WM. & MARY BILL RTS. L. REV. 1011 (2003).

19. See, e.g., Paula England, Andrew Levine & Emma Mishel, *The Gender Revolution Is Stalling—What Would Invigorate It?*, BROOKINGS INST. (2020), <https://www.brookings.edu/articles/the-gender-revolution-is-stalling-what-would-reinvigorate-it> [<https://perma.cc/H85E-JWM3>]; Martha J. Bailey, Thomas E. Helgerman & Bryan A. Stuart, *How the 1963 Equal Pay Act and 1964 Civil Rights Act Shaped the Gender Gap in Pay*, NAT'L BUREAU OF ECON. RESEARCH (Dec. 2023), <https://www.nber.org/papers/w31332> [<https://perma.cc/FBY6-P9VQ>].

20. England et al., *supra* note 19.

different industries or types of jobs on their own. You all break that apart and say, that's not what's going on here. I'm just wondering to what extent you have identified the unfair job outcomes feeding into or fed by cultural patterns, some of which we're seeing in this election just in the last few weeks, especially as to the role of men in society and the role of masculinity in society?

June: One of the things that surprised us was that we expected to see lots of different kinds of stories working to women's disadvantage, childcare, the low-wage workforce at Walmart, finance (which has always been notorious), and we expected that there would be a number of different factors contributing to the outcomes. But we found every chapter was the same story. We started digging down, for example, on the story of a woman, Lauren Martinez, who had been a manager in a dental office when Covid hit.²¹ She had a newborn, and her older child was taking care of the newborn. The older child got Covid, and Martinez ended up being fired, arguably in violation of the Covid protections that Congress had passed.²² We thought, "This is going to be a different story. It's a dental office, so maybe it was a story of decentralization, a limited number of workers, a dentist who felt squeezed by the pandemic." But no, the story is one about private equity. Aspen Dental, a private equity firm, dominates the dental management industry nationally, and the decision to fire Martinez was not made in Florida, where the dental office was located, but in Aspen's human resources office in New York. Monthly profits were the key driver in Aspen's calculations. We were stunned. We got off the phone with Martinez, and one of our collaborators looked at us and said, "Did you see that coming?" It's the same story in every other chapter.

So, what is that story? I think Silicon Valley in the 90s with the dot-com bubble captures it quite nicely. We used to have tech innovation with federal oversight, with many of the initial innovations funded by the Defense Department.²³ The government would finance universities like Stanford, and phone call toll rates funded Bell Labs, AT&T's private research arm. By the 90s, the source of the funding had shifted from public sources to venture capital, with the 90s boom, touching off an intense competition to

21. CAHN ET AL., *supra* note 2, at 142–58.

22. See *Martinez v. Aspen Dental Mgmt., Inc.*, No. 2:20-CV-545-JES-MRM, 2022 WL 523559, at *9 (M.D. Fla. Feb. 22, 2022) (alleging violation of the Emergency Family and Medical Leave Act).

23. NATIONAL RESEARCH COUNCIL, MAXIMIZING U.S. INTERESTS IN SCIENCE AND TECHNOLOGY RELATIONS WITH JAPAN 48 (1997) (describing the role of defense spending in the early growth of science and technology in the United States).

fund the next hot product. All the incentives were to grow quickly and massively. My husband and I were living in Silicon Valley at the time, and you could get a sense of the boom when you went into expensive restaurants in San Francisco or Palo Alto, and you couldn't get a table. You could sense the excitement. You could see young engineers moving to California because they wanted to be a part of the tech boom. Looking at the shift in culture, the first shift is the difference in selection: venture capitalists, unlike university research labs, select for confidence, dominance, narcissism, and drive.²⁴

Venture capitalists, who expect most of the start-ups they fund to fail, are looking for something that scales up very quickly. This gives you a platform that allows you to dominate a whole new sector of industry that may not have existed before. Mark Zuckerberg, the founder of Facebook, described the environment as “move fast and break things,”²⁵ capturing the idea that the successful will displace existing industries. Uber is the poster child for this mindset. After all, it outflanked the taxi companies, in part by flouting the laws that apply to taxi companies.²⁶ Uber also had a competitive advantage, in part, because it could operate more cheaply by treating its drivers as independent contractors. Growing quickly (and having a great app) made it possible to recruit a loyal customer base that opposed taxi company efforts to fight back. Venture capital firms, in selecting start-up founders, look for individuals like Uber CEO Travis Kalanick, whose biggest strength was described as the fact that he would “run through a wall to accomplish his goals.”²⁷ It turns out that when you select for those qualities, you're

24. Hayden Field, *98 Percent of VC Funding Goes to Men. Can Women Entrepreneurs Change a Sexist System?*, ENTREPRENEUR (Oct. 23, 2018), <https://www.entrepreneur.com/article/315992> [<https://perma.cc/LZ39-4C9Q>]; see also CAHN ET AL., *supra* note 2, at ch. 4, ch. 6.

25. See, e.g., Enrique Dans, *When Companies Move Fast, They Do More than Break Things*, MEDIUM (Nov. 8, 2023), <https://medium.com/enrique-dans/when-companies-move-fast-they-do-more-than-break-things-770740e248c2> [<https://perma.cc/T5NC-PNFF>].

26. Edward Ongweso, Jr. & Jason Koebler, *Uber Became Big by Ignoring Laws (and It Plans to Keep Doing That)*, VICE NEWS, (Sept. 11, 2019) <https://www.vice.com/en/article/8xwxyv/uber-became-big-by-ignoring-laws-and-it-plans-to-keep-doing-that> [<https://perma.cc/EE4Q-TJFT>].

27. Eric Siu, *10 Lessons Startups Can Learn from Uber's Growth*, SINGLE GRAINBLOG, (Sept. 26, 2022), <https://www.singlegrain.com/blog-posts/business/10-lessons-startups-can-learn-ubers-growth> [<https://perma.cc/2RK3-224R>]; Mike Isaac, *How Uber Got Lost*, N.Y. TIMES (Aug. 23, 2019), <https://www.nytimes.com/2019/08/23/business/how-uber-got-lost.html> [<https://perma.cc/E5JQ-5278>].

also selecting for people who feel entitled to pay themselves handsomely, have wild parties, and open beer kegs on the floor of many Silicon Valley startups, and you're selecting for a personality type that doesn't treat women well.²⁸

Naomi: Also, in terms of seeing the same story in every sector of the economy, we start the book with the story of Betty Dukes, a Walmart greeter.²⁹ One of the things, as June said, in anticipation of your question about what surprised us, was that we were seeing patterns in the case of the dental company worker. But beginning the book with Betty Dukes, showed how foundational these 'masculinity contest cultures' are and the pervasiveness of this new corporate culture and mindset.

Claire: I want to return to the subject of lawbreaking. You say, reasonably, that Uber is in the business of breaking laws, and of course, so is Airbnb.³⁰ But so are some other companies that many people of a certain demographic might regard more sympathetically. Marijuana companies are also in the business of breaking the law, as are companies trying to ship abortion pills. I have two questions about this, one more consistent with your book, and one more of a detour. The first one is: is there some sort of interesting historical-cyclical perspective in which law-breaking sometimes becomes the next frontier? Certainly, in finance, there are booms and busts. After a boom, where investors are trying to do the best they can—high returns, but high risk, AKA, “flight to yield”—there's a bust. After the bust comes the “flight to quality,” where everyone is cautious and investors are happy with more certain, but lower, returns. At a certain point, investors' memories start to fade, and they again look for higher returns, accepting higher risk. That's followed by another bust, and so it continues.³¹ Would you say that the situation you describe with lawbreaking is similar? That there's a cycle where people flee to yield-risky law-breaking strategies, but then flee to quality, a more conservative follow-the-law perspective, followed by . . . ? If so, where are we in the cycle? The other question is: would you make a distinction between different types of law-breaking – for instance, between, as some might characterize it, law-breaking

28. See Berdhal et al., *supra* note 15.

29. CAHN ET AL., *supra* note 2, at 21–41.

30. See generally Elizabeth Pollman & Jordan M. Barry, *Regulatory Entrepreneurship*, 90 S. CAL. L. REV. 383 (2017) (describing businesses where contesting and changing regulation is part of their business plan).

31. See Claire A. Hill, *Why Didn't Subprime Investors Demand a (Much Larger) Lemons Premium?*, 74 L. & CONTEMP. PROBS. 47, 62 (2011).

intended to do an end-run around consumer-protective regulation and law-breaking to get around outdated or unjust laws?

Nancy: I'll take the easy question. We have seen this from a historical perspective, and it relates to the next article that the three of us are writing on the gender of law. I'm sure everyone in the room is familiar with the history of robber barons and industrialists, who broke as many laws as they could. Then there was a cycle back to regulation with FDR saying that it was not right and the development in the 1950s of the "organization man" (whom we really think was a woman!). The organization man, although he wore gray flannel suits and probably had a wife at home and the only women in the firm were in the secretarial pool, had an extraordinary amount of loyalty and was committed to the corporation and cared for the people around him.³²

We've seen this movement from competition to cooperation with periods of rampant individualism and lawlessness and then restraining and returning to the rule of law, which is, of course, one of the things that we advocate. We've seen the cycles throughout history. Where are we in the cycle? Read your morning newspaper.

June: There's a quote from Frédéric Bastiat, a French economist and member of the French National Assembly, who said, "When plunder becomes a way of life for a group of men in a society, over the course of time they create for themselves a legal system that authorizes it and a moral code that glorifies it."³³ What Bastiat described is not just a few pushing the boundaries of what they can get away with, or the type of business cycle that produces booms and busts, with course corrections along the way. Instead, it involves a wholesale change that defines an era. All of the companies we looked at were judged by how well their share prices performed on the stock markets, and most of the "winners" ultimately defeated what are supposed to be the guardrails in place to prevent what they did. For Walmart, the ultimate victory was crushing unionization efforts, a victory that came when George W. Bush brought an end to the enforcement efforts that the NLRB had brought against the company;³⁴ the defeat of unionization made Walmart's domination of the retail industry—and its ability to treat

32. CAHN ET AL., *supra* note 2, at 45-47.

33. *Frédéric Bastiat Quotes*, GOODREADS, <https://www.goodreads.com/quotes/6862167-when-plunder-becomes-a-way-of-life-for-a-group> [<https://perma.cc/K8MX-FJE7>].

34. NELSON LICHTENSTEIN, *THE RETAIL REVOLUTION: HOW WAL-MART CREATED A BRAVE NEW WORLD OF BUSINESS* 136-37 (2009).

wages and hours fines as simply the cost of doing business—possible. In most of the other chapters, financialization has encouraged an emphasis on producing the numbers Wall Street rewards, whether the production numbers at Tesla, met by ignoring product quality concerns, or earnings management at GE. Many of these practices are illegal, but the Supreme Court has made it systematically harder to prosecute white collar crimes and while many of the companies do pay fines, the total dollar amounts are small in comparison with the size of the gains to the company from the practices. The odds of accountability for the executives who engineered these practices is small. And this in turn changes the measure of what constitutes success. I like to describe it this way: George Romney and Mitt Romney, father and son, both owned major companies, and both were governors of important States. They both ran for President, bragging about their accomplishments as businessmen. For George, the father, the accomplishment was the health of his company, American Motors. For Mitt, no one much cared about his private equity fund, Bain Capital; his status came from the size of his personal fortune, much of it in the Cayman Islands to escape tax liability. Troy Paredes has written a piece summarizing the psychological research, concluding that your worth depends on the size of your bonus. Corporate boards, in turn, think, “If we’re that good, we have to pay our CEO more than other companies.”

So, you have a shift in what confers prestige from the health of the institution to the individual who outshines others, with the result that individual wealth confers prestige in and of itself. That’s a shift. It’s a shift that happened in the Gilded Age and is happening now. The last time it ended in two world wars and the Great Depression.

Naomi: I’ll try to answer the hard question. I think that when we’re talking about your example of abortion pills, there’s also a question between breaking the law versus testing the law. So, it’s about seeing how far you can go with what is legal. For example, the wage theft that Walmart engaged in was clearly illegal.³⁵ Shipping abortion pills is not illegal—yet.³⁶ Tax strategies to

35. See PHILIP MATTERA, GRAND THEFT PAYCHECK: THE LARGE CORPORATIONS SHORTCHANGING THEIR WORKERS’ WAGES 8 (2018), https://goodjobsfirst.org/wp-content/uploads/docs/pdfs/wagetheft_report_revised.pdf [<https://perma.cc/G5PC-FMY6>] (“The employer that has paid far and away the most in wage theft penalties is Walmart, with more than \$1.4 billion in fines and settlements since 2000.”).

36. Naomi Cahn & Sonia Suter, *Supreme Court Unanimously Concludes That Anti-Abortion Groups Have No Standing to Challenge Access to Mifepristone – But the Drug Likely Faces More Court Challenges*, THE CONVERSATION (June 13, 2024),

minimize the estate and gift taxes are not illegal, and creative lawyers have developed the strategies that test the applicable regulations.³⁷ In the book, we see instances where breaking the law, in fact, leads to much greater inequality and anti-unionization, which is against the collective good. So, a lot of what we focus on, and this gets into the reconstructive project, is what about the collective good?

Claire: I'm going to briefly respond, and then I'm going to turn it over to Matt. I do want to take the other side of what you're saying with respect to breaking the law, and I say this as someone who's very much a moderate. I think that one can defend even the law-breaking that can be seen as an end-run around consumer-protective regulation. Not all such law-breaking, of course, but some of it—even, to some extent, Uber and Airbnb. Consumer-protective regulation can be cumbersome, inartful, and excessive; some end-runs might serve the greater good. I think that it's very hard, as a principled matter, to distinguish between when the law completely gets it right and when it really doesn't, and when we're in a more complicated place. And I think reasonable people can disagree about the value of "pushing the envelope." Uber is certainly a complicated case on many fronts: there are many different constituencies—some are better off, some are worse off. In sum, I'd divide the universe into three buckets: 1) Law-breaking that is just wrong and bad, like wage theft, such that nobody could defend it; 2) law-breaking that some could defend on grounds that the law is unjust or otherwise bad; and 3) The complicated middle ground, where it depends in particular cases about who's benefiting, who's being hurt, ancillary effects and precedents set, and, perhaps, the respective parties' motives.

June: The reason I want to respond to this question is that my long story about the difference between Mitt Romney and George Romney captures it. We're describing a system, a system-level

<https://theconversation.com/supreme-court-unanimously-concludes-that-anti-abortion-groups-have-no-standing-to-challenge-access-to-mifepristone-but-the-drug-likely-faces-more-court-challenges-232453> [<https://perma.cc/2BGX-VMS2>]; Naomi Cahn & Sonia Suter, *Medication Abortion Could Get Harder to Obtain—Or Easier: There's a New Wave of Post-Dobbs Lawsuits on Abortion Pills*, THE CONVERSATION (Feb. 9, 2023), <https://theconversation.com/medication-abortion-could-get-harder-to-obtain-or-easier-theres-a-new-wave-of-post-dobbs-lawsuits-on-abortion-pills-198978> [<https://perma.cc/DNH6-8F82>].

37. See, e.g., Jesse Drucker, *How One of the World's Richest Men Is Avoiding \$8 Billion in Taxes*, N.Y. TIMES (Dec. 5, 2024), <https://www.nytimes.com/2024/12/05/business/nvidia-jensen-huang-estate-taxes.html> [<https://perma.cc/JED8-KFZU>].

change, and a system-level change from identifying success with the strength of institutions to a system of personalized power in which what counts is the results, however they are achieved. When you do that, some results are good. I admire Musk's supercharging the electric vehicle industry, even if some of the means he used to produce results violated the securities and anti-discrimination laws.³⁸ I think Walmart is an extraordinarily successful company that, when it hired women in the Arkansas Hills in the 60s, produced win-win results (the women valued the jobs even at the low pay Walmart offered and even when the company failed to pay the wages mandated by federal wage and hour protections). It is possible to say all that. But when you then look at the dynamic of a society that says you can break the rules and get away with it, it then becomes possible to become a billionaire who, whether or not it is possible to buy the Presidential election, can definitely buy every election in Arkansas. When you get to that point, you skew society, and you destabilize society for a number of reasons.

Part of the change we describe in the book is how that creates a system that selects for narcissists, it turned out that narcissistic CEOs were not worse. What they did was produce more big wins and more big losses.³⁹ As a society, when you concentrate wealth in the hands of a few winners who are then excused for all their flaws, you skew everything else.⁴⁰

Nancy: I agree with Claire that there are many different buckets and that nuances are hugely important. One of the structures we put in the book was the idea of a triple bind. First, if women don't compete on the same terms as men, they lose because they're just not in the game. The second leg of the triple bind was that when women do try to compete on the same terms as men, they are punished more harshly for their sharp elbows and ethical misdeeds.⁴¹ When scandals need scapegoats, women are very convenient ones. We looked at the work of Mark Egan; he wrote a wonderful article that many of you may have read, entitled "When

38. SEC, *Elon Musk Settles SEC Fraud Charges; Tesla Charged With and Resolves Securities Law Charge* (Sept. 29, 2018) <https://www.sec.gov/news/press-release/2018-226> [<https://perma.cc/J5FA-UZSS>].

39. See Arijit Chatterjee & Donald C. Hambrick, *It's All About Me: Narcissistic Chief Executive Officers and Their Effects on Company Strategy and Performance*, 52 ADMIN. SCI. Q. 351 (2007) (describing how narcissistic leaders produce more big gains and more big losses, averaging out to about the same performance).

40. See Donald C. Langevoort, *Resetting the Corporate Thermostat: Lessons from the Recent Financial Scandals About Self-Deception, Deceiving Others and the Design of Internal Controls*, 93 GEO. L.J. 285, 288 (2004) (describing the psychology associated with breaking the rules).

41. CAHN ET AL., *supra* note 2, at 14-15.

Harry Fired Sally.”⁴² It has a great article title, but not quite at the level of “When Mother Jones Meets Gordon Gecko,”⁴³ but still, it’s up there. His thesis was that women who commit misconduct in finance are more likely to be fired and less likely to be rehired than men. He looked at the Wells Fargo circumstance and said that when there were examinations and investigations into the opening of excess accounts, women suffered 55% of employment separations, and when men committed the same conduct, 46% experienced employment separations.⁴⁴ So, it’s not just good behavior, bad behavior. It’s what happens along gender dimensions when there is bad behavior, and that’s one of the things we address in the book.

Naomi: Our book is not about breaking the law. As both June and Nancy have said, it’s about a system. I have taught a course on estate planning with a partner at a law firm. At the end of our course, our students turn to us and say, “Do you mean everything that we learned this semester is legal?” This is how wealthy people are able to retain their wealth. They hire estate planners to use the existing law.⁴⁵ So, the book is not about breaking the law; it’s about what happens with this winner-take-all mentality that we identify.

Matthew: It’s just such a fascinating book, and there’s so much to ask. The possibility of a Freudian analysis is one thing I’m curious about. This is another somewhat far-out example, but I’m thinking about how the Vikings of yore were stereotypically known for pillaging and lawlessness, and now the Scandinavian societies are some of the most Democratic Socialist countries in the world and very communitarian. How do you go about transitioning from a system where we find ourselves locked into this winner-take-all system? How do you transition out? One of the things you talk about is fighting back. How can people fight back?

42. Mark Egan, Gregor Matvos & Amit Seru, *When Harry Fired Sally: The Double Standard in Punishing Misconduct*, (Nat’l Bureau of Econ. Rsch., Working Paper 23242, 2021), https://www.nber.org/system/files/working_papers/w23242/w23242.pdf [<https://perma.cc/AB72-HFKA>].

43. Matthew T. Bodie, *Mother Jones Meets Gordon Gekko: The Complicated Relationship Between Labor and Private Equity*, 79 U. COLO. L. REV. 1317 (2008).

44. Egan et al., *supra* note 42; *see also id.* at 16 (“Relative to male advisers’, the decline in reemployment opportunities following misconduct is 30% larger for female advisers.”).

45. Andrew Ross Sorkin, *Tax the Rich? Here’s How to Do It (Sensibly)*, N.Y. TIMES (Feb. 25, 2019), <https://www.nytimes.com/2019/02/25/business/dealbook/taxes-wealthy.html> [<https://perma.cc/VW47-SDR3>] (noting the estate tax system has “loopholes that allow wealthy Americans to blatantly (and legally) skirt taxes”).

June: Well, I want to talk about Scandinavia, having spent three months in Sweden. What I was struck by was the friends we got to meet there were all saying how Sweden is busy becoming a capitalist society with greater inequality and greater hostility toward immigrants. But when we looked at it, it looked a lot like the United States in the 1950s. We are sometimes warned about nostalgia, but I think is worth looking at the 50s, and what produced it. Here's my answer. People talk about the Greatest Generation's shaping events of the Depression and World War II. I think the shaping events of the Depression and World War II were threefold. First, Congress enacted marginal tax rates, on average, for the entire period from 1940 into the 60s when Kennedy began to lower them.⁴⁶ Second, the New Deal decision to make unions the base of the Democratic party, locking in a shift in the balance of power in the country. Third, the two world wars and the Great Depression had weakened the power of wealthy capitalists to prime the system on their own behalf, allowing a more egalitarian society to emerge, characterized by much lower levels of income inequality. A large part of the answer with respect to Scandinavia is that it, too, for a longer period than in the United States, also had relatively high marginal tax rates, higher levels of social services than in the United States, and a relatively egalitarian society. In Scandinavia, like the United States, those factors have begun to break down, producing greater inequality.

While economists certainly disagree about taxing the rich,⁴⁷ an important consequence of high marginal tax rates is that the competition for status becomes channeled into institutions. The bragging rights in the fifties were: "My company is bigger than your company," "My company is more prestigious than your company because it has Bell Labs." There's no point in saying, "My bonus is bigger than your bonus," because if it's taxed at an 80% marginal rate, the size of the individual bonus becomes less important. So, what happened was the channeling of competition into different arenas that were less destructive.

Of course, the United States also emerged from World War II as the only major country in the world whose industrial base had not been destroyed. Companies within the United States enjoyed cartel-like profits and the ten largest companies in the United

46. Marc Linder, *Eisenhower-Era Marxist-Confiscatory Taxation: Requiem for the Rhetoric of Rate Reduction for the Rich*, 70 TUL. L. REV. 905, 923 (1996).

47. See Paul Krugman, *The Economics of Soaking the Rich*, N.Y. TIMES (Jan. 5, 2019), <https://www.nytimes.com/2019/01/05/opinion/alexandria-ocasio-cortez-tax-policy-dance.html> [<https://perma.cc/66KT-LSBX>].

States in 1960 were the same as the ten largest companies in 1910, producing a great deal of economic stability.⁴⁸ That's not true today. So, if you think of it as a system, then you say that equality produces greater quality because we are all in it together. Inequality produces people who rewrite the tax code to make sure they keep it all. We've gotten rid of the rule against perpetuities and trusts. Why? Because the new generation of oligarchs wants to control their wealth. It is legal. That's Bastiat.

Naomi: We had many long discussions and potential disagreements while writing the book. One of the long discussions was about what we mean when we hearken back to the 50s, and the organization man, because the organization man was a white man. Women who worked, could essentially serve as secretaries or housekeepers.⁴⁹ And then there's the Black racial wealth and income gap.⁵⁰ So, when we say, "Bring back the 50s," what we're talking about is bringing back some (but certainly not all) of the *values* identified with the organization man. Those values today are actually, perhaps ironically, identified with women. To get back to your question, part of the reconstructive project is valuing community, unions, loyalty, stability, and equality rather than *per se* going back to the 50s.

June: I was radicalized by this project. We started off writing a book about how women are losing here, there, and everywhere. We sometimes referred to the summary as a report card on women. Our initial draft looked at Title VII cases, the persistence of what

48. For a description of the importance of institutions in the fifties compared with today, see Carbone & Levit, *The Death of the Firm*, *supra* note 1.

49. U.S. DEPT' LAB. WOMEN'S BUREAU, WOMEN'S BUREAU BULLETIN 253, CHANGES IN WOMEN'S OCCUPATIONS 1940-1950, (1954), https://fraser.stlouisfed.org/files/docs/publications/women/b0253_dolwb_1954.pdf [<https://perma.cc/6SBK-EE7U>]; Cecilia A. Conrad, *Racial Trends on Labor Market Access and Wages: Women*, in AMERICA BECOMING: RACIAL TRENDS AND THEIR CONSEQUENCES: VOLUME II 128 (Nat'l Acads. of Scis., Eng'g, & Med. ed.) (2001), <https://nap.nationalacademies.org/read/9719/chapter/7#127> [<https://perma.cc/9G6X-82L8>] ("Before 1960, a White woman without a college degree could find employment as a secretary, a sales clerk, or as a blue-collar operative. A Black woman, particularly in the South, had one option—domestic service. In 1960, more than 33 percent of all Black women worked as domestic servants ('private household workers'); only 3.2 percent of White women held these jobs . . .").

50. See, e.g., Patrick Bayer & Kerwin Kofi Charles, *Divergent Paths: A New Perspective on Earnings Differences Between Black and White Men Since 1940*, 133 Q. J. ECON. 1459, 1472 fig. 3, 1473 fig. 4 (2018); Stephanie Bornstein, *Confronting the Racial Pay Gap*, 75 VAND. L. REV. 1401, 1460 (2022); Ellora Derenoncourt, Chi Hyun Kim, Moritz Kuhn & Moritz Schularick, *Wealth of Two Nations: The U.S. Racial Wealth Gap, 1860-2020*, 139 Q. J. ECON. 693 (2024) (the racial wealth gap was 7:1 in the 1950s).

seemed to be sex discrimination, and studies of implicit bias. But at some point, that perspective stopped making sense. If you go the era in the 60s when Congress passed the anti-discrimination laws, there was relative economic equality among white men. The question was, how do women gain a foothold? How do racial minorities win a seat at the table? Equality was the benchmark because the goal was to acquire the benefits white men had. If I were to give my law review version of the book, it would talk about how almost all of the law of Title VII is about measuring equality, that is, about measuring whether those who had been excluded had gained access to formerly white male workplaces.

The point of radicalization for me came in realizing that in today's world, there is no equality between white men or anyone else. You're talking about hierarchy and radical inequality, even among the well-off. Women have lost ground in a variety of ways, but, in relative terms, they are not the biggest losers in the new economy – that honor belongs to men without college degrees who no longer have access to the well-paying unionized jobs.⁵¹ Instead, when you're talking about radical inequality and asking how women are doing, we came to the conclusion in our book that women are the canaries in the coal mine; they are inside the workplace today rather than outside of it and their well-being is a measure of how well-run, fair, and transparent an organization is. We concluded the goal of the fight for women's equality in the workplace should not be: "How can we make sure that when Carrie Tolstedt commits fraud at Wells Fargo she can get away with it to the same degree as the men sitting next to her?" Once you start thinking in terms of a radically unequal society, the question shifts from equality to abuse of power. The symbol of that is #MeToo, not Betty Dukes' loss on employment discrimination in front of the Supreme Court in a five to four vote.⁵²

Nancy: We often get asked, "What should women do? Should women lean in? Should women lean out?" And our answer is, "Change the system, not the women." And I'd really like to get audience participation at this point on what can be done to move away from a system with high stakes bonus systems, et cetera. What can be done to move away from companies that pit employees

51. See June Carbone & Clare Huntington, *Fatherhood, Family Law, and the Crisis of Boys and Men*, 124 COLUM. L. REV. 2153, 2171–73 (2024) (describing relative declines in male earning and employment and reporting that the median wage of men without a college degree nearly fell in half after the late 70s, and the racial wage gap between white men and Black men increased).

52. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011).

against each other? We just danced in some of the areas. For example, we looked at shareholder derivative litigation and said, “Hey, can you sue the board instead of using Title VII, which has damage caps that haven’t changed in more than three decades?”

What do you think can be done to move from a winner-take-all system in a winner-take-all economy to a system that provides opportunities for equality, cares about employees, and cares about the well-being of the family? In other words, it goes back to some of the values that we’re talking about from the 50s.

Claire: Let me yet again offer a slightly contrarian perspective: might the trajectory be one-way, and inexorable? Many big law firms had “lockstep” compensation, where people were compensated based on seniority. At a certain point, some firms, and then most firms, and then almost all firms, moved to “eat what you kill,” lawyers being compensated based on the business they had brought to the firm. The latter system allows for enormous disparities in lawyer pay.⁵³ Maybe there will be a move back towards more collective compensation schemes—that is, maybe the phenomenon is cyclical—although the trajectory I am aware of is one way: from more collective (lockstep) to less collective (eat what you kill). Investment banks, too, have followed a similar trajectory, from more collective to less collective. Investment banks used to be organized as general partnerships, with each partner liable for the partnership’s obligations, a collective-type structure. They are now corporations— and far less collective in this respect.⁵⁴

*Q (Avner Ben-Ner): As I was reading the book, I found myself in complete agreement with just about every sentence. On the other hand, two things bothered me. Your historical analysis, as in another recent book that I loved (David Leonardt’s *Ours Was the Shining Future*⁵⁵), projects the sense the past was much better than it probably was. Things were not as rosy as implied by the discussion*

53. See generally Jacob Dougherty, Note, *Can LockStep Find Its Footing Again? Why the Lockstep Compensation Model Creates a Culture for Providing Better Legal Services*, 84 PITT. L. REV. 313 (2022); Milton C. Regan, Jr. & Lisa H. Rohrer, *Money and Meaning: The Moral Economy of Law Firm Compensation*, 10 U. ST. THOMAS L.J. 74 (2012); FINANCIAL TIMES, ‘Lockstep’ Falls Out of Step with Modern Law Firms, (Dec. 16, 2021) <https://www.ft.com/content/5bb897b9-ec87-4018-8705-589fe8ce569d> (last visited Mar. 24, 2025).

54. See generally CLAIRE A. HILL & RICHARD W. PAINTER, BETTER BANKERS, BETTER BANKS PROMOTING GOOD BUSINESS THROUGH CONTRACTUAL COMMITMENT (2015).

55. DAVID LEONARDT, OURS WAS THE SHINING FUTURE: THE STORY OF THE AMERICAN DREAM (2023).

of the present for large swaths of the population. As you know full well, unions were good for some workers but not others, and those who enjoyed wage increases in 1950s, for example, had lower standards of living, worse workplace safety, and harsher bosses than workers do today. Women's job opportunities were poor, and only a narrow slice enjoyed the suburban plenty enabled by the companies for which their "organization men" husbands worked. To say nothing of Blacks. So that's one thing that bothered me.

The other thing is, why have the changes faithfully described in the book taken place? The book seems to attribute them to changes in values, community, collectivity, and culture. I'm in complete agreement with all that. But what drives all this? Is it technology? Is it technology that allows greater mobility, faster movement of goods, rapid communications, and other changes in the economy that facilitated the rise of the phenomenon of winner-take-all? Is it that competition within organizations becoming harsher while product markets became dominated by monopolies, and oligopolies and powerful companies came to have a lot of power in labor markets?

Despite the trends that you describe in the book, there is also the other trend that if we sat here 20 or 50 years ago, there would not have been this many women, certainly not in front of the room. So there have been a lot of changes that kind of contradict that. Although I'm not disputing the statistics about wage disparities and relevant trends, there's no question that along with all these changes have been other kinds of changes. So, my biggest question that your stimulating book raises for me is, what drives all this?

June: Let's look at the three things that created the environment for change in 1980 as Jack Welch became the CEO of General Electric and ushered in what I think really is the starting point of this shift. First, when the U.S. emerged from World War II as the only industrial economy that the war hadn't decimated, it enjoyed something like a monopoly position. By the time you get to the 80s, global competition began to challenge U.S. dominance and fed the perception that American companies were bureaucratic and uncompetitive. Secondly, the combination of globalization and technological change also increased the importance of being able to respond quickly, companies that could respond nimbly could quickly boost earnings, something that became more important with the shift to shareholder value and executive compensation tied to stock options.

The third, and in my opinion, the underestimated component, is the Arab oil embargo and stagflation. That created not only a

recession, as the Federal Reserve finally dealt with it, but a sense of discontent that increased the openness to deregulation and the shift to shareholder primacy as a theory of corporate governance.⁵⁶

So, I think there are large components of the shift in corporate governance that would have happened anyway, such as automation and globalization. But when you then trace why CEO salaries skyrocketed, you find two things. There is a legal change, a legal change in how one expenses stock options.⁵⁷ And there is the change in mindset that makes share price the principal measure of success. Reinforcing this focus is also the role of activist investors, such as hedge funds, who buy up significant shares in a company they see as underperforming, acquire seats on the board, and pressure management to make changes that boost shareholder value.⁵⁸

You also find something else that drives me insane. I ask economists all the time, how do we measure this? Is it good? Is it bad? Have we increased productivity? Are there measures that allow us to analyze the corporate structure? The overwhelming answer I get is we have no idea how to measure productivity, so we don't study it. So that goes to the question, what's the flip side? I would note that it is the question I play with. I think the key to the Industrial Age is that the shop floor became the focal point for the New Deal and the Great Society, that is, large capitalist industrialists needed a large stable labor force. Henry Ford introduced the male family wage in 1914 because he had a 370% turnover the year before.⁵⁹ Unionization, in subsequent decades, then becomes an important factor in worker reforms and in the foundation of the Democratic party. Where are we now? We've eliminated the shop floor. There is no focal point for the counter organization.

Naomi: I think there was also a change in politics. One of the things we talk about in the book is the efforts of corporations. The Powell Memo⁶⁰ is an example of that in terms of spurring

56. See Lynn A. Stout, *On the Rise of Shareholder Primacy, Signs of Its Fall, and the Return of Managerialism (in the Closet)*, 36 SEATTLE U. L. REV. 1169 (2013).

57. Carbone & Levit, *Death of the Firm*, *supra* note 1, at 1000 (describing change in the tax treatment of stock options).

58. *Id.* at 966 (describing role of activist investors).

59. Naomi Cahn & June Carbone, *Uncoupling*, 53 ARIZ. ST. L. REV. 1, 15–16 (2021).

60. Lewis F. Powell, Jr., *The Memo in THE POWELL MEMORANDUM: ATTACK ON AMERICAN FREE ENTERPRISE SYSTEM* (Powell Archives ed., 1971), <https://scholarlycommons.law.wlu.edu/powellmemo/1/> [<https://perma.cc/2837-WKUQ>]; see Nikolas Bowie, *Corporate Democracy: How Corporations Justified Their*

corporations to press their agenda politically, and we've seen that quite visibly in the Citizens United case and its repercussions.⁶¹ But this is an intermingling of business and politics even more, and the model that we critique in the book—and elsewhere.⁶² As we have noted, politicians “have found that the corporate playbook works in the political arena the same way that it does in the business sphere.”⁶³

Q: Your analysis pertains, as you presented it so far, exclusively to the private sector. Yet a lot of American workers are in the public sector. To what extent are the issues of inequality the same? And are the causes at all parallel?

June: We have many versions of the book, and in the initial draft, we talked a lot about the rise of public sector unions. The final version has a section on public school teachers, who have been under wholesale assault. I think one of the keys to the modern era, and to lawlessness in particular, is the radical shifting of power between the public sector and the private sector, with the public sector losing. The public sector, however, has been an important source of support for women and for Black women, in particular. I started working at the Justice Department in 1978. There was a picture on the wall of a whole group of white men and one white woman in a mini skirt. By the time I left five years later, the office was about 50% women and 25% non-white. The best of the men left to join law firms when their wives got pregnant, and the best of the women went to law firms and came back because it was a whole lot easier to raise kids in the public sector.

Naomi: We also have a chapter in the book on teachers as an example of public employees, and we see some of the same dynamics there. On the other hand, Rachel Rebouché, the Dean at Temple University, and co-authors have done wonderful articles analyzing

Right to Speak in 1970s Boston, 36 L. & HIST. REV. 943, 954 (2018) (“[Powell] called on business executives to enlist their own institutions—business corporations—to respond using ‘guerrilla warfare’ against the regulatory state.”).

61. *Citizens United v. FEC*, 558 U.S. 310 (2010); see, e.g., Gillian E. Metzger, *Foreword: 1930s Redux: The Administrative State Under Siege*, 131 HARV. L. REV. 1, 28 (2017); Jedediah Purdy, *That We Are Underlings: The Real Problems in Disciplining Political Spending and the First Amendment*, 30 CONST. COMMENT. 391 (2015); Amanda Shanor, *The New Lochner*, 2016 WIS. L. REV. 133, 134.

62. See June Carbone, Nancy Levit & Naom Cahn, *Trump's Business Strategy and His Authoritarianism Are Linked - And Women Are the Antidote*, THE HILL (Mar. 20, 2024), <https://thehill.com/opinion/finance/4543027-trumps-business-strategy-and-his-authoritarianism-are-linked-and-women-are-the-antidote/> [<https://perma.cc/P9TR-VVBE>].

63. *Id.*

the gender composition of patent attorneys in public and private practice.⁶⁴

Afra Afsharipour: It's a paper that studies women's and men's relative participation in appellate patent litigation. They find a significant difference in the opportunity to argue patent cases between government lawyers versus lawyers from private sector law firms, with much less disparity in women presenting oral arguments in patent cases when they represent the government. The authors have also conducted other studies of inequality in patent litigation.⁶⁵

Q: My question is about political scientists and institutions. If Tony Blair and Bill Clinton had never existed, and the Democrats hadn't abandoned the working class, what would be different? and not necessarily among the 0.01%, but a little further down?

June: Public universities, like the University of Minnesota, would be better funded; *we* might be better off. The changes we are describing emphasize the impact of the changes in corporate governance on women, but they take place in the context of a broader set of changes that may be as profound as the industrial revolution. By 2019, even conservatives like Florida Senator Marco Rubio were criticizing "quarterly capitalism," which is really what we're describing in the book, that is, a myopic focus on quarterly earnings, and how that skewed decision-making in large companies and on Wall Street.⁶⁶ What we don't have is a new paradigm for governance.

So, think of Marx in the nineteenth century as synthesizing the critique of capitalism and providing a vocabulary for the opposition focused on the exploitation and the alienation of factory

64. Paul R. Gugliuzza & Rachel Rebouché, *Gender Inequality in Patent Litigation*, 100 N.C. L. REV. 1683 (2022) [hereinafter Gugliuzza & Rebouché, *Gender Inequality in Patent Litigation*]; see Afra Afsharipour & Matthew Jennejohn, *Gender and the Social Structure of Exclusion in U.S. Corporate Law*, 90 U. CHI. L. REV. 1819, 1882 (2023) (discussing the study). For further analysis, see Paul R. Gugliuzza, Rachel Rebouché, & Jordana R. Goodman, *Inequality on Appeal: The Intersection of Race and Gender in Patent Litigation*, 58 U.C. DAVIS L. REV. (forthcoming 2024) [hereinafter Gugliuzza et al., *Inequality on Appeal*], <https://ssrn.com/abstract=4614338> [https://perma.cc/HFU4-3LQJ], or <http://dx.doi.org/10.2139/ssrn.4614338>.

65. See Gugliuzza et al., *Gender Inequality in Patent Litigation*, *supra* note 64; Gugliuzza et al., *Inequality on Appeal*, *supra* note 64.

66. MIAMI HERALD, *Rubio Sounds Alarm on U.S. Business Investing: 'The Stock Market is Not the Economy'*, TAMPA BAY TIMES (June 20, 2019), <https://www.tampabay.com/florida-politics/buzz/2019/06/20/rubio-sounds-alarm-on-us-business-investing-the-stock-market-is-not-the-economy/> [https://perma.cc/AQW6-LB6H].

workers, and the solution was to rebuild the factory work. That became the agenda, starting with the Progressive era and continuing until Reagan's fight against the Air Traffic Controllers symbolizing the end of union power. What's the agenda today? There's none. There is an agenda that talks about lawless capitalists, but there's not an agenda to rebuild an economy that works for everybody, and I think that's the problem. Once you got rid of all the workers from the factory floor, you lost the focal point for the counter organization. So #MeToo is more inspiring than most workplace-related activities because there's a focal point.

Claire: Matt had talked previously about Scandinavian countries. I spent a semester interviewing various people in various Scandinavian and other northern European countries. In my interviews, I asked my interview subjects how they felt about high marginal tax rates and government generally—that is, whether they felt that the government would have good use for their money and otherwise trusted the government. Someone I talked to at some length in the Netherlands said to me: “I don't understand your country. We judge ourselves by how we treat the least of us.” But about ten minutes later, he was complaining that some Bulgarians, having entered the Netherlands as visitors, could, after five years of living in the Netherlands, get full privileges (presumably including welfare-type benefits). I asked how he could reconcile his two statements. He basically said that “the least of us” did not include (non-Dutch) like the Bulgarians.

I had conversations with people in Scandinavian countries, and especially in Sweden, noting increasing hostility to minorities. One strain of comments was to the effect that being egalitarian—having an egalitarian ethos and practices—is easier when a country is homogeneous. You're hypothesizing a United States in which people are okay with equality even though we are not a homogeneous country. My question, then, is: to what extent does significant heterogeneity on many dimensions complicate attempts to get towards moral equality? And what do we do about it?

June: We need to take a longer view of the process of change. When you look at the New Deal, one of the things you find is that Roosevelt knew he could not take on discrimination in the South and, indeed, some New Deal programs increased segregation. But Roosevelt was not indifferent to racial equality either, and he did things that laid a foundation for greater racial equality in later decades. The most important of these things were to create a legal foundation for unionization, and then during World War II, he acted to strengthen the roles of unions in the defense industry and to ban

discrimination by executive order in federal agencies, employers, and unions as part of the defense mobilization effort.⁶⁷ Fast forward to the present and one of the things we found in researching the book is that union representation is perhaps the single most important factor in reducing racial and gender disparities. Unions, though they have been under assault for the last half century, are no longer the bastion of white males. Unionized women earn 94% of the pay men receive, a substantially smaller wage gap than elsewhere in the economy, and Black and Latina women, in particular, do substantially better in unionized workplaces.⁶⁸

Naomi: I'm going to do a shout-out to our piece that came out today in a journal called *The Persistent*, which is about gender and voting.⁶⁹ To build on this last question, one of the things that we emphasize is the need for a community mentality rather than one based on "heads, I win, tails, you lose," which also gets at how we function in a society where people can trust each other. That doesn't at all mean we are against any form of competition.

Nancy: One of the questions that was posed before today was, do we feel optimistic? There are probably three different views. If we divorce ourselves from the roller coaster of the news these days, I'm actually quite optimistic about the long-term future. There's a phrase by a Unitarian minister to which Dr. Martin Luther King Jr. later gave voice: "the arc of the moral universe is long, but it bends toward justice."⁷⁰ I'm hopeful for the long term. This younger generation grew up with rights and never had to fight for them. They are learning to fight for rights. While the national political outcome is dark for people who believe in individual rights, there have been recent and unexpected bright spots on the state level. As just one example, voters in very red Kansas blocked a proposed constitutional amendment that would have unraveled protections for abortion that the Kansas Supreme Court held were supported

67. Exec. Order No. 8802, 6 Fed. Reg. 3109 (Jun. 27, 1941), <https://www.archives.gov/milestone-documents/executive-order-8802> [<https://perma.cc/E9XF-PWP5>].

68. See Elise Gould & Celine McNicholas, *Unions Help Narrow the Gender Wage Gap*, ECON. POL'Y INST. (Apr. 3, 2017), <https://www.epi.org/blog/unions-help-narrow-the-gender-wage-gap/> [<https://perma.cc/8V3A-7HX7>].

69. Naomi Cahn, June Carbone & Nancy Levit, *What's Really Fueling U.S. Voters?*, THE PERSISTENT (Oct. 24, 2024), <https://www.thepersistent.com/us-election-workplace-gender-harris-trump/> [<https://perma.cc/62KF-BDQY>].

70. Martin Luther King, Jr., Speech at the Washington National Cathedral: Remaining Awake Through a Great Revolution (Mar. 31, 1968), <https://www.seemeonline.com/history/mlk-jr-awake.htm> [<https://perma.cc/S7YM-6EL3>].

by the Kansas Constitution.⁷¹ In 2023, with abortion rights issues headed to the state supreme court, Wisconsin voters elected a liberal justice and flipped control of the Wisconsin Supreme Court to a liberal majority.⁷² These little flares of optimism may embody collective and progressive action on the state level. If federalists truly do believe in states' rights, that is where the ground game needs to occur. Also, the #MeToo movement was not a little flare: there were nineteen million tweets after actor Alyssa Milano tweeted the phrase in 2017, and the country witnessed extra-legal action (that did not depend on lawsuits), community cooperation, and turning the power of celebrated individuals against them to bring them down. I am hopeful about the future of the fight for rights—although if the *Dobbs* case, other decisions of the Roberts Court, and the outcome of the 2024 election are at all indicative, it will likely be a many-year battle that begins with some significant retrenchment.

June: One of the reasons I went off on my long digression about the history of the 50s and the New Deal is that when people, and men in particular, feel they're losing status, income, or position in society, they become less willing to support things that help other people, even if they themselves would benefit. What we tried to capture in the corporate environments is that the CEO tactics that enhance personal power involve making everybody insecure, pitting people against each other, and handsomely rewarding the winners but only so long as they're with the program. The alternative strategy requires people to believe that we are all in this together, but that requires success in delivering benefits to increase an overall sense of societal well-being.

Nancy: I speak for all of us in saying that we're delighted to have this opportunity to share our work with you, and we look forward to your thoughts.

71. Sherman Smith & Lily O'Shea Becker, *Kansas Voters Defeat Abortion Amendment in Unexpected Landslide*, KANSAS REFLECTOR (Aug. 2, 2022), <https://kansasreflector.com/2022/08/02/kansas-voters-defeat-abortion-amendment-in-unexpected-landslide-1/> [https://perma.cc/TYH4-LKS7].

72. Alex Ebert, *Abortion Ads Help Drive Most Expensive Court Race in U.S. History*, BLOOMBERG L. (Mar. 24, 2023), <https://about.bgov.com/news/abortion-ads-help-drive-most-expensive-court-race-in-us-history/> [https://perma.cc/U994-2WEP].

The Homo Economicus Model of Work Describes Men More than Women, But Only in WEIRD Cultures

Thomas Talhelm, Danila Medvedev & Yin Li[†]

Introduction

Money is an obvious reason people work, but people work for many reasons that are not directly about money. People work for social approval, because of a calling, because being productive is a value in itself, and other reasons besides money. We tested several ways to encourage people to work, and we put those into two broad buckets—money and psychology. We argue that the money model of work applies more to men than women—at least in Western cultures. In contrast, gender differences are weaker (and even flip directions) in non-Western cultures.

The money bucket is the classic “homo economicus” model of work.¹ People work for their own self-interest. People work to earn money for themselves, and (in the most simplistic model) they should ignore non-monetary motivations, like social approval, judgment, or calling in life. The psychology bucket includes the social motivations that the simplest economic theory says that people should ignore—social approval, feelings of satisfaction, competition, charity, and so on. These motivations also include methods to motivate people to change their behavior in the nudge movement.

One example of a classic psychological incentive is when a University of California research team from the Department of

[†]. Thomas Talhelm is an associate professor of behavioral science at the University of Chicago Booth School of Business. Danila Medvedev is a postdoctoral research fellow at the Dispute Resolution Research Center at the Northwestern University Kellogg School of Management. Yin Li is a PhD student at the Yale University School of Management. This research was supported by a William Ladany Fellowship awarded to Thomas Talhelm. Correspondence about this article should be addressed to Thomas Talhelm, University of Chicago Booth School of Business, 5807 South Woodlawn Avenue, Chicago, IL 60637. Email: talhelm@uchicago.edu. Open Data: Talhelm. Data and analysis scripts are available in the Open Science Framework. They are also available upon request from Thomas Talhelm talhelm@uchicago.edu.

1. Joseph Henrich, Robert Boyd, Samuel Bowles, Colin Camerer, Ernst Fehr, Herbert Gintis & Richard McElreath, *In Search of Homo Economicus: Behavioral Experiments in 15 Small-Scale Societies*, 91 AM. ECON. REV. 73, 73 (2001).

Psychology sent letters to participants comparing how much power they use to their neighbors and to their neighbors who were the most energy efficient.² After receiving the letters, participants used less energy. This was despite the fact that they received no money or prize for reducing their electricity (beyond having smaller electricity bills, which everyone across conditions could always benefit from). The social norm was enough to change people's behavior.

A. A Fair Shake: Following Psychological Motivations May Make People Vulnerable

Of course, psychological motivations like following social norms can be a strategy for making money in the long run. Many rewards in life depend on social approval, such as job promotions and admissions to college. However, even if people follow psychological motivations just to earn money, they do leave people open to exploitation more than pure money motivations. Being a generous or well-liked person and expecting to be paid back eventually is a risky strategy. It requires other people to pay attention to our good behavior, remember it later, and decide to pay it back. For anyone concerned about being taken advantage of, following psychological motivations leaves people more vulnerable than the homo economicus model of money. To be sure, wage theft is real. Employers can promise workers money and then refuse to pay. Yet the shorter pay timeline makes it easier to detect dishonest bosses than with psychological motivations.

B. Is Homo Economicus Male?

We wanted to know whether there are gender differences in money versus psychology. Our goal here is not to criticize the homo economicus model. Economists since the "father of economics," Adam Smith, have recognized that humans care about things other than money.³ Instead, our goal is to ask *how well* this simple model of human behavior describes men and women across cultures.

We suspected that the homo economicus model might apply more to men than women. For one, the economics field has long had more men than women, even compared to other social science

2. See Wesley Schultz, Jessica M Nolan, Robert B Cialdini, Noah J Goldstein & Vidas Griskevicius, *The Constructive, Destructive, and Reconstructive Power of Social Norms*, 18 PSYCH. SCI. 429, 431 (2007).

3. See ADAM SMITH, *THE WEALTH OF NATIONS* (1776) (recognizing the importance of morality and social responsibility in achieving a flourishing society).

fields.⁴ This could happen if men are more drawn to economics in the first place, or if learning about economics makes people behave more like homo economicus. Both explanations would lead to the prediction that the homo economicus model applies more to men than women.

Studies in psychology have found that people perceive women as warmer than men.⁵ Women score higher than men on tests of interpreting other people's emotions through their facial expressions,⁶ which suggests they are more sensitive. Women also have lower rates of diagnosed autism, which involves lower sensitivity to the emotions of others and social etiquette in general.⁷ These findings make it logical to think that women would respond more to psychological incentives than men.

C. Culture

There is some evidence for cultural differences in how people respond to pay-for-performance incentives. A study in the United States and China randomly assigned students to take a math test with performance incentives or without.⁸ In the incentive condition,

4. Bettina J. Casad, Christina E. Garasky, Taylor R. Jancetic, Anne K. Brown, Jillian E. Franks & Christopher R. Bach, *U.S. Women Faculty in the Social Sciences Also Face Gender Inequalities*, 13 FRONTIERS PSYCH., May 2022, at 3–4.

5. See Sabine Sczesny, Christa Nater & Alice H. Eagly, *Agency and Communion: Their Implications for Gender Stereotypes and Gender Identities*, in AGENCY AND COMMUNION IN SOCIAL PSYCHOLOGY 103 (2019) (discussing results of studies indicating that women are perceived as “more communal and less agentic” than their male counterparts); see *id.* at 111 (citing Andrea E. Abele, Nicole Haukel, Kim Peters, Eva Louvet, Aleksandra Szymkow & Yanping Duan, *Facets of the Fundamental Content Dimensions: Agency with Competence and Assertiveness – Communion with Warmth and Morality*, 7 FRONTIERS PSYCH., Nov. 2016)) (describing warmth or sociability and morality as two components of communion).

6. Simon Baron-Cohen, Sally Wheelwright, Jacqueline Hill, Yogini Raste & Ian Plumb, *The “Reading the Mind in the Eyes” Test Revised Version: A Study with Normal Adults, and Adults with Asperger Syndrome or High-Functioning Autism*, 42 J. CHILD PSYCH. & PSYCHIATRY & ALLIED DISCIPLINES 241 (2001); Marcello Vellante, Simon Baron-Cohen, Mariangela Melis, Matteo Marrone, Donatella Rita Petretto, Carmelo Masala & Antonio Preti, *The “Reading the Mind in the Eyes” Test: Systematic Review of Psychometric Properties and a Validation Study in Italy*, 18 COGNITIVE NEUROPSYCHIATRY 326, 346 (2013).

7. See Meng-Chuan Lai, Michael V. Lombardo, Bonnie Auyeung, Bhismadev Chakrabarti & Simon Baron-Cohen, *Sex/Gender Differences and Autism: Setting the Scene for Future Research*, 54 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 11 (2015) (addressing prior research indicating higher prevalence of autism in men and proposing a four-level conceptual framework to clarify the sex/gender differences embedded in autism research).

8. See Uri Gneezy, John A. List, Jeffrey A. Livingston, Xiangdong Qin, Sally Sadoff & Yang Xu, *Measuring Success in Education: The Role of Effort on the Test*

students received money for each question they answered correctly. In the United States, incentives worked in line with classic economic intuition. Students answered more questions correctly when they could earn money. But in China, the incentives did not boost performance. At half the schools in China, money seemed to lower performance, although the difference was not significant.

We also found evidence for cultural differences in incentives in our earlier research.⁹ We gave thousands of people across cultures a simple work task online. We paid everyone a base pay for completing the minimum requirement for the task. Then we randomly assigned some people to receive extra pay for completing more of the task. We assigned other people to receive psychological incentives, such as a social norm that suggested most people complete many trials of the task. People in individualistic cultures showed a larger “money advantage.” In other words, they worked much harder in response to the pay-for-performance than for the non-pay psychological incentives. For example, in one study, pay-for-performance boosted effort by 109% in the United Kingdom and 20% in China. In short, the homo economicus model applied more to the individualistic Western cultures than the non-Western cultures.

We also tracked whether workers quit at the first opportunity they had. We told workers they could collect their full base pay after completing ten images. In the psychological conditions, workers received no extra pay for working past ten images. In the United States, 50% of workers quit right after ten images. In Mexico, just 8% of workers did. In China, 14% quit after ten.

As one way to understand the differences, we split cultures into “WEIRD” and “non-WEIRD” cultures. This is based on the argument of Henrich and colleagues, who reviewed evidence that people in individualistic Western cultures are often outliers on psychological measures. For example, people in Western cultures tend to score on the extreme end of measures of analytic thought and offers to strangers in economic games. To describe that tendency, the researchers created the acronym “WEIRD,” which stands for Western, educated, industrialized, rich, and democratic. We use this contrast between WEIRD and non-WEIRD cultures in this study to describe cultural differences. However, we recognize that WEIRD cultures share many dimensions, such as

Itself, 1 AM. ECON. REV.: INSIGHTS 291 (2019).

9. See Danila Medvedev, Diag Davenport, Thomas Talhelm & Yin Li, *The Motivating Effect of Monetary over Psychological Incentives Is Stronger in WEIRD Cultures*, 8 NATURE HUM. BEHAV. 456 (2024).

individualism, democratic institutions, and more frequent interactions with strangers. Our goal in this study is to document cultural differences. Our data does not allow us to pull apart competing explanations for these differences beyond these broad cultural distinctions.

The difference between WEIRD individualistic cultures and non-WEIRD collectivistic cultures in motivation might explain differences in how companies structure pay around the world. Researchers have found that pay-for-performance is more common in individualistic cultures.¹⁰ One explanation is that practices tend to be adapted to the styles that fit local cultures around the world. Another possibility is that differences in the structure of pay are the cause behind why people respond differently to incentives across cultures.

The previous findings also raise questions about how people conceptualize work contracts. One way to understand contracts is that they are strict, literal, and limited to the elements that are explicitly in the contract. This view of contracts fits with the high quit rates we found in our study in the United States and United Kingdom.¹¹ The instructions said people could quit after ten images, and many of our participants in the United States and United Kingdom did just that. They followed the contract literally and maximized their pay and effort in line with the contract.

Another view of contracts is that they are ongoing relationships, flexible, and interpreted over time based on changing needs. People in some cultures may be more likely to see contracts as rough outlines. If contracts are rough outlines, people may expect each other to be forgiving if a need arises that isn't covered in the contract. And people may feel it is expected to read between the lines. That explanation fits with the behavior in our non-WEIRD cultures, like China and South Africa. People there were more likely than Americans to keep working beyond the contractual minimum. They may have thought, "They said just ten images, but they probably want me to keep working."

10. Luis R. Gomez-Mejia & Theresa Welbourne, *Compensation Strategies in a Global Context*, 14 HUM. RES. PLAN. 29, 33–35 (1991); Randall S. Schuler & Nikolai Rogovsky, *Understanding Compensation Practice Variations Across Firms: The Impact of National Culture*, 29 J. INT'L BUS. STUD. 159, 165 (1998).

11. Medvedev et al., *supra* note 9.

I. Study Overview

To test these questions, we analyzed two previous large-scale studies for gender differences.¹² In the studies, workers on crowdsourcing websites completed simple work tasks for money. Everyone received the same base pay, but some people received monetary incentives for doing extra work, and other people received psychological incentives to encourage extra work. By “monetary incentives,” we mean explicit pay-per-performance incentives. All participants received a base pay, so this is constant across conditions. Our monetary incentives are piece-rate pay beyond the base pay.

We compared how effective these monetary incentives and psychological incentives were at motivating people to work. It is important to note that there is no pure control condition in this setup. Although there is a condition that gives only base pay and no additional incentive, we think it would be inaccurate to say that this is a pure non-psychological condition. Even paying people money and asking them to do something in return involves some amount of psychological motivation, such as doing the right thing, doing a good job, or not letting down the employer. Thus, following our prior research, we calculate the psychological conditions including the base-pay-only condition.¹³

A. Study 1: Mashing Buttons for Ten Minutes

i. Methods

In Study 1, we analyzed data that two behavioral economists collected in a large-scale online study.¹⁴ They gave monetary and psychological incentives to workers on Amazon’s MTurk platform, a platform where companies or researchers can post small tasks. Workers receive small amounts of money for these micro tasks. In their study, the researchers asked participants to push the “a” and “b” buttons on their keyboard as fast as possible for ten minutes. Each time they pressed “a” and then “b,” they earned a point. We categorized their conditions into two types:

Monetary: The four monetary conditions gave participants an immediate, linear pay-per-performance incentive. For example, one condition paid participants 4 cents for every 100 points they scored.

12. *Id.*; Stefano DellaVigna & Devin Pope, *What Motivates Effort? Evidence and Expert Forecasts*, 85 REV. ECON. STUD. 1029 (2018).

13. Medvedev et al., *supra* note 9, at 458.

14. See DellaVigna & Pope, *supra* note 12.

Psychological: The seven psychological conditions gave participants no extra money beyond the base pay. To make it clear that they would not earn a piece rate, the researchers told all participants, “Your score will not affect your payment.” In the social norm condition, participants read, “Many participants scored more than 2,000.” In the “please try” condition, the researchers simply asked participants, “Please try as hard as you can.”

Table S1 and S2 describe all the conditions in more detail. This table also describes the seven conditions we did not analyze because they did not clearly fit our criteria.

Culture: One benefit of their choice of platform is that it allowed us to test for cultural differences. The original researchers did not do this intentionally, but Amazon’s MTurk platform includes a large percentage of workers in India. In the sample, 81% of workers are in the United States, but 13% are in India. In the eleven conditions we analyzed, we had a sample 6,294 participants (United States = 5,526, India = 768).

Demographics: The United States’s sample was more female (57.8%) than the sample in India (32.2%). The India sample was also more educated than the United States sample. About half (50.6%) of the United States sample had completed an undergraduate degree or were currently pursuing one, compared to 84.0% in India. In our analysis, we control for age and education.

ii. Analysis

In our main comparison of gender, we ran hierarchical linear models with participants nested in countries. We ran models using the LMER function in R:

$$\text{Points} \sim \text{Female} * \text{Monetary Incentive} + \text{Age} + \text{Education} + (1 | \text{Country})$$

When we tested the interaction between gender and culture, we ran simple regressions in this format:

$$\text{Points} \sim \text{Female} * \text{Monetary Incentive} * \text{Country} + \text{Age} + \text{Education}$$

Note that inputting the interactions automatically enters the main effects and sub-interactions for each variable. We did not nest participants in these latter models because we only had two groups, but results were similar with or without nesting.

iii. Open Data

The data is available on the Open Science Framework, along with code for processing the raw data.¹⁵ Analysis syntax for these gender analyses is available on a separate Open Science Framework page.¹⁶

iv. Results

Monetary incentives increased performance across the board ($B = 310.11$, $SE = 19.09$, $t = 16.24$, $p < .001$, from a regression without an interaction with gender). On average, the pay-for-performance conditions led to 310 more button presses. However, money was more effective for men than women (Table 1). Monetary incentives increased effort by 21% for men and 16% for women (Figure 1). Thus, money worked for both men and women, but it increased effort more for men than women.

Table 1

The Motivating Power of Money Is Stronger for Men than Women

	<i>B</i>	<i>SE</i>	<i>t</i>	<i>p</i>
Female	-100.65	23.50	-4.28	< .001***
Monetary Condition	372.85	28.41	13.12	< .001***
Age	-70.96	7.36	-9.64	< .001***
College Degree	-34.69	7.81	-4.44	< .001***
Female x Monetary Condition	-114.30	38.34	-2.98	.003**
<i>N</i> = 6,294, DV = number of points in the button-pushing task				

Note: The analysis is a hierarchical linear model with participants nested in cultures. Female is coded as 0 = male, 1 = female. Monetary is coded as 0 = non-monetary (psychological), 1 = monetary. College degree is coded as 0 = no undergraduate degree, 1 = completed or currently studying for an undergraduate degree. Participants reported age in categories from 1 (18-24) to 6 (65 or

15. Danila Medvedev, Diag Davenport, Thomas Talhelm & Yin Li, *The Motivating Effect of Monetary Over Psychological Incentives Is Stronger in Western Cultures*, OSFHOME (last updated Oct. 17, 2023), <https://osf.io/8yu95/> [https://perma.cc/DBN2-7EUQ].

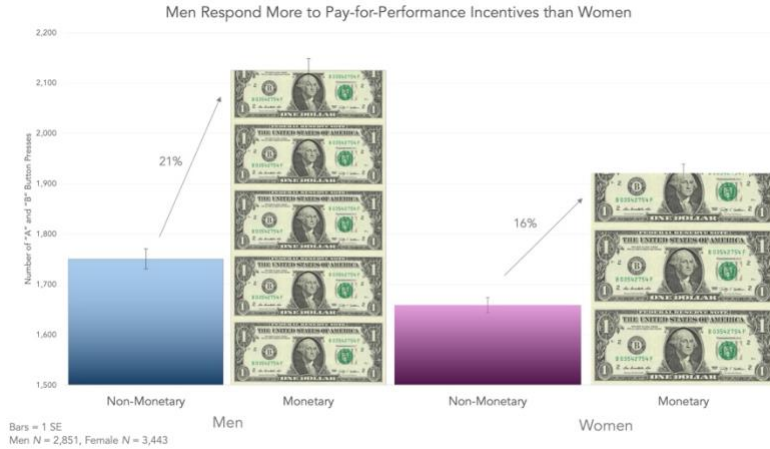
16. Thomas Talhelm, *Money Advantage - Gender Differences*, OSFHOME (last updated Dec. 17, 2024), https://osf.io/2wnvy/?view_only=171e6a4e92a946fbaac74259d6391c95 [https://perma.cc/7Z34-UJR4].

higher). A point in the button-pushing task is hitting the “A” key and then “B” key.

* $p < .05$, ** $p < .01$, *** $p < .001$

Figure 1

Men Respond More to Pay-for-Performance Incentives than Women



Note: Men worked harder than women in response to pay-for-performance incentives in a simple button-pushing task on Amazon’s MTurk platform.

Next, we tested whether gender differences varied across cultures. The interaction between gender and monetary incentives did not differ significantly across cultures ($p = .146$, Table 2). This could be because the India sample was only 13% of the entire sample, and women only made up 32% of the India sample. That left us with fewer than 100 female participants in India in the monetary condition, which decreased our statistical power. However, looking at the averages, the U.S. pattern replicated overall patterns. Money increased effort by 24% for men and 16% for women. In India, the averages were in the opposite direction. Money increased effort by 10% for men and 14% for women.

Table 2
Interaction Between Culture, Gender, and Pay-for-Performance Incentives

	<i>B</i>	<i>SE</i>	<i>t</i>	<i>p</i>
Female	-74.40	25.02	-2.97	.003**
Monetary Condition	420.73	31.34	13.42	< .001***
India	-136.01	44.32	-3.07	.002**
Age	-71.18	7.35	-9.68	< .001***
College Degree	-34.60	7.81	-4.43	< .001***
Female x Monetary	-156.06	41.18	-3.79	< .001***
Female x India	-164.54	74.91	-2.20	.028*
Monetary x India	-264.10	73.82	-3.58	< .001***
Female x Monetary x India	180.06	123.89	1.45	.146

N = 6,294, DV = number of points in the button-clicking task

Note: Female is coded as 0 = male, 1 = female. Monetary is coded as 0 = non-monetary (psychological), 1 = monetary. College degree is coded as 0 = no undergraduate degree, 1 = completed or currently studying for an undergraduate degree. Participants reported age in categories from 1 (18-24) to 6 (65 or higher).

* $p < .05$, ** $p < .01$, *** $p < .001$

v. Discussion

Our re-analysis of a large-scale study found that men responded more to pay-for-performance incentives than women. There was suggestive evidence that this gender difference only applied to the United States, not India. However, those differences were not significant, perhaps because splitting the sample across conditions, gender, and culture lowered statistical power.

B. Study 2

To test whether this was an issue of sample size, we analyzed gender differences across cultures in our larger follow-up study. This larger study gave us more statistical power to test for gender differences across cultures. In addition, our Study 2 sample included more cultures. In addition to the United States, we tested participants in the United Kingdom, China, Mexico, and South

Africa. This allowed us to test whether the findings in Study 1 were limited to India and the United States or whether the findings reflect a larger difference between WEIRD and non-WEIRD cultures. Finally, Study 2 tested whether the difference was specific to the button-pushing task. One strange feature of the button-pushing task is that it is transparently meaningless. It is possible people respond to incentives differently when work tasks are meaningless. The pointlessness of the task makes it different from most work tasks, which usually serve some purpose. Thus, we created a picture identification task and told workers that their input would help us design a machine-learning algorithm.

i. Methods

We re-analyzed data from our study of monetary incentives across cultures.¹⁷ In that study, we tested for culture differences in the effectiveness of monetary versus psychological incentives across cultures. We found that people in WEIRD cultures responded more to monetary incentives than people in non-WEIRD cultures. Here, we focus instead on gender differences. Unlike Study 1, Study 2 had an option for non-binary gender (1.8% of participants). This allowed us to contrast people who identify as male (44.3%) versus female (53.9%) directly. We could not do this in Study 1 because the previous researchers did not include a non-binary option.

ii. Sample

We analyzed the data for Study 2 from our earlier paper, which included 7,269 people from the United States, U.K., China, Mexico, and South Africa. We followed our prior study and categorized the United States and the United Kingdom as WEIRD cultures and China, Mexico, and South Africa as non-WEIRD cultures. However, results are similar if we replace the categorical WEIRD variable with a continuous variable, the Global Collectivism Index.¹⁸ Participants came from the Prolific platform for each culture except China, which does not have Prolific. Participants in China were

17. See Medvedev et al., *supra* note 9.

18. See Brett Pelham, Curtis Hardin, Damian Murray, Mitsuru Shimizu & Joseph Vandello, *A Truly Global, Non-WEIRD Examination of Collectivism: The Global Collectivism Index (GCI)*, 3 CURRENT RSCH. ECOLOGICAL & SOC. PSYCH. 1, 2022 (defining the Global Collectivism Index (GCI) GCI as an updated and globally comprehensive measure that eliminates biases ingrained in WEIRD measures and provides increased statistical power in cross-cultural research).

recruited through Hubei University and participant recruitment groups on the WeChat and QQ platforms.

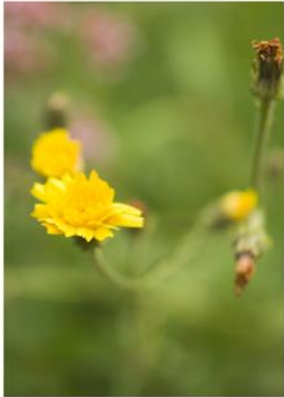
iii. Task

Our work assignment in Study 2 was an image-classification task. Participants saw images one by one and had to rate whether each image had a building or not (Figure 2). Before they started, the instructions stated that they were required to complete ten images to receive their base pay. The instructions made it clear that they would receive no extra pay for completing more than ten images. We wanted to make the task have at least some plausible purpose, unlike the transparently meaningless button-pushing task in Study 1. To give the task meaning, we told participants that we were “developing a machine learning image-classification database, and we need your help!”

Figure 2

A Sample Question in the Image-Rating Task (Study 2)

09:10



Does this image contain a building?

☐ Yes

☒ No

→

Note: This is a sample question in the image-rating task. We designed the task to be simple and avoid favoring some cultures

over others. For example, the button-pushing task in Study 1 could favor people in cultures where laptops are more prevalent. Pushing buttons quickly could be harder for participants taking the study on their phone. In contrast, the image-rating task should be more neutral.

iv. Money vs. Psychology Conditions

We randomly assigned participants to a money or psychology condition. Across all conditions, participants received a base pay for completing the ten images. In the pay-for-performance conditions, participants received extra pay for every chunk of ten images they completed. Here, we combine different samples from our original study, which included different pay conditions across rounds of data collection. One pay setup was \$1.30 base pay and an extra .05 for every ten images.

In addition to the base pay condition, we ran three psychological conditions. In the United Kingdom, China, Mexico, and some United States samples, we ran a social norm condition. In the social norm condition, participants read: “Most people try really hard on the task, assessing close to 160 images.” Participants in South Africa and some U.S. samples were assigned to conditions for competition and charity. In the charity condition, participants could earn .05 for the Red Cross for each additional ten images they completed. In the competition condition, we told participants, “This is a competition. We will tell you how well you do compared to other participants after the task.”

v. Explicit Contract

We established a clear contractual minimum for pay. Participants read these instructions:

Every ten images, you will be given an opportunity to be finished with the task. You can view as many images as you like. After the first 10 images completed, you will get the fee for your participation regardless of how many images you view or when you choose to quit the task.

To make sure participants understood the instructions, we required all participants to pass a comprehension question about the payment. We excluded participants who did not pass the comprehension question about the payment.

We also checked whether people were paying attention by asking a multiple-choice question about the purpose of the task. The correct answer was, “developing a machine-learning image-

classification database.” Ensuring that participants understood the task (and particularly the payment) was critical in understanding the differences in participants’ effort. If participants mistakenly thought they could earn more money by working harder, then it would not allow us to test differing motivations for work.

vi. Chance to Quit

After completing ten images, participants saw a page that asked them if they’d like to quit or keep working. If participants continued working, they saw that same page again every ten images. We tested for differences in (1) the percentage of workers quitting at the first possible chance (the contractual minimum) and (2) the number of total images completed.

vii. Statistical Analysis

We analyzed the data using hierarchical linear models with participants nested in cultures. For the quitting decision, we used binomial models in the GLMER function in the program R. For the number of images completed, we analyzed the data using Poisson regressions (for count data) in the GLMER function.

viii. Results

Not surprisingly, people were much more likely to quit at the first chance when we did not pay for performance (Table 3). And as we reported in our earlier paper, money made a larger difference in WEIRD cultures than non-WEIRD cultures. The homo economicus model applies better to people in WEIRD cultures than non-WEIRD cultures.

Overall, the difference between the money and psychology conditions was *larger* for women than men. In the money conditions, 13% of men quit at the first opportunity, whereas 8% of women quit at the first opportunity. Pay-for-performance cut the quit rate by 50% for men and 75% for women.

However, the pattern of gender differences was distinct across cultures (interaction between gender and non-WEIRD cultures: Table 4). In WEIRD cultures, the money advantage was larger for men than for women. Pay-for-performance cut the quit rate by 34% for men and 29% for women (Figure 3). In non-WEIRD cultures, the money advantage was larger for women than men. Pay-for-performance cut the quit rate by 6% for men and 11% for women. Thus, gender differences were not the same but smaller in non-WEIRD cultures. Instead, the direction was reversed.

Table 3

The Percentage of Workers Quitting at the First Chance After the Contractual Minimum

	<i>B</i>	<i>SE</i>	<i>t</i>	<i>p</i>
Female	-0.28	0.07	-4.09	< .001***
Monetary Condition	-1.57	0.10	-15.69	< .001***
Age	-0.01	0.00	-2.58	0.010*
College Degree	0.18	0.06	2.85	0.004**
Female x Monetary Condition	-0.30	0.15	-2.04	0.041*

N = 7,269 people in 5 cultures, DV = quitting at the first chance

Note: The analysis is a hierarchical linear model with participants nested in cultures. Female is coded as 0 = male, 1 = female. Monetary is coded as 0 = non-monetary (psychological), 1 = monetary (pay-for-performance). College degree is coded as 0 = no undergraduate degree, 1 = completed or currently studying for an undergraduate degree. Participants reported their age in years.

* $p < .05$, ** $p < .01$, *** $p < .001$

Table 4

Quitting at First Chance: Gender Differences in Monetary Incentives Depend on Culture

	<i>B</i>	<i>SE</i>	<i>t</i>	<i>p</i>
Female	-0.37	0.08	-4.66	< .001***
Monetary Condition	-1.78	0.11	-15.68	< .001***
Non-WEIRD	-1.82	0.38	-4.84	< .001***
Age	-0.01	0.00	-2.65	.008**
College Degree	0.18	0.06	2.80	.005**
Female x Monetary	-0.09	0.16	-0.58	0.564
Female x Non-WEIRD	0.35	0.16	2.16	.031*
Monetary x Non-WEIRD	1.05	0.23	4.50	< .001***
Female x Monetary x Non-WEIRD	-0.94	0.39	-2.43	.015*

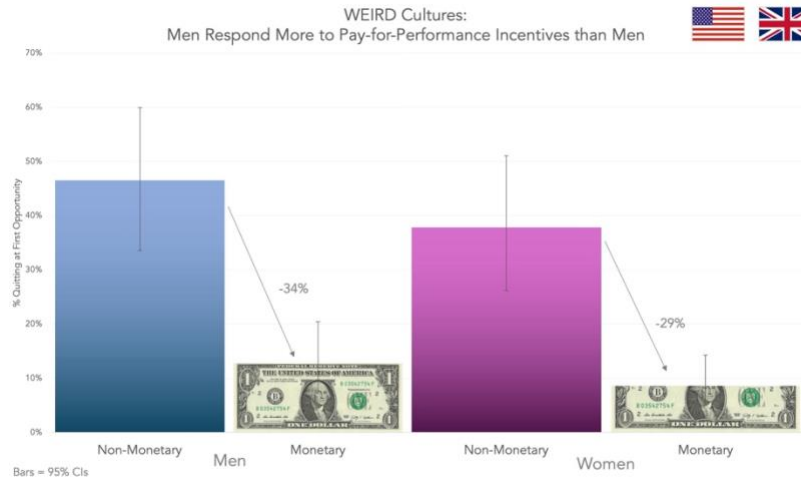
N = 7,269 people in 5 cultures, DV = quitting at first chance

Note: The analysis is a hierarchical linear model with participants nested in cultures. Non-WEIRD is coded as 0 = WEIRD, 1 = non-WEIRD. WEIRD cultures are the US and UK. Non-WEIRD cultures are China, Mexico, and South Africa. Female is coded as 0 = male, 1 = female. Monetary is coded as 0 = non-monetary (psychological), 1 = monetary (pay-for-performance). College degree is coded as 0 = no undergraduate degree, 1 = completed or currently studying for an undergraduate degree. Participants reported their age in years.

$*p < .05$, $**p < .01$, $***p < .001$

Figure 3

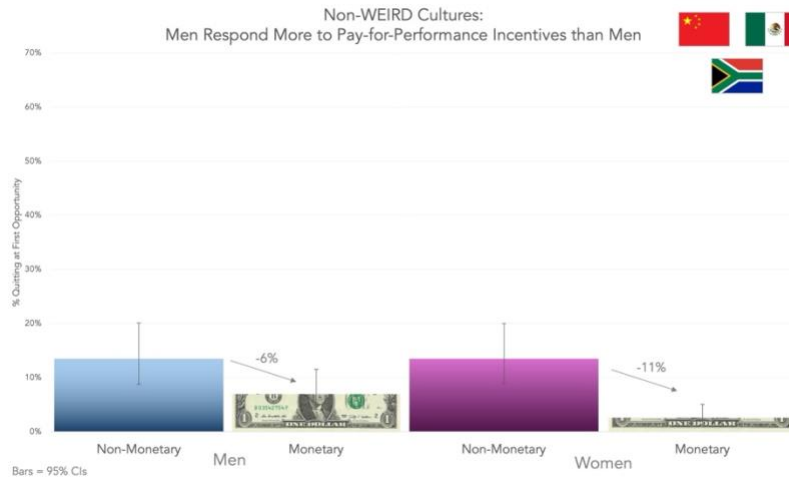
The Percentage of Workers Quitting at the Contractual Minimum in WEIRD Cultures



Note: We showed workers a screen asking if they wanted to quit the task after they completed the first ten images, which was the contractual minimum. In the monetary conditions, workers could earn more money by continuing to work past ten images. In the non-monetary conditions, workers received no extra pay for working past ten images.

Figure 4

The Percentage of Workers Quitting at the Contractual Minimum in Non-WEIRD Cultures



Note: Figures 3 and 4 present marginal means controlling for differences in education and age. The non-monetary conditions were a social norm, donation to charity, and competition.

ix. Number of Images Completed

In addition to the quit rate, we analyzed the total number of images completed. With the number of images completed, the money advantage was larger for men than women (interaction in Table 5). This is the opposite of the finding for the quit rate. It is interesting to note that the estimates from the quit rate and the number of images completed go in different directions for the overall quit rate. One reason this can happen is that the quit rate is binary, so participants have a limited range of influence on the results. But with the number of images completed, participants can range from 10 to over 200. That means an extremely motivated participant can have more influence on the averages.

Using the total number of images completed, gender differences across cultures were similar to the analysis with the quit rate (Table 6). In WEIRD cultures, pay-for-performance boosted the number of images completed 137% for men and 125% for women. In non-WEIRD cultures, pay-for-performance increased the number of images completed by 34% for men and 35% for women. Thus, the results were similar to the analysis of the quit rate. The homo

economicus model applied better to men in WEIRD cultures but not in non-WEIRD cultures.

Table 5

The Number of Images Completed in Response to Psychological and Monetary Incentives

	<i>B</i>	<i>SE</i>	<i>t</i>	<i>p</i>
Female	-0.004	0.005	-0.76	0.445
Monetary Condition	0.64	0.00	132.54	< .001***
Age	-			
	0.0037	0.0002	-23.80	< .001***
College Degree	-0.12	0.004	-32.58	< .001***
Female x Monetary Condition	-0.02	0.01	-3.00	0.003**

N = 7,269 people in 5 cultures, DV = the total number of images completed

Note: The analysis is a hierarchical linear model with participants nested in cultures. Female is coded as 0 = male, 1 = female. Monetary is coded as 0 = non-monetary (psychological), 1 = monetary (pay-for-performance). College degree is coded as 0 = no undergraduate degree, 1 = completed or currently studying for an undergraduate degree. Participants reported their age in years.

* $p < .05$, ** $p < .01$, *** $p < .001$

Table 6

Interaction Between Culture, Gender, and Pay-for-Performance Incentives

	<i>B</i>	<i>SE</i>	<i>t</i>	<i>p</i>
Female	0.07	0.01	10.01	< .001***
Monetary Condition	0.90	0.01	135.10	< .001***
Non-WEIRD	0.40	0.19	2.09	0.037*
Age	-0.004	0.0002	-24.33	< .001***
College Degree	-0.11	0.0035	-31.58	< .001***
Female x Monetary Condition	-0.08	0.01	-9.47	< .001***
Female x Non-WEIRD	-0.13	0.01	-13.81	< .001***

Monetary x Non-WEIRD	-0.57	0.01	-58.23	< .001***
Female x Monetary x Non-WEIRD	0.09	0.01	6.84	< .001***

N = 7,269 people in 5 cultures, DV = number of images completed

Note: The analysis is a hierarchical linear model with participants nested in cultures. Non-WEIRD is coded as 0 = WEIRD, 1 = non-WEIRD. WEIRD cultures are the United States and the United Kingdom. Non-WEIRD cultures are China, Mexico, and South Africa. Female is coded as 0 = male, 1 = female. Monetary is coded as 0 = non-monetary (psychological), 1 = monetary (pay-for-performance). College degree is coded as 0 = no undergraduate degree, 1 = completed or currently studying for an undergraduate degree. Participants reported their age in years.

* $p < .05$, ** $p < .01$, *** $p < .001$

II. Discussion

We tested whether there are gender differences in workers' responses to psychological versus monetary incentives. In Study 1, we found that men responded more to monetary incentives than women. This suggests that the homo economicus model of work and motivation applies better to men than women. However, this effect was entirely driven by participants in the United States. In India, the pattern was flipped. Women responded more to monetary incentives than men. One limitation of Study 1 was that the sample size from India was small, which could explain why the difference across cultures was not statistically significant.

To deal with the small sample size from the non-Western culture in Study 1, we analyzed data from over 7,000 people in five cultures. With this larger sample split more evenly across WEIRD and non-WEIRD cultures, the gender differences across cultures were significant. In WEIRD cultures, men responded more to monetary incentives than women. The quit rate changed more in response to pay-for-performance more for men than women. But this pattern flipped in non-WEIRD cultures.

These findings suggest that gender differences are not hard-wired. Instead, culture shapes gender differences. In WEIRD cultures, men behave more like "economic man." But in non-WEIRD cultures, women behaved more like "economic man."

This conclusion seems to apply to WEIRD and non-WEIRD cultures outside of just a single comparison. Study 1 tested just the United States and India, which raises questions about whether the difference was specific to these two cultures. Yet Study 2 sampled people in the United States, United Kingdom, China, Mexico, and South Africa. This suggests the difference is broader than the United States and India. But we don't know whether these results apply to WEIRD and non-WEIRD cultures more broadly. As Henrich argued, "non-WEIRD" is a broad category.¹⁹ We should not assume all non-WEIRD cultures are the same as the four we tested here.

One potentially promising type of culture to look at are those cultures that farmed crops historically that did not use plows. Cultures with a history of plow use tend to have more gender inequality in the modern day.²⁰ Researchers argued this is because plows required significant upper body strength, which differs sharply between men and women. This may have led to a sharper division of labor between men and women in plow societies. In contrast, cultures that farmed non-plow crops like millet tend to have more gender equality, even after accounting for economic development. This historical difference is worth testing in future studies.

Results from an earlier study offer one way to understand why gender patterns differ across cultures. Researchers tested 80,000 participants in 76 countries around the world.²¹ They tested participants on a range of tasks, such as risk-taking, trust, and altruism. For each country, they calculated the size of gender differences. Surprisingly, gender differences were *largest* in countries with the most legal gender equality. Gender differences were also larger in economically developed countries.

One way to understand this difference is with the "seed theory." The seed theory is the idea that economic modernization gives people more freedom and resources that they can choose to use in ways that reflect some underlying group difference. One example of this comes from a study on student achievement around the world.²² Across cultures, students who reported being more

19. Joseph Henrich, *WEIRD*, OPEN ENCYC. OF COGNITIVE SCI. (July 24, 2024), <https://oecs.mit.edu/pub/spow8trw/release/1> [<https://perma.cc/BMK8-HQ5F>].

20. See Alberto Alesina, Paola Giuliano & Nathan Nunn, *On the Origins of Gender Roles: Women and the Plough*, 128 Q. J. ECON. 469 (2013).

21. See Armin Falk & Johannes Hermle, *Relationship of Gender Differences in Preferences to Economic Development and Gender Equality*, 362 SCI., Oct. 2018, at 1.

22. See Xingyu Li, Miaoze Han, Geoffrey L. Cohen & Hazel Rose Markus, *Passion Matters But Not Equally Everywhere: Predicting Achievement from Interest*,

interested in and enjoyment from learning science, math, or reading tended to score better on those tests. But that correlation varied widely across cultures. In individualistic cultures, personal interest explained 37% of the differences in test scores. But in collectivistic cultures, interest explained 16%. This offers one way to understand the pattern of gender differences around the world. More economically developed individualistic cultures may give kids more opportunities to make choices based on their preferences. But less economically developed cultures may flatten differences between kids by giving them fewer opportunities to choose based on their preferences.

Note that the seed theory does not require us to assume that gender differences are real or biological. Instead, it could be the case that people simply *believe* that there are gender differences. Then, economically developed cultures can reinforce this belief by telling stories in movies and on TV that depict gender differences. Even if no real gender differences exist in the first place, people may come to believe in gender differences and form preferences based on these beliefs. The fact that this process seems to come at the same time as legal gender equality is a surprising contradiction.

III. Supplemental Materials

A. *Conditions Included in Study 1*

When choosing which data to analyze from our earlier study, we chose to analyze data from Study 2. Study 1 was our re-analysis of the study from DellaVigna and Pope, which we already analyzed here as Study 1. We did not analyze data from Study 3 because that study used an exceptionally low monetary incentive to test the limits of the effect. We did not analyze data from Study 4 because that study randomly assigned language in India only to test the effect of culture. Thus, it would not fit with our analysis strategy in this paper.

B. *Alternatives to the Binary WEIRD vs. Non-WEIRD Binary Variable*

The WEIRD versus non-WEIRD binary variable is one way of slicing the data. However, the conclusions do not depend on this particular variable. For example, we ran robustness checks by replacing the binary WEIRD variable with continuous variables.

One alternative to the WEIRD classification is collectivism. WEIRD cultures tend to score low on collectivism, and non-WEIRD cultures tend to score high on collectivism. Thus, in one robustness check, we replaced the WEIRD variable in Table 4 with scores on the Global Collectivism Index.²³ This index uses census indicators such as the percentage of three-generation households, the percentage of people living alone, and divorce rates to estimate collectivism across cultures. Using the Global Collectivism Index, the key interaction of culture, gender, and monetary incentives predicting quitting at the first chance remained significant ($p = .012$). The full statistical output is available on the Open Science Framework page.

We also tested economic development as an alternative. One component of the WEIRD acronym is “wealthy,” and wealth is correlated with collectivism. Wealthy countries tend to score low on collectivism. Thus, we ran a model replacing the WEIRD variable in Table 4 with gross national income per capita in 2019. Again, the key interaction remained significant ($p < .001$).

In sum, these analyses suggest that the differences between cultures are robust to the method of categorizing cultures. The conclusions do not depend on the WEIRD classification. However, with only five countries, we can only draw conclusions about broad cultural differences. We do not have the fine-grained data we would need to pull apart different societal variables, such as collectivism, economic development, and rule of law.

23. See Pelham et al., *supra* note 18.

Table S1
Pay-for-Performance Versus Non-Monetary (Psychological)
Conditions from DellaVigna and Pope Included in Study 1

Pay-for-Performance Conditions	Non-Monetary (Psychological) Conditions
1 cent for 1,000 points (Self) "You will be paid an extra 1 cent for every 1,000 points."	Flat fee "Your score will not affect your payment."
1 cent for 100 points (Self) "You will be paid an extra 1 cent for every 100 points."	Unconditional Gift "In appreciation for performing this task, you will be paid a bonus of 40 cents. Your score will not affect your payment."
4 cents for 100 points (Self) "You will be paid an extra 4 cents for every 100 points."	Please Try "Please try as hard as you can."
10 cents for 100 points (Self) "You will be paid an extra 10 cents for every 100 points."	Social Comparison "We will show you how well you did relative to others."
	Social Norm "Many participants scored more than 2,000."
	1 cent for 100 points (Charity) "The Red Cross will be given 1 cent for every 100 points."
	10 cents for 100 points (Charity) "The Red Cross will be given 10 cents for every 100 points."

Note: These are the conditions from the study by DellaVigna and Pope that we analyzed for Study 1.

Table S2
Pay-for-Performance Versus Non-Monetary (Psychological)
Conditions from DellaVigna and Pope Excluded from Study 1

Excluded Condition	Reason
Risk: Low Probability of High Reward "You will have a 1% chance of an extra \$1 for every 100 points."	Bonus is not guaranteed
Risk: High Probability of Low Reward "You will have a 50% chance of an extra 2 cents for every 100 points."	Bonus is not guaranteed
2-Week Delay Discounting "You will be paid an extra 1 cent for every 100 points (2-week delay)."	Bonus is not immediate
4-Week Delay Discounting "You will be paid an extra 1 cent for every 100 points (4-week delay)."	Bonus is not immediate
40-Cent Gain "You will be paid an extra 40 cents if you score at least 2,000 points."	Bonus is not linear
40-Cent Loss "You will be paid an extra 40 cents. However, you will lose this bonus unless you score at least 2,000 points."	Bonus is not linear
80-Cent Gain "You will be paid an extra 80 cents if you score at least 2,000 points."	Bonus is not linear

Tournament Incentives and the Triple Bind for Working Women

Amalia R. Miller & Carmit Segal[†]

Introduction to Tournament Theory

A key theme in *Fair Shake: Women and The Fight to Build a Just Economy* is that workplace competition, with increasingly outsized rewards for winners, generates gender inequality by creating a “triple bind,” preventing women from achieving equal success in high-powered careers and reaching the top ranks of corporate hierarchies.¹ In this essay, we offer an economic perspective on the phenomenon of workplace competition, starting with a discussion of the potential benefits to employers from implementing competitive reward schemes as well as some of the potential downsides most often discussed in the economics literature. We then survey recent experimental research in economics examining how competitive schemes that reward workers based on their success relative to co-workers can contribute to gender inequality. We conclude by relating these experimental findings to the triple bind concept in *Fair Shake* and discussing potential policy implications.

It is perhaps natural that, as economists, we start by presenting the case in favor of competitive incentives at work. As background, it is useful to observe that a key feature of long-term employment relationships is that they shield participants from labor market competition. Workers with secure employment don’t have to wake up every morning not knowing what job they will find or how much pay they will receive for it. Similarly, firms with employees are not left uncertain each day about who is going to operate their machines or serve their customers, and at what cost. Employment relationships increase stability for workers and firms and reduce search and training costs associated with job switches.

[†]. Amalia R. Miller is the Georgia S. Bankard Professor of Economics at the University of Virginia, a Research Associate at the National Bureau of Economic Research, and a Research Fellow at the IZA Institute of Labor Economics. Carmit Segal is an Associate Professor in the Department of Business Administration at the University of Zurich.

1. NAOMI CAHN, JUNE CARBONE & NANCY LEVIT, *FAIR SHAKE: WOMEN AND THE FIGHT TO BUILD A JUST ECONOMY* (2024).

Alongside these beneficial features, however, is the concern that workers with safe jobs will devote too little effort to their work. This is the economic motivation for devising incentives at work.

Within-firm competition is presented as a solution to the fundamental challenge at the heart of the field of personnel economics:² How can firms motivate workers to invest costly effort into their jobs and increase output from production? The concern is not that workers are lazy or irresponsible, but that working hard strains workers physically, emotionally, or mentally, and takes time and energy away from other pursuits. It may be possible to get some people to work hard because they derive meaning or enjoyment from their work, so that these effort costs are compensated internally and offset by a greater benefit, but jobs also include many tasks that people don't enjoy and aren't intrinsically motivated to undertake. While recent work in behavioral economics has highlighted the potential for social relationships, social pressure, and gift exchange impulses to increase worker effort,³ financial incentives are still believed to play a primary role, because the impact of nonpecuniary strategies appears limited to only certain people and situations.

After hiring workers, firms retain significant financial power over workers, because they can still fire or dismiss them, and among retained workers, they can decide on job assignments, working conditions, formal rank and authority, and, of course, compensation. The literature in personnel economics has extensively considered how control over these various aspects of job structure and rewards can be used to create financial incentives to motivate workers to provide effort. Individualized incentives based on a worker's own effort are viewed as the theoretical ideal, because such incentives are targeted at the outcome that the worker can control and that the employer values. However, in reality these incentives are often infeasible because of the high costs to employers of monitoring and measuring effort. Instead, employers commonly base incentives on proxies for effort or its outputs.⁴

2. Personnel economics is defined as "the application of economic and mathematical approaches to traditional topics in the study of human resource management." Edward P. Lazear & Paul Oyer, *Personnel Economics* (Nat'l Bureau of Econ. Rsch., Working Paper No. 13480, 2007).

3. See Uri Gneezy, Stephen Meier & Pedro Rey-Biel, *When and Why Incentives (Don't) Work to Modify Behavior*, 25 J. ECON. PERSP. 191 (2011); David J. Cooper & John H. Kagel, *Other-Regarding Preferences: A Selective Survey of Experimental Results*, in 2 THE HANDBOOK OF EXPERIMENTAL ECONOMICS 217 (John H. Kagel & Alvin E. Roth eds., 2015).

4. Examples of individual incentives based on output, rather than effort, include a piece rate payment per unit produced, a commission that is a fixed percent of worker's own sales, or a fixed financial bonus for a teacher based on the amount

Moreover, performance incentives, both positive and negative, are commonly based on relative comparisons among coworkers, rather than individual effort or achievement alone. A prominent example highlighted in *Fair Shake* is the rank-and-yank (or stacked ranking) performance evaluation scheme implemented at GE under Jack Welch.⁵

The idea that relative comparisons and workplace competition could be harnessed by employers as an effective way to motivate worker effort was developed formally in foundational work by Lazear and Rosen.⁶ That paper establishes key results of tournament theory, by showing how winner-take-all contests for a financial reward (such as a bonus or promotion) could be developed to induce desired effort levels in workers, even when effort is impossible to observe and there is only a noisy relationship between effort and output. Because workers are risk averse, and tournaments increase variability in pay, the employer may need to increase base pay to attract workers to enter the contest. Despite the costs of getting risk-averse workers to take on additional risk, tournaments can still be profitable if they are sufficiently effective at raising effort.⁷ This is suggested by the widespread prevalence of tournament schemes across a range of organizations and outcomes, noted in *Compensation and Incentives in the Workplace*,⁸ and the fact that promotions “almost always require relative rankings.”⁹

While these theoretical predictions regarding the potential value of tournaments as a way to increase worker effort have been

of their students' test score improvements.

5. Under stacked ranking, a fixed threshold is set for the share of top performing employees who are rewarded and of bottom ranking employees who are terminated. A related scheme used in major technology companies is “forced ranking” in which evaluators must conform to a predetermined structure for the overall score distribution, with fixed shares of employees placed in the highest and lowest categories.

6. Edward P. Lazear & Sherwin Rosen, *Rank-Order Tournaments as Optimum Labor Contracts*, 89 J. POL. ECON. 841 (1981).

7. See *id.* Lazear and Rosen demonstrate how tournaments can even match the benchmark of the individual piece rate under certain conditions. Furthermore, the literature shown that competitive incentives, using relative comparisons, can improve upon individual-based incentives for cases in which external shocks to output are common across workers and unrelated to their effort. In that case, benchmarking performance relative to a peer group can reduce the volatility of the outcomes and make it more closely related to the factor the worker can control, raising the signal to-noise ratio of the measure, and reducing the variability in payouts for risk averse agents.

8. Edward P. Lazear, *Compensation and Incentives in the Workplace*, 32 J. ECON. PERSP. 195 (2018).

9. *Id.* at 202.

supported in experimental and empirical studies of competitive incentives,¹⁰ the literature has also examined potentially harmful effects of competition in some settings. Incentives for relative performance have the effect of pitting coworkers against one another, which can be harmful to production processes that depend on collaboration or information exchange among co-workers. This can even be a problem for training and mentoring of people who could potentially become competitors in the future. Team-based incentives may help, by removing individual-level competition, but these can weaken incentives and are not always feasible. Even for individual production, high-stakes tournaments can create incentives for deception and sabotage of colleagues.¹¹

I. Economics of Gender and Competition

While the economics literature on tournaments was initially developed without regard to gender, focusing on workers who are either male or non-gendered, more recent studies have considered how competition might interact with gender. Drawing on substantial work on gender differences in competitiveness and voluntary participation in competitions from psychology,¹² experimental economists designed studies to test for gendered effects of competition. There are two main approaches. The first is focused on measuring gender differences in the effects of competition on work effort and performance, while the second is focused on gender differences in decisions to enter into competitions. Studies using both approaches have revealed significant gender differences. Male participants show significantly larger performance improvements under competition¹³ and are more likely to choose a tournament scheme for pay, even when their relatively low prior performance suggests they would do better with a piece rate.¹⁴ Later scholarly work has replicated and confirmed

10. See, e.g., Jeffrey P. Carpenter & Peter Hans Matthews, *Tournaments and Competition*, in HANDBOOK OF LABOR, HUMAN RESOURCES AND POPULATION ECONOMICS (Klaus F. Zimmerman ed., 2023); Lazear, *supra* note 8.

11. See Carpenter & Matthews, *supra* note 10, at 22–30 (discussing potential negative effects of tournaments, including sabotage); see also Subhasish M. Chowdhury & Oliver Gürtler, *Sabotage in Contests: A Survey*, 164 PUB. CHOICE 135 (2015) (focused specifically on sabotage).

12. See ANNE CAMPBELL, *A MIND OF HER OWN: THE EVOLUTIONARY PSYCHOLOGY OF WOMEN* (2002).

13. See Uri Gneezy, Muriel Niederle & Aldo Rustichini, *Performance in Competitive Environments: Gender Differences*, 118 Q.J. ECON. 1049 (2003).

14. See Muriel Niederle & Lise Vesterlund, *Do Women Shy Away from Competition? Do Men Compete Too Much?*, 122 Q.J. ECON. 1067 (2007).

these initial findings,¹⁵ while also yielding new insight into the variation of the effects across features of the setting and competition.

This important work shows that, regardless of their effects on overall efficiency, competitive incentives are unfavorable to women as a group. The literature argues that the prevalence of competition in elite fields and promotion tournaments to attain top leadership job is a key factor contributing to gender inequality at the top of the earnings distribution and women's low rates of representation in top corporate jobs. This hypothesis is typically considered as an alternative in contrast to explanations based on women's caretaking obligations preventing them from investing the long hours at work needed for success in elite jobs.

II. Effects of Competition on Work Time

Rather than treating workplace competition and long work hours as two separate phenomena that each act independently to produce gender inequality, our recent work with Ragan Petrie instead examines the possibility that the two are related.¹⁶ Although not highlighted explicitly in the prior literature, an implication of tournament theory is that contests provide greater incentives for workers to invest effort by both working harder while they are engaged in work and also by working for longer hours. This suggests a causal relationship between these two features of high-status and high-paying male-dominated jobs: the reliance on high-stakes competition among coworkers may itself be producing the requirement for long work hours. If this happens in practice, it offers another answer to the question of why some workers are willing and expected to devote such long hours to their jobs. This explanation corresponds to the popular notion of a "rat race" (because a race is competitive), but it has not been examined in the economics literature. Prominent theories for long work hours have either focused on the possibility that certain production functions are convex, meaning that workers doing those kinds of work have an hourly productivity rate that increases as they work more hours,¹⁷ or on long hours serving as a signaling mechanism through

15. See Muriel Niederle, Gender, in 2 *THE HANDBOOK OF EXPERIMENTAL ECONOMICS* 481 (John H. Kagel & Alvin E. Roth eds., 2015).

16. Amalia R. Miller, Ragan Petrie & Carmit Segal, *Effects of Workplace Competition on Work Time and Gender Inequality*, 77 *INDUS. & LAB. RELS. REV.* 251 (2024).

17. Claudia Goldin, *A Grand Gender Convergence: Its Last Chapter*, 104 *AM.*

which workers convey their dedication and work ethic to employers before promotions.¹⁸

Miller, Petrie, and Segal tested this theory in *Effects of Workplace Competition*, using a controlled field experiment¹⁹ in which workers were randomly assigned to different incentive schemes, to eliminate the host of potential confounding factors that could drive the correlation observed between competitive workplace incentives and long work hours. In the experiment, workers operating under different payment schemes are compared to one another in their performance of the same job, using the same technology to accomplish the same work task, and working under otherwise identical conditions. This design draws on the prior experimental literature on competition but departs from the usual focus on work intensity. Instead, to consider work hours as an outcome, the study examines a tournament that allows workers to improve their performance through both the amount and intensity of their effort. To do this, it develops an experimental setup that uses an open-ended task, where the amount of work to be done is not limited (as in a race) and where work time is not limited to an equal and brief amount of time.

In the primary experiment, workers were offered a fixed payment for an advertised hour-long work session in which they would be testing and benchmarking a tablet-computer program. Upon arrival at their designated sessions, workers were assigned to gender-balanced rooms of four workers and provided with brief training explaining the work task. The task entailed watching the screen and clicking on boxes that appeared in random locations at set intervals, with an enforced wait period of ten seconds between appearances of boxes. The job was designed to require constant attention but offered limited stimulation, which combine to create costly effort. Indeed, workers found it to be very tedious and unpleasant.

ECON. REV. 1091, 1103–06 (2014).

18. See Renée M. Landers, James B. Rebitzer & Lowell J. Taylor, *Rat Race Redux: Adverse Selection in the Determination of Work Hours in Law Firms*, 86 AM. ECON. REV. 329 (1996); Renee M. Landers, James B. Rebitzer & Lowell J. Taylor, *Work Norms and Professional Labor Markets*, in GENDER AND FAMILY ISSUES IN THE WORKPLACE 166 (Francine D. Blau & Ronald G. Ehrenberg eds., 1997).

19. Miller et al., *supra* note 16. As described by John List: “Similar to laboratory experiments, field experiments use randomization to achieve identification. Different from laboratory experiments, however, field experiments occur in the *natural environment* of the agent being observed and cannot be reasonably distinguished from the tasks the agent has entered the marketplace to complete.” John A. List, *Field Experiments: A Bridge Between Lab and Naturally Occurring Data* (Nat’l Bureau of Econ. Rsch., Working Paper No. 12992, 2007).

As part of the initial training, workers were informed that they only needed to stay and work for ten minutes and then complete a survey about the program to be paid the promised wage. The reasons for the shortened mandatory work time were described as being motivated by the employer's concern for their wellbeing, and workers were asked kindly to stay and work for as long as possible, for a maximum of forty minutes, to benefit the employer. At the end of the training, workers in randomly selected treatment rooms were also told they could potentially earn a bonus payment for their performance. Workers in the main treatment were offered a tournament-based bonus of \$30, paid to highest-output worker in the room. Workers in the control room were not offered any financial incentives for performance.²⁰

Several features of the experiment help enhance its reliability. First, the fact that workers were not alerted to the possibility of a bonus payment before they arrived and started training means that individuals are not self-selecting into tournaments. Second, the decision to recruit workers for a full-hour and limit them to all staying for less than that was made in order to prevent variation in outside obligations from affecting how long workers decided to stay at the job. Third, the simplicity of the task, and the fact that it was a one-time only job, had the combined effects of making effort the most important determinant of performance and of preventing signaling motivations from affecting effort. The simplicity of the task and the fact that ability and prior knowledge may not help improve performance emulates the real-world feature of competitions that workers (who are typically grouped with others who have similar skills and qualifications) are not able to win by relying on their greater skill alone, but must also invest substantial effort. The one-shot nature of the task, which differs from high-status jobs that demand high effort levels over months and years, is necessary to reliably measure the effects of competition in a controlled setting. Finally, the experiment draws on the behavioral economics insights about the potential impact of non-financial factors on work effort by trying to stimulate social impulses for reciprocity and directing them to work effort. This was done by hiring workers for a job that produced an output described as

20. The paper also tested two alternative bonus schemes: a low-stakes tournament with a \$15 prize and a piece rate of 3 and 1/3 cents per point (set to match the average bonus rate paid in the \$30 tournament) paid to all workers based on their individual performance alone.

meaningful to the employer, who displayed thoughtfulness and consideration for the workers.

The first key result of this experiment is that workers offered a chance to win a tournament prize spend significantly more time on the job than workers not offered that chance. The average work time in the \$30 tournament is 83% longer than in the non-bonus group and the share of workers staying for the maximal time is eight-times larger. Work intensity also increased, raising total output by close to 90%. This near doubling of output was more than enough to offset the greater cost of the tournament scheme, which increased costs by 30%. As a result, the cost of extracting effort from workers is reduced by more than 30% with the introduction of a tournament prize. This was true despite the fact that workers in the flat payment control group responded to social incentives, and 58% stayed for significantly more than the minimum time. The finding supports the theoretical prediction from economic models that tournaments can be attractive to employers because of their cost-effectiveness at inducing workers to invest effort and provide labor.

While the first result is based on an analysis of all workers, and does not directly address gender, it has implications for the gendered effects of workplace competition. This is because, outside of our controlled setting, the gendered distribution of unpaid work in which women bear the bulk of caretaking and homemaking obligations, means that women are, on average, less able to work the long hours needed for success and promotion in competitive workplaces. Even female workers who are equally talented and productive per unit of work time, will struggle to produce the same total volume of output as their less encumbered male colleagues, and as a result, will be less likely to succeed. Knowing this in advance can even produce gender differences in entry into certain occupations and job types. Women who expect to reduce their work time while engaged in greater home production, such as childcare or eldercare, can anticipate that these obligations will interfere with progress in competitive fields, and therefore lower their expected returns from those fields. In this way, the finding that tournaments lead to longer work times for all workers reveals the fundamental connection between the two features of elite jobs. This shows that workplace competition contributes to gender inequality through the indirect mechanism of extended work time.

III. Gender Differences in Worker and Job Applicant Responses to Competition

The next set of results in *Effects of Workplace Competition* test for gender differences in the primary experiment. No differences in work time or production are detected between male and female workers in the control group with no bonus, which means that the experimental setting was effective at removing the role of gender differences in outside obligations. Male and female workers also both increased their effort and output under the tournament treatment. Despite these similarities, however, a significant gender difference emerges in the degree of responsiveness to the tournament incentive. Male workers increase their effort by significantly more than female workers, leading to statistically significant gender gaps in time stayed and total output. As a result, although each tournament group started with an even mix of male and female competitors, the winners of the tournament are 73% male.

This finding of a gender gap in work effort that emerges only in the high-stakes tournaments points to a direct mechanism through which workplace competition puts women at a disadvantage. This confirms prior findings of gender gaps favoring men in response to competition²¹ in a new setting in which workers decide on both amount and intensity of effort. The finding also aligns with work that finds, when given an option, men are more likely to choose to enter a tournament over an alternative payment scheme. Workers in the *Effects of Workplace Competition* main experiment were not given a choice between a tournament and an alternative bonus scheme but the decision of how long to work is equivalent to a continuous stream of choices between staying in the competition and leaving for another activity. However, there is an important difference that emerges in the continuous setting where workers perform their tasks in the same room at the same time and are therefore able to observe and respond to choices made by other workers. This introduces the possibility that female workers leaving earlier causes male workers to stay even longer, and vice versa.

The paper therefore presents results from a secondary experiment that measures *ex ante* gender differences in tournament entry choices. This experiment uses the same work task and setup as the primary experiment, but it differs in first informing job applicants in advance about these details (including

21. See Gneezy et al., *supra* note 13.

the fact that only ten minutes of work will be required) and about a bonus payment. This enables the study to offer job applicants the possibility of selecting whether they would prefer to compete for a tournament prize based on performance relative to others in their work room, or if they would rather be paid a flat wage rate (of 20¢ per minute) for any overtime after the mandatory period. Applicants were asked to select between tournaments for a variety of prize levels (\$12, \$18, \$24, \$30, \$36) and told that, if hired, they would be assigned at random into one of the prize levels, and their choice for that level would determine whether they entered into a tournament for a bonus or paid a fixed wage rate.

The main result of the second experiment is that the choices of job applicants (N = 739; 57% female) to enter into tournaments also differ by gender, but only for higher stakes tournaments. At low prize levels, men and women choose the tournament at statistically indistinguishable rates. However, as the prize level increases, men respond more strongly to the increased competitive incentive and are significantly more likely to select a tournament. This is a more direct confirmation to the prior literature on gender differences in tournament entry, extended to a setting with variable hours.²² The finding that the extent of the gender gap varies with details of the setup is also consistent with prior work in that literature.²³ The fact that the largest differences are found for the highest prize levels may be particularly concerning for the gendered impact of competition on elite careers.

22. See Niederle & Vesterlund, *supra* note 14.

23. See Uri Gneezy, Kenneth L. Leonard & John A. List, *Gender Differences in Competition: Evidence from a Matrilineal and a Patriarchal Society*, 77 *ECONOMETRICA* 1637 (2009) (showing the existence of gender gaps in patriarchal but not in matrilineal societies); Muriel Niederle, Carmit Segal & Lise Vesterlund, *How Costly is Diversity? Affirmative Action in Light of Gender Differences in Competitiveness*, 59 *MGMT. SCI.* 1 (2013) (showing that when rules are changed to favor women, gender gaps are reversed); Thomas Buser, Muriel Niederle & Hessel Oosterbeek, *Gender, Competitiveness, and Career Choices*, 129 *Q. J. ECON.* 1409 (2014) (showing that the choice to enter a tournament predicts subsequent high school academic track selection); Jeffrey A. Flory, Andreas Leibbrandt & John A. List, *Do Competitive Workplaces Deter Female Workers? A Large-Scale Natural Field Experiment on Job Entry Decisions*, 82 *REV. ECON. STUDIES* 122 (2014) (showing that the gender gaps depend on the specific work task and whether the job is performed in teams); Nagore Iriberry & Pedro Rey-Biel, *Stereotypes are Only a Threat when Beliefs are Reinforced: On the Sensitivity of Gender Differences in Performance Under Competition to Information Provision*, 135 *J. ECON. BEHAV. & ORG.* 99 (2017) (finding that gender gaps in performance vary across tasks and informational conditions).

IV. Discussion and Implications

Taken together, the results of the field experiments in *Effects of Workplace Competition* and the broader economics literature on gender and competition support the central theme of *Fair Shake*, that winner-take-all corporate tournaments put women at a disadvantage relative to men. The direct mechanism for the negative effect of workplace competition on gender equality is examined in *Effects of Workplace Competition* and in the prior literature on economics on gender and competition. It derives from the fact that men and women respond differently to competitive incentives.²⁴ Competition is more attractive to male workers and has a more positive impact on their job performance. This means that competitive workplace cultures will tend to draw in fewer women than men from the outset, they will retain fewer women over time, and they will tend to bestow fewer rewards on women. This gender difference in direct response to competition and men's greater apparent desire to participate and dominate in tournaments may contribute to the third aspect of the triple bind discussed in *Fair Shake*: that women are less likely to enter and persist in winner-take-all workplace cultures.

Despite this common conclusion, however, the focus of *Fair Shake* differs from the prior economics literature on gender and competition. Instead of considering cases where competition improves performance in a way that increases the production of useful goods and services, the book is most interested in situations where winning at work is not simply a matter of effort (working harder and longer) but also requires engaging in activities that are socially harmful, and possibly also unethical or illegal. This focus on the "dark side" of high-powered incentives is also found in the economics literature on competitive incentives, but that work has not typically focused on gender differences. The personnel economics literature has also focused on agency problems, where competitive incentives are a problem for firms because they distort effort away from non-incentivized activities²⁵ or towards efforts to

24. These differential responses themselves likely derive from the combined effects of gender differences in risk aversion (where men are more willing to accept gambles and women more willing to pay to avoid them), overconfidence (where men tend to overestimate their own relative ability ranking and future performance), as well as preferences, positive or negative, for engaging in competitions (and from winning or losing in them).

25. See Bengt Holmstrom & Paul Milgrom, *Multitask Principal-Agent Analyses: Incentive Contracts, Asset Ownership, and Job Design*, 7 J.L. ECON. & ORG. 24 (1991).

falsify performance metrics,²⁶ or sabotaging the productivity of colleagues at the same company.²⁷ While some of the examples in *Fair Shake* illustrate agency problems between firms and employees, the bulk of the examples depart from that framework. Instead, they describe scenarios in which the socially harmful behavior benefits top managers at the company (improving short-term profits or stock prices) and possibly even its shareholders at the expense of its customers, employees, or other stakeholders.

In that sense, the book broadens the argument, relative to *Effects of Workplace Competition*, by showing that workplace competition can have gendered effects if men and women differ in their willingness to engage in socially harmful behaviors to win at workplace tournaments. The first and second parts of the triple bind in the book suggest reasons for why that must happen, even if men and women have the same underlying preferences for conforming to ethical norms (because of differences in access to information about the expectations for unethical behavior or differences in expected punishments that men and women are likely to suffer if they decide to do it). The third part of the bind is based on the idea that preferences might also differ, with the same information and reward structure. While this is ultimately an empirical question, making it an interesting topic for future research, the research findings of gender differences in tastes for competition can offer further support for this dimension as well. If men value winning at work more than women do, they will be more willing to risk the same punishment or incur the same amount of internal psychic costs from violating their own ethical priorities because the rewards to do so will lead to more utility (for the same financial payout).²⁸

Although, as noted above, the triple bind proposed in *Fair Shake* includes differential entry and persistence by gender into tournaments, which resembles the direct mechanism in *Effects of Workplace Competition*, it may be more similar in spirit to the second mechanism in that paper because of its indirect nature. The

26. See Jeffrey P. Carpenter, Peter Hans Matthews & John Schirm, *Tournaments and Office Politics: Evidence from a Real Effort Experiment*, 100 AM. ECON. REV. 504 (2010); Richard B. Freeman & Alexander M. Gelber, *Prize Structure and Information in Tournaments: Experimental Evidence*, 2 AM. ECON. J.: APPL. ECON. 149 (2010).

27. See Chowdhury & Gürtler, *supra* note 11.

28. Men may also derive greater social benefits from higher earnings and economic status, and greater penalties for unemployment and low wages, for example, through rewards in marriage and dating markets, while ambitious career-oriented women may suffer penalties. See Leonardo Bursztyn, Thomas Fujiwara & Amanda Pallais, 'Acting Wife': *Marriage Market Incentives and Labor Market Investments*, 107 AM. ECON. REV. 3288 (2017).

difference between the paper and the book is the nature of the intermediate mechanism. In *Fair Shake*, the gendered impacts run through an intermediate mechanism related to rule-breaking and misbehavior, while in *Effects of Workplace Competition*, it is from punishingly long work hours. The finding that tournaments increase the work time required of all workers is itself gender neutral, because it applies equally to male and female workers. Nevertheless, it has a highly gendered impact, because women bear that primary burden of unpaid caregiving and home production work, which limits the time they can devote to workplace competition.

A key implication of the presence of this second indirect mechanism is also shared by the triple bind mechanism proposed in the book: that addressing the harmful effects of workplace competition on women's careers is not going to be as simple as convincing more women to be competitive and risk-loving.²⁹ Although studies suggest this may be possible,³⁰ or that gender-based affirmative action can induce talented women to enter tournaments,³¹ it is unlikely to be sufficient.

Furthermore, the presence of these indirect mechanisms also raises questions about the social desirability of changing women's preferences to compete like men. This is clearly concerning if competing like men means more cheating and deception, but it may also be concerning if it means sacrificing the possibility of devoting time to home production. This can drive talented women with family aspirations out of careers where they could contribute socially or suppress fertility intentions for others. Perhaps these effects could be mitigated if gender norms around caretaking and homemaking continue to evolve towards greater equality, with men sharing more evenly in the burdens and pleasures of home production, sometimes taking on the major role. Although recent

29. The risk component is important separately from tastes for competition because tournament schemes typically concentrate rewards among a small number of winners. This increases the variability in payouts and therefore income inequality across workers, while also raising the level of financial risk faced by individual participants in workplace tournaments. In the experiments in Miller et al., *supra* note 16, although the average payment to workers was slightly higher in the piece rate individual bonus (\$32.56) than in the high-prize tournament (\$32.50), the standard deviation in payments was much higher in the tournament (13.1) than in the piece rate (3.2).

30. See Sule Alan & Seda Ertac, *Mitigating the Gender Gap in the Willingness to Compete: Evidence from a Randomized Field Experiment*, 17 J. EUR. ECON. ASS'N 1147 (2019).

31. See Niederle et al., *How Costly is Diversity?*, *supra* note 23.

opinion polls suggest some progress on the social dimension,³² we see little cause for optimism, as expressed by Goldin,³³ that technological change will itself eliminate the disproportionate rewards for long work hours in elite jobs. If workplace competition is a root cause of long hours, as implied by *Effects of Workplace Competition*, then long hours should be expected to persist as long as workplace competition does.

32. Recent opinion polls from the Pew Research Center suggest optimism on this dimension. The vast majority of fathers surveyed described being a parent as the among the most (61%) or as the most (25%) important aspect of their personal identity; and 77% of adults said that “children who are raised in a household with a mother and a father are better off when both parents focus equally on their job or career and on taking care of their children and home.” Katherine Schaeffer, *Key Facts About Dads in the U.S.*, PEW RSCH. CTR. (June 15, 2023), <https://www.pewresearch.org/short-reads/2023/06/15/key-facts-about-dads-in-the-us/> [<https://perma.cc/8ELV-FN25>].

33. See Goldin, *supra* note 17.

An Economic, Psychological, and Linguistic Explanation of (Some Reasons) Why Women Don't Get a Fair Shake

Claire A. Hill[†]

Introduction

Fair Shake describes workplace dynamics that deeply disadvantage women.¹ My (wildly optimistic) aim here is to explain how those dynamics might arise and persist consistent with orthodox economic theory, and to suggest how orthodox economic theory might better accommodate dynamics of this sort. My more realistic aim is to open the door to such an inquiry

In the world depicted in *Fair Shake*, companies are surviving, and sometimes thriving, even though they are not properly rewarding skilled and talented female employees: such employees may quit or may even be fired. Under orthodox theory, these companies should be outcompeted by companies that do reward female employees' skill and talent.² Having been outcompeted, such companies should fail. Yet, while some do, many do not. And even those that do eventually fail are able to continue their problematic (that is, not merit-based) practices for quite a while.

There are several ways to resolve this puzzle. Perhaps the authors' assessment that the women have skill and talent, and were not properly rewarded for other reasons, is wrong. But that seems unlikely: the authors' case studies are very well documented, as is their broader evidence for this proposition, that women's prospects in the workplace are not always merit based.³

[†]. Professor and James L. Krusemark Chair in Law, and Founding Director, Institute for Law and Rationality, University of Minnesota Law School; Visiting Professor, University College Dublin. I wish to thank June Carbone for her extremely helpful comments (and for writing the book that inspired them).

1. NAOMI CAHN, JUNE CARBONE & NANCY LEVIT, *FAIR SHAKE: WOMEN AND THE FIGHT TO BUILD A JUST ECONOMY* (2024).

2. *See generally* GARY S. BECKER, *THE ECONOMICS OF DISCRIMINATION* (2010) (analyzing and trying to explain what might account for discrimination in employment given that employers must pay to discriminate.)

3. Of course, non-merit-based treatment is not confined to women. There are many reasons independent of gender why an employer might not recognize or reward merit.

Perhaps the worldview that markets work well enough that firms making bad personnel decisions should be outcompeted is wrong. But how could that be?

I argue here that markets do work well enough, but that “well enough” does not mean that only the fit(test) survive. It’s not as though there is pure competition among the competitor firms that leaves only the (fittest) victor surviving. As philosopher Daniel Milo explains, pure competition is *artificial* selection, where two or more stylized competitors are sent into “battle,” what we see in the world is actually the far more unwieldy *natural* selection.⁴ There are multiple types of competition on multiple dimensions, with no discrete beginning or end time to the particular competition. *What survives only needs to be good enough to do so.*⁵ And among the entities that survived, how do we know which qualities account for those entities’ success? The selection metaphor, again founded on a simple phenomenon, obscures the extent to which the assessment here is complicated and contingent—perhaps some mixture of luck and skill.

Critically, nobody knows who is going to win, or at least not lose, the competition.⁶ Business actors (including managers and investors) have to decide who to bet on before the winner is known. How do they do that? One appealing strategy is by hypothesizing what well-regarded others might do or copying what they do.⁷ Knowing that business actors will be looking for very quick demonstrations of good results, would-be competitors make decisions with a view towards short-term results, even if a regard for the longer term would counsel a different course.⁸

4. DANIEL MILO, GOOD ENOUGH: THE TOLERANCE FOR MEDIOCRITY IN NATURE AND SOCIETY 12 (2019).

5. *Id.* at 6 (“Human society is not ruthlessly competitive, and neither is nature. Both are tolerant of excess, inertia, error, mediocrity, and failed experiment. Where great successes occur in society and in nature, luck can be far more important than talent.”).

6. Note that even the broad applicability of the competition metaphor is coded male. That competition that yields a victor, as opposed to mutual cooperation that can make both sides better off, is an oft-discussed distinction between male and female conversational styles and indeed, modes of interacting. *See generally* DEBORAH TANNEN, YOU JUST DON’T UNDERSTAND: MEN AND WOMEN IN CONVERSATION 42 (1990) (discussing differences among males and females as to competition, cooperation, and their respective interests in and ways of establishing status and connecting with one another).

7. Claire A. Hill & Alessio M. Paces, *The Neglected Role of Justification under Uncertainty in Corporate Governance and Finance*, 3 ANNALS CORP. GOVERNANCE 276, 303–08 (2018). *See also* Claire A. Hill, *Justification Norms under Uncertainty: A Preliminary Inquiry*, 17 CONN. INS. L.J. 27, 33–38 (2010).

8. Hill & Paces, *supra* note 7, at 276.

More broadly, business actors have to make decisions as to what is apt to work, and assessments as to what is working and what is not working. While orthodox theory characterizes the process as one of “seeking information,” the real-world process is far from straightforward, and different people can and do come to different conclusions.⁹ And necessarily so—not only do we live in a world of incomplete information, we live in a world of uncertainty, in which we might not know “complete” information, except perhaps in retrospect.¹⁰

I. On Prototypes and Proxies

What influences people’s decisions and assessments could of course not be feasibly be addressed in anything shorter than a multi-volume treatise. Here, I discuss some aspects of the inquiry, first in general, and then, in the context of gender: the role of prototypes¹¹ and proxies.¹² While not in common parlance, the terms are nevertheless in common currency—they are well understood and pervasive. As explained further below, prototypes are the typical examples of a category. (Think of a sunset. Or a cat.) Proxies are indirect indications of a fact: making erudite-sounding references to obscure historical facts is an indication, or proxy, of being learned or perhaps wise.

9. See Claire A. Hill, *Repetition, Ritual, and Reputation: How Do Market Participants Deal With (Some Types of) Incomplete Information?*, WISC. L. REV. 515 (2020).

10. See generally JOHN KAY & MERVYN KING, *RADICAL UNCERTAINTY: DECISION-MAKING BEYOND THE NUMBERS* (2022) (arguing that we live in a of uncertainty, in which possible and associated probabilities are not known, and discussing the implications thereof).

11. There is extensive literature distinguishing between prototypes and exemplars, and between different theories of prototypes. See generally *Prototype Theory*, SCIENCE DIRECT, <https://www.sciencedirect.com/topics/social-sciences/prototype-theory> [<https://perma.cc/W6GB-QH88>] (summarizing prototype theories); *Concepts*, STAN. ENCYC. PHIL. <https://plato.stanford.edu/entries/concepts/> [<https://perma.cc/4BE5-F4AX>] (summarizing philosophy of concepts). These distinctions are irrelevant for my purposes; I use a rough and intuitive sense of the term. See generally STEVEN WINTER, *A CLEARING IN THE FOREST: LAW, LIFE AND MIND* (2001) (describing prototypes as the category applies in the legal context).

12. For the use of the term “proxy” in this sense, see, e.g., Akshay R. Rao, *The Quality of Price as a Quality Cue*, 42 J. MKTG. RSCH. 401, 401 (2005) (“In the economics-oriented literature and in the emerging empirical tradition in marketing and consumer behavior, it was becoming increasingly apparent that consumers frequently used price as a proxy for product quality.”) (citations omitted). Note that the related term usually used in the economics literature is “signal.” See Spence, *infra* note 20.

Prototypes and proxies are commonly considered in discussions of gender. But the discussions often characterize gender prototypes and proxies as inaccurate and bad, rather than taking seriously their inevitability and what follows from that. Below I introduce prototypes and proxies in general and consider gender-related prototypes and proxies.

People organize their worldviews using prototypes. Experiences (and people, and most other things) are not singular—a person is an x, sharing x-ness with other x's. A singer shares an inclination and ability to sing with other singers. A skyscraper shares the attributes of a skyscraper—a tall building that “scrapes the sky”—with other skyscrapers. “Singer” and “skyscraper” can be viewed as categories.¹³ Categories have prototypes, or examples that are typical of the category, examples that immediately come to mind. A singing dog or bird is probably not a prototypical singer, nor is, in a classic example, the Pope or a four-year-old boy a prototypical bachelor. The prototypical bachelor in conversations about these examples was sometimes George Clooney, before his marriage to Amal Clooney.¹⁴

Think of Santa Claus. I would wager that you have a mental image of a portly jocular bearded older man with white hair dressed in a red outfit with white trim saying “Ho, Ho, Ho.” Santa Claus is no outlier in this respect. Supplying prototypical people is actually the business model of “Central Casting,” an agency that provides background actors for movies and television. The agency opened in 1925 and is still in existence.¹⁵ The phrase “out of Central Casting,” first used in 1953 in an article about an eighty-three-year-old man who had enrolled at UCLA,¹⁶ has come to be used figuratively, albeit perhaps not by generations after Gen X, to describe a person well summoned up by the applicable prototype. Indeed, the man in the

13. See Roland Fryer & Matthew O. Jackson, *A Categorical Model of Cognition and Biased Decision Making*, 8 B.E.J. THEORETICAL ECON. 1 (2008) (discussing the history, importance, and inevitability of “categorization”).

14. See Nichola Murphy, *George Clooney's Friends' Initial Reaction to Wife Amal Before Venice Wedding*, HELLO! MAG. (Aug. 7, 2023), <https://www.hellomagazine.com/brides/499566/george-clooney-friends-initial-reaction-to-wife-amal-before-venice-wedding> [https://perma.cc/YP6H-FTSR] (describing George Clooney as the paradigmatic bachelor); see also GEORGE LAKOFF, *WOMEN, FIRE, AND DANGEROUS THINGS* (1987) (discussing the bachelor example). See generally WINTER, *supra* note 11 (describing categorization and prototypes in the legal context).

15. *What Does Straight Out of Central Casting Mean?*, CENT. CASTING (Apr. 2, 2020), <https://www.centralcasting.com/what-does-straight-out-of-central-casting-mean/> [https://perma.cc/JM4T-7CPM].

16. *Id.*

1953 article was described as “having ‘a formidable shock of white hair and a magnificent goatee’” and looking “as if he had just walked out of Central Casting with the role of a witty, kindly old prospector in the latest western movie.”¹⁷

A more recent example concerns the ouster of Disney CEO Bob Chapek, and his replacement with his immediate predecessor in the job, Bob Iger: “Bob Iger’s shoes were impossible to fill,” said Jeffrey Cole, director of USC’s Center for the Digital Future. “Chapek wasn’t as diplomatic or elegant or smooth as Iger He just wasn’t Central Casting’s idea of the CEO who would follow Bob Iger.”¹⁸

As noted above, prototypes aren’t just about physical appearances. A surly profane and drunken (but plump, white-bearded, and suitably attired) Santa Claus wouldn’t be considered a real Santa Claus, as countless movies make clear. And note that it was Chapek’s lack of diplomacy and “smooth[ness]” as much as his lack of “elega[nce]” that made him seem like the wrong man for the job.¹⁹ Note too that the real or figurative Central Casting might have far more than one idea as to who could succeed Iger—there isn’t just one prototypical CEO. Santa Claus is pretty close to having only one prototype, but a category may have many prototypes. Consider the category of “chef:” it is easy to conjure up several different prototypes.

A proxy is an indirect conveyance of information that complements or substitutes for direct conveyance.²⁰ This does not

17. *Id.*

18. Meg James, *Behind the Stunning Exit of Disney CEO Bob Chapek*, L.A. TIMES (Nov. 21, 2022), <https://www.latimes.com/entertainment-arts/business/story/2022-11-21/bob-chapek-disney-ouster-bog-iger> [<https://perma.cc/G9M2-ZWTE>]. Donald Trump is also known to make use of the phrase “central casting.” See Michael Collins & John Fritze, *Donald Trump, a Former TV Star, Often Sees Those Around Him as ‘Central Casting’*, USA TODAY (Feb. 25, 2021), <https://www.usatoday.com/story/news/politics/2019/02/25/donald-trump-often-uses-central-casting-describe-those-around-him/2981978002/> [<https://perma.cc/J5VK-44YC>].

19. James, *supra* note 18.

20. For my purposes, the terms are largely synonymous. See generally *Signaling Theory*, SCIENCEDIRECT, <https://www.sciencedirect.com/topics/economics-econometrics-and-finance/signaling-theory> [<https://perma.cc/P4YG-98AX>] (summarizing signaling). The most-discussed type of signaling is Spence signaling. See Michael Spence, *Job Market Signaling*, 87 Q. J. ECON. 355 (1973), known as the seminal paper on Spence signaling. I use the term proxy because signaling has come to be associated with Spence signaling, which is a particular subtype of signaling not relevant to my use of the term here. Spence signaling involves resolving the problem of asymmetric information by the information possessor’s use of a costly device to convince the information seeker. For instance, a rich person spends money

imply that there is (or is not) a *conveyor*. Rather, a proxy is something the conveyee (decision-maker, actor, etc.) takes as information for a particular proposition, whether purposively conveyed to that end or not.

We can't help but use proxies to figure out what is true or what we should do—much of what we want to know can't be directly conveyed. We take a person's ostentatious spending, or casual references to exotic travel or consumption of luxury goods, as evidence that the person is rich. We take a person's rudeness to his subordinates and to waitstaff as evidence that the person is generally unkind. We take a job applicant's extensive preparation for an interview as evidence that the applicant is capable of and motivated to be prepared in other contexts.

Proxies are related to “signals,” a term from economics.²¹ In the standard economics use of “signaling,” the focus is on purposiveness—for instance, a person is spending ostentatiously to convince people that they are rich. Saying they are rich would be dismissed as self-serving, so they “signal” that they are rich by doing something that costs them far more if they are not rich (spending a great deal) than if they are.²² But, as the other examples suggest, there is a more general phenomenon at issue, of people trying to determine the presence of a characteristic or a state of affairs using suggestive, but far from definitive, evidence.

Again, we use proxies constantly—doing otherwise would be unthinkable, given the extent to which we need to act and make decisions based on incomplete information. What “authority” should we rely on as to what is true about the world? What food should we eat or not eat? Should we bring an umbrella and raincoat? Consider the process by which we make inferences that we use to guide us. Obviously, proxies are not perfect—you might conclude that food that didn't smell spoiled was safe to eat and later find out you were

ostentatiously to show they have enough that they can afford to do so. Or a person spends years getting a college degree to convince a prospective employer that the person is willing to make that investment. By contrast, the kind of proxy/signal at issue here is not necessarily one used purposively by the information possessor. The focus of my account is the proxy's use by the information seeker as an input in her assessment and decision. See generally Hill, *supra* note 7; Claire A. Hill, *Making Sense of Fallacies*, in *HIDDEN FALLACIES IN CORPORATE LAW AND FINANCIAL REGULATION* (Alexandra Andhov, Claire A. Hill & Saule T. Omarova, eds., 2025) (arguing that economics and law and economics far more often depict the process by which information is conveyed as Spence signaling than is warranted). I also avoid the term “signal” because it has been co-opted by semiotics into a term that has strayed far from its intuitive roots.

21. See, e.g., Spence, *supra* note 20.

22. This is an example of Spence signaling. *Id.*

wrong. Moreover, proxies are very sensitive to context. A sea of umbrella wearing, raincoat-clad people outside might be filming a movie rather than protecting themselves from the rain. An American lawyer who was thought to be effective in the United States because he was very assertive might, in another country, be thought to be boorish and difficult. This example raises another important aspect of proxies and prototypes: the extent to which the ultimate categories at issue are coarser or finer. Degrees of aggressiveness might be important to someone in the United States, whereas, in a country where lawyers were less adversarial, there might be a coarser prototype, and there might not be proxies for differing degrees of adversariness. This will prove very important when we turn expressly to the concept of gender.²³

Finally, of course, there are significant changes over time.²⁴

An interesting example is Sam Bankman-Fried (SBF). People are always looking for “the hot new thing”—notably, for this purpose, the genius who is capable of generating hot new business ideas. Genius doesn’t come pre-labeled as such: thus, we need a proxy. For a time, the ways SBF presented himself served in combination as proxies, and the overall persona became a prototype. But given his downfall, a hoodie-wearing, disheveled, and inattentive persona may no longer serve as a proxy for or prototype of genius, as described in a bit more detail below.

Not for Bankman-Fried the physical cage of a suit and tie. Instead, the T-shirt, cargo shorts and sneakers, often worn with white running socks scrunched down at the ankle. And not just any T-shirt and cargo shorts, but what could seem like the baggiest, most stretched out, most slept in, most consciously unflattering T-shirts and shorts; the most unkempt bed-head.²⁵

23. See Vallay Varro, *We've Got to Stop Lumping All Asian-Americans Together*, ED POST (Jan. 27, 2017), <https://www.edpost.com/stories/weve-got-to-stop-lumping-all-asian-americans-together?form=MG0AV3> [<https://perma.cc/656G-WMMV>] (discussing the concept of model minority, akin to a prototype).

24. See Daphne van der Pas, Loes Aaldering & Angela L. Bos, *Looks Like a Leader: Measuring Evolution in Gendered Politician Stereotypes*, 46 POL. BEHAV. 1653 (2024).

25. Vanessa Friedman, *Hey, Silicon Valley, Maybe It's Time to Dress Up, Not Down*, N.Y. TIMES (Dec. 13, 2022) <https://www.nytimes.com/2022/12/13/style/sam-bankman-fried-style.html> [<https://perma.cc/DHA6-B974>]; see also Calder McHugh, *Did Sam Bankman-Fried Just End the Era of the Boy Genius?*, POLITICO (Feb. 10, 2023), <https://www.politico.com/news/magazine/2023/02/10/sam-bankman-fried-crypto-image-00081637> [<https://perma.cc/B8NG-BXTJ>] (“SBF . . . donned a regular uniform of sneakers, long white socks, shorts that went below his knees and a long T-shirt that sometimes seemed barely laundered. He let his hair grow in every direction. This dishevelment seemed curated to advertise his youth and irreverence.”).

Famously, SBF would play video games during meetings where he was seeking investors' funds,²⁶ as though he was so brilliant and so nonchalant about getting money that he couldn't and wouldn't devote his full attention to persuading them that he was worth investing in.

Clearly, dirty clothes, messy hair, and not paying attention in a business meeting is not in any direct way an indication of genius generally or worthwhile business ideas in particular. Yet for a time, it came to be so. There is no straightforwardly reliable test—like, for instance, a very difficult math test—that could pick out the kind of genius being sought, someone who had big money-winning ideas. So, this proxy was used instead and came to constitute a prototype.²⁷ An investor and marketing professor gave this description of the prototype and its underlying rationale: “It’s the ultimate billionaire white boy tech flex: [SBF is saying that he is] so above convention. [He is] so special [that he is] not subject to the same rules and propriety as everyone else.”²⁸

Subsequent to SBF’s fall from fortune and grace, the prototype he instantiated may have run its course. Articles recounting his fall have had titles such as *Hey Silicon Valley, Maybe It’s Time to Dress Up, Not Down: Sam Bankman-Fried’s Choices May Signal an End to the Schlubby Mystique*,²⁹ and *Wait, When Did the Schlubs of Silicon Valley Learn to Dress?: Tech Moguls Trade Hoodies for Conventional Style Amid Fresh Scrutiny of the Industry; Dressing Down ‘Is So Played Out.’*³⁰ The search for the hot new thing will continue, but it may look rather different than it did in SBF’s heyday.

As the foregoing makes clear, prototypes and proxies are often closely linked. Consider the reasons why Sam Waterston, who played District Attorney Jack McCoy on television for many years, was used as a spokesperson for a brokerage house advertising to get investors to entrust it with money: “At the end of the day, [the

26. Brittney Nguyen, *Sam Bankman-Fried Was Once Caught Playing the Video Game ‘League of Legends’ During a Pitch Meeting for FTX*, BUS. INSIDER (Nov. 10, 2022), <https://www.businessinsider.com/ftx-sam-bankman-fried-league-of-legends-investor-pitch-meeting-2022-11> [<https://perma.cc/Z84J-RZM2>].

27. See, e.g., Emily Peck, *Sam Bankman-Fried’s “Underdressed Genius” Look*, AXIOS (Nov. 28, 2022), <https://www.axios.com/2022/11/28/sam-bankman-frieds-genius-look> [<https://perma.cc/HC57-W7HN>].

28. Friedman, *supra* note 25.

29. *Id.*

30. Jacob Gallagher, *Wait, When Did the Schlubs of Silicon Valley Learn to Dress?*, WALL ST. J. (Mar. 25, 2024), <https://www.wsj.com/style/fashion/silicon-valley-tech-schlubs-fashion-897909ad> [<https://perma.cc/UJG5-NF46>].

advertising agency responsible for the advertising, together with the client] decided he is a valuable, credible spokesman for the idea of independence. In his role on 'Law & Order,' he is the voice of critical, independent thinking."³¹

McCoy was depicted as someone with unimpeachable integrity—he would never lie or cheat, nor would he proceed without what he deemed sufficient knowledge. He also didn't hesitate to take an unpopular position when he thought doing so was warranted by the facts and circumstances.

Jack McCoy is thus a (not *the*) prototypical trustworthy authoritative person. His taking unpopular stances at times is a proxy for an ability and willingness to think critically and be independent. Of course, the person appearing in the advertisement is not McCoy, but instead, the actor who played him, Sam Waterston. There is more to say, beyond our scope, as to why potential investors would imbue Waterston with McCoy's characteristics. At the least, they might think that Waterston would not have thought it worthwhile to have risked his reputation—and continuing prospects of playing McCoy—to get even a generous sum of money if he thought the firm was sketchy. Indeed, note that none of the foregoing suggests that prototypes or proxies are necessarily inaccurate, a topic to which I will return. Moreover, prototypes and proxies can also be starting points. After all, we have to start somewhere. Sometimes, though, prototypes and proxies start off accurate but become inaccurate: they are "sticky," not departed from notwithstanding evidence to the contrary.

How is this relevant to *Fair Shake*? In the orthodox economic picture, a) there's a "fact" as to who has talent and skill, b) determining that "fact" involves a process that will often be tractable and worthwhile, and c) failing at that determination should mean non-survival on grounds of unfitness. But the reality is far more complex. Even if we had a full list of what characteristics a desirable employee would have, we would still need to make the determination of whether someone had them—notably, including proxies for those characteristics, and prototypes, of what someone with those characteristics would be (look) like.

31. Stuart Elliot, *Actor Gets an Encore as Broker's Spokesman*, N.Y. TIMES (Apr. 19, 2006), <https://www.nytimes.com/2006/04/19/business/actor-gets-an-encore-as-brokers-spokesman.html> [<https://perma.cc/9TR4-6VEE>].

II. Some Examples Involving Gender

I now turn to some specifics expressly pertaining to women at work, particularly as regards women in more senior roles. These are intended to demonstrate how proxies and prototypes complicate an assessment of women's talents and skills.

A familiar example concerns leadership. Leaders need first and foremost to be competent and authoritative.³² Men more readily fit the prototype of competence and authority than women do. Not being seen as authoritative is of course importantly self-reinforcing. A woman's being viewed as warm may complicate her ability to be viewed as authoritative. By contrast, her being viewed as cold may be punished. There is a classic double bind—a woman, in an attempt to have her authority recognized, is viewed as cold, something that, again, will be held against her given the deviation from the female prototype. By contrast, men, “starting out” from a presumption of being authoritative, can be warm—or not—without cost.³³ A familiar trope is that women are too emotional to be leaders; thus, a woman being visibly affected by bad news might be taken as confirming that belief. By contrast, a man can afford to be visibly affected in that manner without undermining his appearance as an effective leader.³⁴

Discussing workplace interactions between men and women, linguist Deborah Tannen says:

Conversational rituals common among men often involve using opposition such as banter, joking, teasing, and playful put-downs, and expending effort to avoid the one-down position in the interaction. Conversational rituals common among women are often ways of maintaining an appearance of equality, taking into account the effect of the exchange on the other person, and expending effort to downplay the speakers' authority so they can get the job done without flexing their muscles in an obvious

32. See Tomas Chamorro-Premuzic, *Why Do So Many Incompetent Men Become Leaders?*, HARV. BUS. REV. (Aug. 22, 2013), <https://hbr.org/2013/08/why-do-so-many-incompetent-men> [<https://perma.cc/7TNL-UUDJ>]; Anne M. Koenig, Alice H. Eagly, Abigail A. Mitchell & Tiina Ristikari, *Are Leader Stereotypes Masculine? A Meta-Analysis of Three Research Paradigms*, 137 PSYCH. BULL. 616 (2011); see also Charles A. O'Reilly III, Bernadette Doerr, David F. Caldwell & Jennifer A. Chatman, *Narcissistic CEOs and Executive Compensation*, 25 LEADERSHIP Q. 218, 220 (2013) (“This evidence, that narcissists are no more competent and, over the long term, are less likable than non-narcissists, raises the paradoxical question, why do they so often emerge as leaders?”).

33. See Susan T. Fiske, *Stereotype Content: Warmth and Competence Endure*, 27 CURRENT DIRECTIONS PSYCH. SCI. 67 (2018).

34. See, e.g., Susan Milligan, *Women Candidates Still Tagged as Too 'Emotional' to Hold Office*, US NEWS (April 16, 2019), <https://www.usnews.com/news/politics/articles/2019-04-16/women-candidates-still-tagged-as-too-emotional-to-hold-office> [<https://perma.cc/NJ94-BJBM>].

way. When everyone present is familiar with these conventions, they work well. But when ways of speaking are not recognized as conventions, they are taken literally, with negative results on both sides. Men whose oppositional strategies are interpreted literally may be seen as hostile when they are not, and their efforts to ensure that they avoid appearing one-down may be taken as arrogance. When women use conversational strategies designed to avoid appearing boastful and to take the other person's feelings into account, they may be seen as less confident and competent than they really are.³⁵

The problem is that arrogance may not be perceived as un-leader-like in a man, but deficits in confidence and competence in a woman surely will be.³⁶

Continuing in the vein of language, there has been research on typically gendered speaking patterns. One study on "uptalk," raised intonation at the end of a phrase more often associated with women, finds that: "over and above firm, CEO, analyst, and call attributes, equity analysts downgrade recommendations and the share price of a firm drops when incoming female CEOs (but not male CEOs) use high levels of uptalk."³⁷ Another paper by some of the same authors found that:

Female executives respond to the presence of more female executives on the call with more uptalk. By contrast, the incidence of uptalk by men decreases with the fraction of female executives present on the call. Uptalk by women increases when the firm's financial constraints are greater and decreases when analysts' recent and/or next recommendations are higher, but uptalk by male executives does not exhibit similar effects. These results are consistent with findings in the sociolinguistics literature that uptalk is a female-typed behavior which signals a lack of confidence.³⁸

When discussing women and language, one of course must mention Elizabeth Holmes, who supposedly learned to speak in a lower pitched voice in order to sound more male.³⁹ She also

35. DEBORAH TANNEN, *TALKING FROM 9 TO 5: WOMEN AND MEN AT WORK* 13 (2013) (ebook).

36. See Elliot, *supra* note 31.

37. Aharon Cohen Mohliver, Anantha Divakaruni & Laura Fritsch, *Equity Analysts Downgrade Stock Recommendations When Female CEOs Use Uptalk* 10 (SSRN Working Paper No. 4634085, 2024).

38. Anantha Divakaruni, Laura Fritsch, Howard Jones & Alan D. Morrison, *Market Reactions to Gendered Speech Patterns* 2 (SSRN Working Paper No. 4501479, 2023).

39. Danielle Cohen, *Elizabeth Holmes Has Changed Her Voice Again*, THE CUT (May 8, 2023), <https://www.thecut.com/2023/05/elizabeth-holmes-voice-new-york-times-interview.html> [<https://perma.cc/E7S8-746U>].

regularly dressed in a black turtleneck, supposedly to emulate Steve Jobs.⁴⁰ Interestingly, evidence generally supports the idea that those with lower-pitched voices seem more leaderlike, whether the leader is male or female.⁴¹ It seems likely, though, that the reason is a prototype of leader that is male, something unfortunate but not historically inaccurate.

On the broader topic of gendered prototypes, consider the following example, discussed in a 2014 magazine article (albeit describing research only published in 2021):

Here's an old riddle . . . [A] father and son are in a horrible car crash that kills the dad. The son is rushed to the hospital; just as he's about to go under the knife, the surgeon says, "I can't operate—that boy is my son!" . . .

If you guessed that the surgeon is the boy's gay, second father, you get a point for enlightenment, at least outside the Bible Belt. But did you also guess the surgeon could be the boy's *mother*? If not, you're part of a surprising majority.

In research conducted by [several scholars] even young people and self-described feminists tended to overlook the possibility that the surgeon in the riddle was a she . . .

In both groups, only a small minority of subjects . . . came up with the mom's-the-surgeon answer. Curiously, life experiences that might suggest the mom answer "had no association with how one performed on the riddle[.]"⁴²

This "riddle" is quite old, from a time when very few women were doctors, much less surgeons. In the 1960s, women comprised less than 5% of physicians, with a much smaller number being surgeons.⁴³ More recently, in 2022, 38% of active American

40. Kate Storey, *Why the Black Turtleneck Was So Important to Elizabeth Holmes's Image*, ESQUIRE (Mar. 18, 2019), <https://www.esquire.com/style/mens-fashion/a26836670/elizabeth-holmes-steve-jobs-black-turtleneck> [<https://perma.cc/FZR5-QER7>].

41. Midam Kim, *Think Leader, Think Deep Voice? CEO Voice Pitch and Gender*, ACAD. MGMT. PROC. (2022). That being said, pitch may matter less in appraising women leaders. *Id.*; see also Casey A. Klofstad, Rindy C. Anderson, Stephen Nowicki, *Perceptions of Competence, Strength, and Age Influence Voters to Select Leaders with Lower-Pitched Voices*, 10 PLOS ONE 2 (2015) ("[P]reference for leaders with lower-pitched voices correlates with the perception that speakers with lower voices are stronger, more competent, and older."). The findings are not unambiguous or completely clear, but they don't need to be for the points I am making.

42. Rich Barlow, *BU Research: A Riddle Reveals Depth of Gender Bias*, BOS. UNIV. (Jan. 16, 2014), <https://www.bu.edu/articles/2014/bu-research-riddle-reveals-the-depth-of-gender-bias> [<https://perma.cc/N6KB-G36U>]; see also Deborah Belle, Ashley B. Tartarilla, Mikaela Wapman, Marisa Schlieber & Andrea E. Mercurio, "I Can't Operate, That Boy Is My Son!": Gender Schemas and a Classic Riddle, 85 SEX ROLES 1 (2021) (describing the riddle research).

43. Deborah A. Wirtzfeld, *The History of Women in Surgery*, 52 CANADIAN J. SURGERY 317, 319 (2009).

physicians were women; female surgeons represent a greater, but still small, proportion of surgeons, ranging from 24% to 6% depending on the surgical specialty.⁴⁴ Still, I would argue that the “riddle’s” continuing vitality is astonishing, and pernicious.

One way to articulate the point is by reference to the concept of “stereotype.” Stereotypes may, and indeed, sometimes do, have some basis in reality. The concept of stereotype is closely related to that of prototype, but “stereotype” is generally negatively charged. It is used to mean making an oversimplified and overgeneralized (and sometimes incorrect) attribution of particular proclivities, aptitudes, or circumstances to someone who comes within a particular (gender, race, immigration status, religion, or other) category, and often for negative purposes. Even if the attribution has some validity for the group as a whole, it is often perniciously and incorrectly used for particular people within the group regardless of whether the attribution is accurate as to them.⁴⁵

III. What Follows?

Thus far, I’ve argued that we necessarily use proxies and prototypes to make decisions, including, for this purpose, as to who to hire, promote, give particular responsibilities to, discipline, or fire, and that those proxies and prototypes are flawed, reflecting history that may have changed or not have been accurate to begin with, or having other shortcomings. This is not to say that there is a perfect (or even better) alternative or that these uses of proxies and prototypes are purposive or intentionally malevolent. Indeed, the examples above suggest that use of proxies and prototypes is often unconscious; a part of people’s assumptions of what is true.

44. Patrick Boyle, Michael Dill, Rosalie Kelly & Zakia Nouri, *Women are Changing the Face of Medicine in America*, AAMC (May 28, 2024), <https://www.aamc.org/news/women-are-changing-face-medicine-america?form=MG0AV3> [<https://perma.cc/J654-B9LS>]; Laura J. Linscheid, Emma B. Holiday, Awad Ahmed, Jeremy S. Somerson, Summer Hanson, Reshma Jaggi & Curtland Deville Jr., *Women in Academic Surgery over the Last Four Decades*, 15 PLOS ONE (2020), <https://journals.plos.org/plosone/article?id=10.1371%2Fjournal.pone.0243308&form=MG0AV3> [<https://perma.cc/PHL4-WRLN>].

45. The over-attribution isn’t just descriptively false. It can also be pernicious, as the text suggests. Fryer and Jackson provide a fascinating example. Fryer, *supra* note 13, at 2. A majority-race employer may have “coarser”—that is, broader, with fewer distinctions—categories for minorities. *Id.* at 5. Because “minorities will not be as finely sorted based on their investments in human capital[,]” they will have “less of an incentive to invest in human capital, which then further reinforces the coarse sorting.” *Id.* at 2.

Surely, it would be difficult to expressly defend an association between low pitch and leadership abilities. Yet we can all envision feeling more (or less) confident in someone's leadership abilities based importantly on an impression of (low-voiced) gravitas. Believing that others also make this assumption adds a recursive dimension in which leadership may be more successful because the leader, seeming more leaderlike, is more readily obeyed. Another example, with higher-pitched voices being sex-specific proxies, discussed above, is the following finding about "uptalk," a raised intonation at the end of a phrase more often associated with women:

[A]nalysts make lower recommendations in response to uptalk by female executives; in particular, more unexpected female executive uptalk increases the likelihood of analyst sell recommendations and decreases the likelihood of buy recommendations. Unexpected uptalk by male executives has no such effects . . . [But] analysts' lower recommendations are a rational response to unexpected female executive uptalk in that they correctly forecast the drop in earnings signaled by it. [Indeed], the analysts who downgrade earnings forecasts in response to uptalk are underreacting. This indicates that female uptalk is a signal of worse-than-expected performance in the next quarter, and that analysts respond to that signal.⁴⁶

Here, the uptalk by a woman did map onto a rational assessment of an imminent decline in share price. Clearly, this proxy is contingent, and relates to broader cultural and linguistic, yet non-sticky, norms, an association borne of history rather than a substantive assessment. Insofar as uptalk is a "tell" for women, training not to use such "tells" should be easy and effective.

Thus far, I have argued that proxies and prototypes regarding gender are used more than is warranted. Sometimes, the proxies and prototypes were truer historically than they are now. Sometimes they were never true. (Sometimes, of course, they are true.) From an orthodox economics perspective, proxies and prototypes that are used more than is warranted should not persist—again, companies that "got it right" about who the best employees were would render those that didn't extinct. But, as I initially argued, competition doesn't work nearly that effectively. It eliminates the unfit, but there is plenty of room for the "good enough." The market does not suffice to give women their due. Women lose out. And so would business, it might seem, insofar as it is hobbled in this manner. The *Fair Shake* authors have many suggestions for how the situation can be improved.

46. See Divakaruni et al., *supra* note 38, at 3–4.

The passage of time is proving helpful. Proxies for what is sought in a high-level employee, and prototypes of women, are changing. One article, appraising the situation as to women in politics, finds this, which suggests some, albeit measured, progress:

The evolution of the women politician stereotype is encouraging: the traits that people associate with women politicians are more positive than ten years ago and more congruent to desirable traits for politicians. However, the findings also underscore the continuing masculinity of the political domain, by the strong overlap between the stereotype of men politicians and politicians in general.⁴⁷

We can hope that greater awareness of the dynamics discussed here will be helpful, especially insofar as the decision-makers' motivations are unconscious or benign. Consider my example above concerning gravitas. Consider as well the strong forces encouraging people to make non-risky—that is to say, traditional—decisions in the employment realm. If there are bad results—say, the company does badly—a person asked to justify a non-traditional decision (such as hiring a woman for a job theretofore always held by a man) may face a steeper hurdle.⁴⁸ As “tradition” erodes, that hurdle should flatten.

But there are, the authors convincingly argue, malign forces at play as to why women are not getting a fair shake: a highly-successful business model that a) relies on attributes that men may have more than women do; b) can be utilized only if men get and keep certain levels of power within the business; and c) is either illegal or in some meaningful sense should be. The authors marshal considerable evidence in the book in support of this view. The view necessarily requires that certain characteristics are more often found in men, and certain other characteristics are more often found in women, something that is overwhelmingly supported in the literature and intuitively.

IV. What Follows

It seems, then, that women lose and society loses if women don't get a fair shake. But might a certain kind of business win? The malign business story could solve the puzzle with which I began this paper: women are losing out because the skills they have, while good for business models that are also good for the society, are not the ones that are needed to carry out “bad” (illegal or unethical)

47. van der Pas, *supra* note 24, at 1653.

48. See Hill, *supra* note 8.

business models, models that are even better for the business, but at the society's expense. The market is working after all—it's law that is falling short. I take the authors of *Fair Shake* to be making precisely this point.

I end on an optimistic note. The problematic business models rely on not being known, recognized, or treated as being what they are. The models co-exist with, and rely to some extent on, the dynamics I describe, to legitimate what they are doing, making it seem "fair" and appropriate. Law is doing better at ferreting them out and dealing with them and can do better still. Moreover, not all instantiations of the dynamic are pretextual—far from it. Indeed, many are benign. We can guardedly hope that with better law, and increasing awareness that proxies and prototypes of business aptitudes may need more careful scrutiny, women will get more of a fair shake.

A Quadruple Bind? How Romantic Partner Dynamics May Hold Women Back at Work, Especially in the “Winner Take All” Economy

Melissa Vink[†]

Introduction

Despite the tremendous gains for women in the workplace over the past decades, gender inequality persists, and the gender gap in wages seems to increase rather than decrease.¹ Women remain less likely to gain access to positions of power or to obtain jobs with higher social and financial rewards than similarly qualified men.² In *Fair Shake: Women and the Fight for a Just Economy*, Naomi Cahn, June Carbone, and Nancy Levit explain how the “winner take all” (WTA) approach to business undermines women’s prospects for achieving equality in the workplace.³ In this system, there is a disproportionately high payoff for a single dominant player and those at the top of the WTA system can take a much larger share of the available institutional resources. To illustrate, the ratio of CEO vs. ordinary worker salary was 2 to 1 in 1965 versus 344 to 1 in 2022.⁴ In such a system, those who are highly competitive, ruthless, and rule-breaking thrive and reach top positions.

[†]. Dr. Melissa Vink is assistant professor at the Department of Social, Health, and Organizational Psychology at Utrecht University, the Netherlands. She received her PhD from Utrecht University in 2020. She investigates the factors that hinder or facilitate equal opportunities in the workplace through the lenses of interpersonal and intergroup relationships.

1. *Closing the Gender Gaps 2.0: Fresh Data Show More Work to Do*, GOLDMAN SACHS (2019), https://www.goldmansachs.com/pdfs/insights/pages/gender-pay-gap-2_0-f/report.pdf [<https://perma.cc/B7KF-9CGM>]; *2022 State of the Gender Pay Gap Report*, Payscale (2025), <https://www.payscale.com/research-and-insights/gender-pay-gap> [<https://perma.cc/ELH7-RYZW>].

2. Aparna Joshi, Soojin Oh & Mark DesJardine, *A New Perspective on Gender Bias in the Upper Echelons: Why Stakeholder Variability Matters*, 49 ACAD. MGMT. REV. 322 (2024); David R. Galos & Alexander Coppock, *Gender Composition Predicts Gender Bias: A Meta-Reanalysis of Hiring Discrimination Audit Experiments*, 9 SCI. ADVANCES (2023).

3. NAOMI CAHN, JUNE CARBONE, & NANCY LEVIT, *FAIR SHAKE: WOMEN AND THE FIGHT FOR A JUST ECONOMY* (2024).

4. Josh Bivens & Jori Kanda, *CEO Pay Slightly Declined in 2022*, ECON. POL’Y INST. (2023) <https://www.epi.org/publication/ceo-pay-in-2022/#epi-toc-1> [<https://perma.cc/N2Q9-M8DJ>].

The authors of *Fair Shake* delineate how the hyper-competitiveness of the WTA system becomes detrimental to everyone and women in particular. Specifically, women are trapped in a “triple bind:” 1) if they don’t compete on the same terms as the men in the WTA workplace, they lose, 2) if women do try to compete on the same terms as the men, they lose because they are disproportionately punished for the sharp elbows or perceived misdeeds, and 3) when women see that they can’t win on the same terms as men, they take themselves out of the game—if they haven’t been pushed out already. The common denominator of these binding factors of women at work are gender stereotypes that describe and prescribe women to be communal and caring and not to be agentic and competitive, and that explain why gender bias and discrimination in the workplace persist.⁵ However, gender stereotypes also strongly impact women’s and men’s lives outside of their work. Specifically, regarding romantic relationships, the stereotypical expectation that men should be breadwinners and women should prioritize caregiving abilities negatively impacts those men and women who divide work and care in a less traditional manner.⁶ These gender stereotypes have an additional binding effect on heterosexual women in the WTA system, as when they surpass their male partner in societal status, they have to deal with negative consequences at home, which, in turn, affect their career and work choices.⁷

In this white paper, I will delineate how romantic partner dynamics are the fourth binding factor that explains why women are worse off in the WTA system. I do this by showing the influence of persisting gender stereotypes on work and relationship outcomes for couples in which the woman is more successful than her male partner (i.e., a role-reversed relationship). First, I show why others judge role-reversed couples less positively than traditional couples by examining how backlash mechanisms operate when the woman has higher status than her male partner. Second, I explain how these backlash mechanisms and stereotypes operate within couples

5. Madeline Heilman, Suzette Caleo, & Francesca Manzi, *Women at Work: Pathways from Gender Stereotypes to Gender Bias and Discrimination*, 11 ANN. REV. ORGANIZATIONAL PSYCH. & ORGANIZATIONAL BEHAV. 165 (2024).

6. Melissa Vink, Belle Derks, Naomi Ellemers & Tanja van der Lippe, *Penalized for Challenging Traditional Gender Roles: Why Heterosexual Relationships in Which Women Wear the Pants May Be More Precarious*, 88 SEX ROLES 130 (2023).

7. Melissa Vink, Belle Derks, Naomi Ellemers, & Tanja van der Lippe, *All Is Nice and Well Unless She Outshines Him: Higher Social Status Benefits Women’s Well-Being and Relationship Quality But Not If They Surpass Their Male Partner*, 79 J. SOC. ISSUES 494, 495 (2023).

by examining how these evaluations impact how women deal and cope with their role-reversed relationship and how this impacts their career intentions and decisions. Third, I show how these negative mechanisms of gender stereotypes for role-reversed couples are especially pronounced in countries that uphold a traditional gender stereotypical culture, which is highly associated with the WTA system⁸. The main tenet of this paper is that, given the strong implicit norms that men should be the ones with higher status than their female partner; in attaining societal status, women are bound by the level of societal status that their male partner has attained. I define societal status as a combination of income, educational level and prestige in society. As sociocultural mechanisms are at play here, I will provide recommendations on decreasing the negative impact of breaking traditional gender roles by looking at structural solutions rather than individual ones.

I. Background

Relationships in which the woman has attained higher societal status than her partner remain scarce. On the one hand, in the United States and almost all European countries, it is nowadays more likely for women to be more highly educated than their male partners in romantic relationships.⁹ However, on the other hand, the percentage of relationships in which the woman earns more than her male partner remains small (e.g., only 16% of American women had a higher income than their husband in 2022, a percentage that has dropped 1% in the last ten years¹⁰). Moreover, there is growing evidence that these couples experience more negative relationship outcomes compared to more traditional couples. Individual outcomes include higher marital distress among husbands, more worries and guilt among wives, more use of erectile dysfunction medication among men and more sleep deprivation and anxiety medication among women.¹¹ Relational outcomes include

8. Melissa Vink, Tanja van der Lippe, Belle Derks & Naomi Ellemers, *Does National Context Matter When Women Surpass Their Partner in Status?*, 12 FRONTIERS. IN. PSYCH. 670439 (2022).

9. Yolien de Hauw, André Grow & Jan van Bavel, *The Reversed Gender Gap in Education and Assortative Mating in Europe*, 33 EUR. J. POPULATION 445 (2017).

10. Richard Fry, Carolina Aragão, Kiley Hurst & Kim Parker, *In a Growing Share of U.S. Marriages, Husbands and Wives Earn About the Same*, PEW RSCH. CTR. (Apr. 13, 2023), <https://pewrsr.ch/3Af1q1n> [<https://perma.cc/3YYJ-TKUZ>].

11. Joanna Syrda, *Spousal Relative Income and Male Psychological Distress*, 46 PERSONALITY & SOC. PSYCH. BULL. 976 (2020); Rebecca J. Meisenbach, *The Female Breadwinner: Phenomenological Experience and Gendered Identity in Work/Family*

lower experienced relationship quality and higher rates of marriage dissolution.¹²

Understanding the underlying mechanisms that are driving these negative relationship outcomes for role-reversed couples is important because this identifies means to prevent or reduce them. Similarly, as the authors of *Fair Shake* show for the triple bind at work, the bind of heterosexual marriages that straitjacket women into traditional roles should be investigated through the lens of sociocultural factors. Norms about gender roles within romantic relationships remain quite traditional as many people still expect men to be the breadwinner and women to be the main caregiver of the family.¹³ Although most people in the United States and European countries agree that it is acceptable for women to do at least some paid work and for men to do at least some caregiving, most people disapprove of men and women who have completely reversed these roles.¹⁴ To illustrate, less than 3% of Dutch inhabitants agree it is better for a family when the woman does most of the paid work and the man most of the unpaid work at home, whereas 17% agree it is better for a family when the man does most of the paid work and the woman most of the unpaid work.¹⁴ It is especially these norms about gender role divisions at home that have barely changed over the last forty years, which is surprising given the increase of women who have paid jobs and have attained higher educational degrees.¹⁵

The sociocultural factors impacting the lives of role-reversed couples can be traced back to gender stereotypes within societies. Gender stereotypes follow from observations of men and women in gender typical social roles, such as men who are the breadwinners of their family and have higher status roles in society and women who are homemakers and have lower status roles. In turn, gender

Spaces, 62 SEX ROLES 2 (2009); Lamar Pierce, Michael Dahl & Jimmi Nielsen, *In Sickness and in Wealth: Psychological and Sexual Costs of Income Comparison in Marriage*, 39 PERS. & SOC. PSYCH. BULL. 359 (2013).

12. See, e.g., Marianne Bertrand, Emir Kamenica & Jessica Pan, *Gender Identity and Relative Income Within Households*, 130 Q.J. ECON. 571 (2015).

13. Thekla Morgenroth & Madeline E. Heilman, *Should I Stay or Should I Go? Implications of Maternity Leave Choice for Perceptions of Working Mothers*, 72 J. EXPERIMENTAL SOC. PSYCH. 53, 53–56 (2017).

14. Wil Portegijs & Marion van den Brakel, *Emancipatiemonitor 2018*, SOCIAAL EN CULTUREEL PLANBUREAU (2018), <https://digitaal.scp.nl/emancipatiemonitor2018/assets/pdf/emancipatiemonitor-2018-SCP.pdf> [https://perma.cc/7DK2-ZTCG]; *Breadwinner Moms*, PEW RSCH. CTR. (May 29, 2013), <https://www.pewsocialtrends.org/2013/05/29/breadwinner-moms> [https://perma.cc/X6RK-CAJ2].

15. Brittany A. Dernberger & Joanna R. Pepin, *Gender Flexibility, But Not Equality: Young Adults' Division of Labor Preferences*, 7 SOCIO. SCI. 36 (2020).

stereotypes are not only descriptive, resulting in the belief that men are “agentic” (e.g., ambitious, independent) and women are “communal” (e.g., warm, concerned about others¹⁶), but also prescriptive: they dictate what men and women *should* be like and proscriptive in what men and women *should not* be like.¹⁷ To illustrate, although weak feminine traits (e.g., being emotional, naïve) are tolerated for women, these traits are proscribed for men. Also, although dominant masculine traits (e.g., dominance, arrogance) are tolerated for men, these traits are proscribed for women.

Men and women who break with these gender stereotypes are likely to receive social and economic penalties (a process called “backlash”¹⁸). Specifically, men who succeed in feminine occupations—domains that are still seen as lower in status—tend to be viewed as weak and are consequently disrespected and less preferred as bosses. This process is termed the “weakness penalty.”¹⁹ Similarly, women who succeed in masculine occupations—domains that are still seen as higher in status—tend to be viewed as interpersonally hostile and, therefore, disliked and less preferred as bosses. This penalty has been termed the “dominance penalty.”²⁰

Besides being confronted with negative evaluations of others when violating prescriptive gender stereotypes, people actively seek meaning of the social groups that they belong to, and they do this through self-categorization and self-stereotyping.²¹ This also applies to gender, such that men and women themselves care about

16. Madeline E. Heilman, *Description and Prescription: How Gender Stereotypes Prevent Women's Ascent up the Organizational Ladder*, 57 J. SOC. ISSUES 657 (2001).

17. Deborah A. Prentice & Erica Carranza, *What Women and Men Should Be, Shouldn't Be, Are Allowed to Be, and Don't Have to Be: The Contents of Prescriptive Gender Stereotypes*, 26 PSYCH. WOMEN Q. 269 (2002).

18. Laurie A. Rudman, Corinne A. Moss-Racusin, Julie E. Phelan & Sanne Nauts, *Status Incongruity and Backlash Effects: Defending the Gender Hierarchy Motivates Prejudice Toward Female Leaders*, 48 J. EXPERIMENTAL SOC. PSYCH. 165 (2012).

19. Madeline E. Heilman & Aaron S. Wallen, *Wimpy and Undeserving of Respect: Penalties for Men's Gender-Inconsistent Success*, 46 J. EXPERIMENTAL SOC. PSYCH. 664 (2010).

20. Madeline E. Heilman & Tyler G. Okimoto, *Why Are Women Penalized for Success at Male Tasks?: The Implied Communality Deficit*, 92 J. APPLIED PSYCH. 81 (2007).

21. Nyla R. Branscombe, Naomi Ellemers, Russell Spears & Bertjan Doosje, *The Context and Content of Social Identity Threat*, in SOCIAL IDENTITY: CONTEXT, COMMITMENT, CONTENT 35 (Naomi Ellemers, Russell Spears & Bertjan Doosje eds. 1999).

acting in line with gendered behaviors and traits. Gender norms about what is or is not appropriate have a strong influence on people, and people often try to avoid gender role violations.²² Also, in reaction to perceived gender role violations, people adhere even more to prescriptive gender stereotypes.²³ For these reasons, gender stereotypes persist and are quite resistant to change.²⁴

II. Analysis

In explaining how gender stereotypes impact women who surpass their male partner in societal status, I will first delineate how backlash mechanisms explain why people often evaluate role-reversed couples more negatively than traditional couples.

A. *Women and Men in Role-Reversed Relationships Face Backlash*

In two experimental studies conducted in the United States (223 participants) and in the Netherlands (269 participants), my colleagues and I investigated whether women with higher societal status than their partner are perceived to be the dominant and agentic one *relative to* their partner, whereas men with lower societal status than their partner are perceived to be the weak one *relative to* their partner.²⁵ As consequences of these dominance and weakness perceptions, we anticipated that people would perceive role-reversed relationships as less satisfying, find these women less likeable and have less respect for these men.

In the two studies, we investigated these hypotheses by manipulating women's status relative to their male partner by presenting participants with a vignette about a fictional couple (Ryan and Anna), as well as information about their occupations. We included three conditions: one in which Anna had a higher status occupation than Ryan, one in which Anna and Ryan had an occupation with equal status, and one in which Anna had a lower status occupation than Ryan. Furthermore, we orthogonally

22. Emily T. Amanatullah & Michael W. Morris, *Negotiating Gender Roles: Gender Differences in Assertive Negotiating Are Mediated by Women's Fear of Backlash and Attenuated When Negotiating on Behalf of Others*, 98 J. PERSONALITY & SOC. PSYCH. 256 (2010).

23. See, e.g., Jennifer K. Bosson, Joseph A. Vandello, Rochelle M. Burnaford, Jonathan R. Weaver & S. Arzu Wasti, *Precarious Manhood and Displays of Physical Aggression*, 35 PERSONALITY & SOC. PSYCH. BULL. 623 (2009).

24. Elizabeth L. Haines, Kay Deaux & Nicole Lofaro, *The Times They Are a-Changing . . . Or Are They Not? A Comparison of Gender Stereotypes, 1983–2014*, 40 PSYCH. WOMEN Q. 353 (2016).

25. Vink et al., *supra* note 6.

manipulated Ryan's absolute status (medium vs. high) in order to test whether backlash in the relational domain is indeed predicted by the relative status of the woman compared to the man, instead of the absolute status of the man.

In the U.S. sample, the average age of participants was 35.19 ($SD = 9.21$), and the majority of participants were of white ethnic origin (51.6%) or Asian ethnic origin (42.2%). Most participants had a bachelor's degree (41.3%), were high school graduates or equivalent (21.1%), or had a master's degree (19.7%). Participants were married (61.9%) or single (38.1%). Also, the majority of participants were employed for wages (72.6%) or self-employed (20.6%). In the Dutch sample, the average age was similar to that of the U.S. sample ($M = 32.96$, $SD = 13.33$). Education levels were also similar (i.e., most participants had a bachelor's degree (31.2%), a higher educational degree (29%), or a master's degree (23.8%)). Most participants were employed for wages (43.9%) or were students (34.6%). They were mostly single (34.6%) or married (26.4%).

In the U.S. sample, we controlled for participants' education level, ethnicity (Asian vs. white ethnic origin), marital status (married vs. single), and employment status (wages vs. self-employed). In the Dutch sample, we also controlled for participants' education level and employment status as well as whether participants were recruited through a platform (i.e., Prolific academic) vs. convenience sampling.

In both studies, the results revealed firstly that when people thought that Anna had an occupation with higher status than Ryan, they perceived Anna to be the dominant one in the relationship and Ryan to be the weak one in the relationship. Also, in this condition, people disliked Anna because of her relative dominance and had less respect for Ryan because of his relative weakness. Moreover, people expected the relationship to be less satisfying when they rated Anna to be the dominant one and Ryan to be the weak one in the role-reversed relationship. Importantly, these effects of the status distribution between Anna and Ryan were found over and above the effects of the absolute societal status of Ryan. It is thus not the low absolute status of the man that predicts backlash, rather, the fact that the female partner has surpassed the male partner in status predicts social penalties for the couple.

Interestingly, we also found that Anna's relative agency can buffer against backlash for her. People evaluated Anna to be the agentic one in her relationship when she had higher status than

Ryan. As a consequence of her relative agency, people also perceived Anna to be more likeable and had more respect for her. This finding is in line with a growing body of literature showing that the role of agency has changed for women due to societal developments that made it more common for women to take up agentic roles in U.S. and European societies.²⁶ This suggests that people think more positively of women who have higher status roles, but that their status is bounded by the level of societal status that their male partner has attained.

Men and women thus risk backlash when they are in a role-reversed relationship in which the woman has the highest status occupation of the two. However, for women, being the agentic one in a role-reversed relationship can have some positive effects on how she is perceived by others.

B. Consequences of “Wearing the Pants in the Relationship”

The aforementioned backlash mechanisms show how people outside the relationship react when they are confronted with another couple's relationship in which the woman has higher societal status than the man. Although these perceptions of others are important to understand why gender stereotypes about heterosexual relationships persist, it is also important to understand how men and women in role-reversed relationships deal with the non-traditional nature of their relationships. On the one hand, it is not self-evident that perceptions that outsiders have of role-reversed relationships are shared by the men and women in role-reversed relationships because partners have a much more detailed and complete mental representation of one another compared to outsiders.²⁷ On the other hand, gender norms about what is or is not appropriate can have a strong influence on people and people often try to avoid gender role violations.

Research shows that prescriptive gender stereotypes indeed have an impact on romantic relationships through how men and women interact and engage in their relationships. According to the gender deviance neutralization idea, men and women who violate gender norms will try to reduce their deviance by showing more

26. See Alyssa Croft, Toni Schmader & Katharina Block, *An Underexamined Inequality: Cultural and Psychological Barriers to Men's Engagement with Communal Roles*, 19 PERSONALITY & SOC. PSYCH. REV. 343 (2015) (reviewing the literature).

27. Yaacov Trope & Nira Liberman, *Construal-Level Theory of Psychological Distance*, 117 PSYCH. REV. 440 (2010).

traditional behaviors (e.g., doing household tasks²⁸). Gender norms make women feel that they should do or want to do household tasks as these tasks are perceived to be feminine, and by engaging in these feminine behaviors, women can reassure themselves and their partners that they are “good” women, regardless of their professional status. For this reason, it can be argued that women with higher societal status than their partner (intend to) adjust their behavior to fit the gender norm.

Additionally, these negative effects of surpassing one’s partner in status may be especially strong among women who have internalized traditional gender stereotypes. Gender stereotypes affect us without us realizing it.²⁹ People may be reluctant to explicitly claim that men should be breadwinners and women should be caregivers, but at the same time, most of us are likely to automatically associate family words more easily with women and career words more easily with men.³⁰ Although these beliefs are implicit, they can have actual affective and behavioral consequences. For instance, couples who implicitly believe that women need to be protected by men are more likely to prioritize the man’s need for intimacy over the woman’s work ambitions.³¹ For this reason, I posit that especially women who have internalized traditional implicit gender associations experience negative outcomes and (intend to) adjust their behavior to fit the gender norm when they have surpassed their partner in status.

In order to test these arguments, my colleagues and I conducted a cross-sectional study ($N = 314$) and a daily diary study ($N = 112$) among working women in the Netherlands. Firstly, in both studies, we showed that women experience more negative relationship outcomes (e.g., lower daily and general relationship satisfaction, more work-family conflict) when they have surpassed their partner in status. Interestingly, we found in the diary study that among women who have higher status relative to their partner, it was especially the women with more traditional implicit gender associations who, on a daily basis, thought about how they could

28. See, e.g., Michael Bittman, Paula England, Liana Sayer, Nancy Folbre & George Matheson, *When Does Gender Trump Money? Bargaining and Time in Household Work*, 109 AM. J. SOCIO. 186 (2003).

29. Naomi Ellemers, *Gender Stereotypes*, 69 ANN. REV. PSYCH. 275 (2018).

30. Anthony Greenwald & Mahzarin Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes*, 102 PSYCH. REV. 4 (1995).

31. Matthew D. Hammond & Nickola C. Overall, *Benevolent Sexism and Support of Romantic Partner’s Goals: Undermining Women’s Competence While Fulfilling Men’s Intimacy Needs*, 41 PERSONALITY & SOC. PSYCH. BULL. 1180 (2015).

adjust their behavior to fit the gender norm (e.g., by sacrificing leisure time and reducing working hours in favor of their family). Interestingly, women with more egalitarian associations who have higher status relative to their partner did not think about adjusting their behavior. This does not mean, however, that these women were protected against the negative effects of surpassing one's partner in status. We found that the more these women have surpassed their partner in status, the more they report feeling guilty towards their partner daily.

Successful women thus experience negative outcomes at home when they surpass their partner in status, because these women report more negative relationship outcomes. Furthermore, these women walk a tightrope as women with traditional implicit gender associations try to adjust their behavior, but still report lower relationship quality and wellbeing, whereas women with egalitarian implicit gender associations feel guilty towards their partner. So, although the effects of being in a role-reversed relationship are different for women with traditional and egalitarian gender associations, either way, these women experience negative consequences of having higher societal status than their male partner.

C. *Does National Context Matter When Women Surpass Their Partner in Status?*

In the previous section, I showed how gender stereotypes affect couples in role-reversed relationships on the individual level (i.e., by women's own implicit endorsement of gender stereotypes). However, it remains to be seen to what extent these findings remain valid in different national contexts. Although our findings are in line with many sociological studies showing negative relationship outcomes for role-traditional couples, these effects also seem to vary by culture. Indeed, the gender stereotypical culture of a country influences relationship dynamics.³² To illustrate, in the United States, the risk of divorce in couples with higher educated wives (compared to their husbands) is reduced over time, which is argued to be a result of greater acceptance of gender egalitarian relationships in the United States³³ Also, married men who do a larger share of household chores are less likely to divorce in countries in which the social policies are more egalitarian (e.g., the

32. See, e.g., Leah Ruppanner, *Conflict and Housework: Does Country Context Matter?*, 26 EUR. SOCIO. REV. 557 (2010).

33. Christine R. Schwartz & Hongyun Han, *The Reversal of the Gender Gap in Education and Trends in Marital Dissolution*, 79 AM. SOCIO. REV. 605 (2014).

United States) compared to countries that reinforce the male breadwinner model (e.g., Germany).³⁴ Additionally, according to rational and economic explanations, partners bargain paid and unpaid work in a rational way, such that the more income one partner brings home, the more unpaid work the other partner takes on. However, this economic perspective is only valid up and until the point that women earn more than their male partner, as women do proportionally more household chores even when they earn more than their partner.

For this reason, I posit that the culture in gender egalitarian countries makes it easier for couples to maintain an egalitarian or role-reversed relationship compared to the culture in more traditional countries. The culture in a country influences decisions, behaviors and feelings of people directly through its social policies as well as indirectly through the implicit norms that are endorsed.³⁵ Following these lines of reasoning, my colleagues and I conceptualize the salience of the gender stereotypical culture by including two indicators: 1) an associative, normative indicator of culture (i.e., average country-level implicit gender stereotypes), and 2) an indicator of institutionalized outcomes of gender inequality (i.e., women's representation in non-stereotypical roles).

With regard to the associative indicator, we used data between 2014 and 2018 of the Gender-Career Implicit Association Task (IAT) made available by Project Implicit.³⁶ Similar to the measure of women's own implicit associations the Gender-Career IAT measures respondents' association strength of the groups *men* and *women* with the concepts *career* and *family*. With regard to the indicator of institutionalized outcomes, we used United Nation's Gender Empowerment Measurement (GEM) index, which is based on four measures: (1) women's share of legislators in the national parliament, (2) the percentage of female managers, legislators and senior officials, (3) amount of female employees in professions, and (4) the female-to-male wage ratio among full-time employees.

We tested two pre-registered hypotheses with the second wave of the European Sustainable Workforce Survey (ESWS). The ESWS

34. Lynn P. Cooke, "Doing" Gender in Context: Household Bargaining and Risk of Divorce in Germany and the United States, 112 AM. J. SOCIO. 442 (2006).

35. B. Keith Payne, Heidi A. Vuletich & Kristjen B. Lundberg, *The Bias of Crowds: How Implicit Bias Bridges Personal and Systemic Prejudice*, 28 PSYCH. INQUIRY 233 (2017).

36. PROJECT IMPLICIT, <https://implicit.harvard.edu> [<https://perma.cc/L2TQ-QPKP>].

is a multifactor organizational survey and is conducted in nine different countries: Bulgaria, Finland, Germany, Hungary, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom. We included all participants who were in a heterosexual relationship ($N = 2748$). First, we aimed to replicate previous findings and hypothesized that the higher women's status relative to their male partner (i.e., the higher women's relative income, educational degree, and working hours relative to their male partner), the more negative relationship- and life outcomes (i.e., relationship quality, work-life satisfaction, time pressure and negative emotions) men and women will report. The results suggested that especially women's income and—to a lesser extent—educational degree relative to their male partner negatively predict relationship outcomes. Specifically, when men and women were in a relationship in which the woman earned more than the man, they reported lower relationship quality and experienced more negative emotions. Moreover, when men and women were in a relationship in which the woman had attained a higher educational degree than the man, they experienced more time pressure.

Second, we expected that men and women in a relationship in which the woman has higher status relative to her male partner would experience more negative outcomes when they live in a country with traditional gender attitudes rather than in more egalitarian countries (as indicated by combining the countries' average IAT score and their GEM index). Here, we found that men and women living in countries with a traditional gender stereotypical culture reported lower relationship quality when they were in a relationship in which the woman earned more than her partner. This was not the case for participants living in countries with an egalitarian gender stereotypical culture. Furthermore, we found that couples in relationships in which the woman was more highly educated than the man reported higher relationship quality in egalitarian countries, but not in traditional countries.

In sum, these results counter evolutionary explanations that men and women have fixed and evolved preferences for traditional gender role divisions. Specifically, these results suggest that countries' gender stereotypical culture has an influence on men and women in relationships in which the woman earns more than her partner and -to a lesser extent- on men and women in relationships in which the woman is more highly educated than her partner. Importantly, we find this using a combination of two different indicators of gender inequality: the average implicit gender stereotypes of countries' inhabitants as well as a country's gender

empowerment (i.e., representation of women in senior positions). This work provides first evidence that the national context determines the degree to which individuals are stimulated to establish traditional relationships in which men are the ones with the highest status of both partners.

III. Recommendations

As the relationship outcomes of men and women in role-reversed relationships are dependent on the context that they are in, it is important to seek solutions and recommendations in the context of these relationships. In order to deal with the difficulties that role-reversed couples experience, it seems more effective to understand and tackle gender stereotypes rather than helping men and women in role-reversed relationships individually. Specifically, the findings suggest that the negative outcomes for men and women in role-reversed relationships can be prevented by tackling both women's own implicit gender stereotypes as well as the gender stereotypes that are salient in the environment of the couple. As gender stereotypes follow both from cultural norms and the observation of men and women in typical social roles, I suggest that the best way to break the vicious cycle is by increasing the representation as well as the cultural acceptance of role-reversed couples in societies. Here, governmental agents, as well as policymakers in organizations, can play a crucial role as they can implement social policies that help role-reversed couples to thrive. For example, governmental agents could implement policies that move away from the male breadwinner model. Furthermore, HR professionals and managers in organizations can facilitate role-reversed couples by acknowledging and facilitating the needs of employees with regard to their careers as well as their relationships. They can do this, for instance, by considering the careers of employees' partners during performance reviews and by stepping away from the expectation that a good employee is someone who prioritizes their work 24/7. If an employer is aware of the career of an employee's partner, they might also better understand if this employee is not working overtime or uses flexibility arrangements without assuming that this employee is less committed to the job.³⁷

37. See Jennifer L. Petriglieri, *Talent Management and the Dual-Career Couple: Rigid Tours of Duty Are the Wrong Approach to Development*, 96 HARV. BUS. REV. 106 (2018) (describing how to consider an employee's partner).

If it becomes easier to maintain a role-reversed relationship, these relationships might also become more common and, thereby, more accepted. To illustrate, it has become more accepted over time for women to possess agentic traits and engage in agentic roles because women have entered male-dominated roles in large numbers. Similar patterns can be expected for the representation of couples who break with the traditional gender hierarchy within their relationship. Lastly, representation and cultural acceptance of role-reversed couples also provide a way to form weaker implicit associations of men with work and women with family, as people's implicit associations follow from their experiences in their own context.

Another reason why it is important to break the negative vicious cycle that role-reversed couples face is that moving away from traditional gender roles can benefit the quality of relationships. Our findings suggest that women's *personal* status is associated with several positive relationship outcomes (e.g., higher relationship satisfaction and less relationship conflict). This is in line with other work showing that couples who adhere to stereotypical gender roles are less happy with their relationship than couples who do not adhere to stereotypical gender roles.³⁸ Empowering women to gain personal status is also important to achieve gender equality. As I show, women who have surpassed their partner in status experience negative work-related outcomes (e.g., work-family conflict), and women with traditional implicit associations even think about reducing their work hours when they have surpassed their partner in status; women's romantic relationships are another reason why it is so difficult to achieve gender equality, especially in the WTA system.

It is worth considering the implications of the negative relationship outcomes for role-reversed couples without undermining the severity of these outcomes for couples themselves. Although I analyzed how role-reversed couples experience less satisfaction with their relationships, more time pressure and negative emotions, I do not find that these couples have more conflict or are less committed to their relationship than traditional couples. Couples with higher socioeconomic status report being happier with their marriages and are less likely to divorce than

38. Heather M. Helms, Christine M. Proulx, Mary Maguire Klute, Susan M. McHale & Ann C. Crouter, *Spouses' Gender-Typed Attributes and Their Links with Marital Quality: A Pattern Analytic Approach*, 23 J. SOC. & PERS. RELATIONSHIPS 843 (2006).

those with lower socioeconomic status.³⁹ One way to become a couple with higher socioeconomic status is for both partners to have a successful career.⁴⁰ Also, partners are better able to support one another when their relationship is equal and when they feel that they can both be communal (e.g., providing warmth and understanding) regardless of their gender.⁴¹ Traditional men in higher status roles do thus not provide an ideal alternative, as these men are less likely to fulfill their partner's needs for support.⁴²

In order to deal with the negative relationship outcomes of men and women in role-reversed relationships, it is important to tackle gender stereotypes in the context that couples operate in rather than advising partners on how they could individually cope with their role-reversed relationship.

Conclusion

In this paper, I analyzed how men and women who try to break gender stereotypes face a vicious cycle of negative evaluations and dynamics. By showing these mechanisms, women's romantic relationships are an additional bind for women who try to make careers within the WTA system. Specifically, I show three mechanisms by which prescriptive stereotypes within the relationship domain constrain women and men into traditional gender roles. Backlash mechanisms affect how others perceive couples in which the woman attains higher societal status than her male partner. This reveals that role-reversed couples face social disapproval and are likely to experience a lack of understanding or social support for their life choices. Furthermore, gender stereotypes explain how women who have surpassed their partner in status feel and cope with their role-reversed relationship. This explains why women in role-reversed relationships walk a tightrope

39. W. BRADFORD WILCOX & ELIZABETH MARQUARDT, WHEN MARRIAGE DISAPPEARS: THE NEW MIDDLE AMERICA 15–16 (2010) <https://fatherhoodchannel.com/wp-content/uploads/2010/12/when-marriage-disappears.pdf> [<https://perma.cc/69FR-WHZ2>].

40. Sharon J. Bartley, Priscilla W. Blanton & Jennifer L. Gilliard, *Husbands and Wives in Dual-Earner Marriages: Decision-Making, Gender Role Attitudes, Division of Household Labor, and Equity*, 37 MARRIAGE & FAMILY REV. 69, 73 (2005).

41. Harry T. Reis & Shelly L. Gable, *Toward a Positive Psychology of Relationships*, in FLOURISHING: POSITIVE PSYCHOLOGY AND THE LIFE WELL-LIVED, 129 (Corey L. M. Keyes & Jonathan Haidt eds., 2003).

42. Paul J. E. Miller, John P. Caughlin & Ted L. Huston, *Trait Expressiveness and Marital Satisfaction: The Role of Idealization Processes*, 65 J. MARRIAGE & FAMILY 978, 981 (2003).

for breaking traditional gender norms because it does not matter what these women do (or do not do); either way, they are worse off compared to women who have not surpassed their partner in status. Lastly, the extent to which gender stereotypes are endorsed nationally also influences relationship outcomes. This clarifies that the negative relationship outcomes experienced by role-reversed couples are influenced by sociocultural factors rather than fixed or evolved individual characteristics but also shows how these mechanisms are especially pronounced in WTA systems. In order to understand the negative outcomes that couples in role-reversed relationships experience, it is thus crucial to understand the intricate gender stereotypical system that dissuades men and women from role-reversed relationships. This way, status dynamics within romantic relationships are a domain that cannot be overlooked when aiming for gender equality.

The Lawless Workplace

Matthew T. Bodie[†]

Introduction

In their remarkable book *Fair Shake: Women and the Fight to Build a Just Economy*,¹ Naomi Cahn, June Carbone, and Nancy Levit tell the stories of individual women who have seen their careers smashed and shattered at some of the most important U.S. companies of the last fifty years. These stories—from employees at places like Walmart, General Electric, Wells Fargo, and Uber—illustrate the confluence of culture, social networks, and managerial policies that have disadvantaged and displaced female workers and elevated their male counterparts. The “Triple Bind,” as the authors describe it, describes the three ways in which women lose at these workplaces: when they don’t compete on the same terms as men; when they do compete but face an uneven playing field; and when they take themselves out or are pushed out of the game.² When men are in charge, the authors argue, they design the game to suit their talents and interests, and women find themselves on the outside.

This essay elaborates on one facet of the work ecosystems that Cahn, Carbone, and Levit describe: namely, their lawlessness. The modern American workplace has seen an erosion in the rule of law, not only from an external regulatory perspective but also from an internal governance perspective. American managers enjoy a relatively unbridled prerogative in designing shop-floor policies that is unique within modern democracies. As *Fair Shake* describes, these businesses have reshaped their internal cultures around “bottom-line” thinking rather than organizational structure, leading to “the lawlessness of the WTA economy.”³ These cultures do have their advantages: they make change easier, profitability

[†]. Matthew Bodie is the Robins Kaplan Professor of Law at the University of Minnesota Law School. His work focuses on labor and employment law, corporate law, and employee data privacy. Thanks to Claire Hill, June Carbone, Naomi Cahn, Nancy Levit, Zinaida Carroll, Fariza Hassan, and the staff of the *Minnesota Journal of Law & Inequality* for the opportunity to participate in this symposium and Special Issue.

1. NAOMI CAHN, JUNE CARBONE & NANCY LEVIT, *FAIR SHAKE: WOMEN AND THE FIGHT TO BUILD A JUST ECONOMY* (2024).

2. *Id.* at 14–15.

3. *Id.* at 223.

more salient, and shareholders richer. But they have substantial costs as well. The lawless workplace privileges those who thrive on chaos, who have pre-existing economic or relational advantages, and who are willing to break the rules. They contribute to a disordered society and a sense of powerlessness for those who are not the ultimate winners.

Part I below provides a brief description of the lawless workplace and provides examples from the pages of *Fair Shake*. Part II describes ways in which law can be reintroduced into the workplace to defeat the “Winner Take All” economy and bring balance back to the governance of employment.

I. Lawlessness and Employment

What does it mean to say that a workplace is “lawless”? Perhaps that seems a bit dramatic. Human resources professionals may feel that the employment relationship is more regulated than ever, with the Pregnancy Workers Fairness Act of 2024 (PWFA)⁴ being the most recent in a line of mandatory terms imposed on employers. Measured in regulatory pronouncements, the modern working environment may seem robustly covered. But for many workers, workplace protections fail to provide the promised sanctuary. There are essentially three types of problems: failed enforcement, rogue business models, and authoritarian governance. Each of these contributes to a sense of lawlessness in modern employment.

Failed enforcement is a common regulatory problem and not unique to our working lives. But the examples of laws ignored and flouted is endemic to many employee experiences.⁵ Wage theft is so prevalent in many industries that many scholars have referred to it as an “epidemic.”⁶ The #MeToo movement revealed what many had long experienced: rampant sexual harassment in all areas of societal engagement, especially the workplace. As *Fair Shake*

4. Pub. L. No. 117-328, div. II, 136 Stat. 4459, 6084–89 (2022) (codified at 42 U.S.C. §§ 2000gg–2000gg-6 (2023)); see *Finally Protected: Analyzing the Potential of the Pregnant Workers Fairness Act*, 137 HARV. L. REV. 662 (2023) (discussing the PWFA).

5. See, e.g., ANNETTE BERNHARDT, RUTH MILKMAN, NIK THEODORE, DOUGLAS HECKATHORN, MIRABAI AUER, JAMES DEFILIPPIS, ANA LUZ GONZÁLEZ, VICTOR NARRO, JASON PERELSHTEYN, DIANA POLSON & MICHAEL SPILLER, BROKEN LAWS, UNPROTECTED WORKERS: VIOLATIONS OF EMPLOYMENT AND LABOR LAWS IN AMERICA’S CITIES (2009), <https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf> [<https://perma.cc/8SHP-YXTV>].

6. Eamon Coburn, *Supply-Chain Wage Theft as Unfair Method of Competition*, 134 YALE L. J. 615, 618, 618 n.1 (2024).

details in the story of Lauren Martinez and Aspen Dental,⁷ the grand latticework of mandatory protections such as family and medical leave can be porous—ignored by faraway HR offices. Arbitration agreements permit employers to establish their own processes and avoid court enforcement, often bending the contours of dispute resolution in their favor. In the gig economy, companies have routinely treated their workers as independent contractors despite rulings to the contrary, with ride-share companies spending millions to change the law and absolve themselves of employment responsibilities.⁸

Fair Shake's discussion of Walmart is instructive here. The biggest private employer in the United States, Walmart is omnipresent across the country as a low-cost, accessible retailer of almost anything the average person needs on a day-to-day basis. Despite its size and cultural importance, Walmart has not been a model employer. According to one report, Walmart is also the number one company in terms of fines and settlements paid out for wage theft through wage and hour violations.⁹ These violations come on top of Walmart's already aggressively-low wages.¹⁰ An incredibly lopsided gender imbalance persists at its managerial levels, which led Betty Dukes and other workers to challenge the company's promotion practices.¹¹ The authors in *Fair Shake* explain how this approach to their employees' entitlements comes from the top: "A lightbulb went on for us when we realized that the managerial system [that the *Wal-Mart v. Dukes* litigation] challenged as discriminatory worked, from start to finish, to facilitate circumvention of the labor laws and shortchange Walmart workers without anyone in Bentonville being held accountable."¹² Depriving workers of their due is baked into the Walmart model.

The second type of lawlessness is represented in the rogue business models unleashed within the American economy. These business models are often created to circumvent regulations

7. CAHN ET AL., *supra* note 1, at 142–46.

8. *Id.* at 159–74 (discussing platform workers and California's Proposition 22).

9. *See id.* at 28; *see also* Steven Greenhouse, *Suits Say Wal-Mart Forces Workers to Toil Off the Clock*, N.Y. TIMES, June 25, 2002, at A1, A18.

10. Wayne F. Cascio, *The High Costs of Low Wages*, 84 HARV. BUS. REV. 23 (2006) ("Wal-Mart's legendary obsession with cost containment shows up in countless ways, including aggressive control of employee benefits and wages.").

11. *Wal-Mart, Inc. v. Dukes*, 564 U.S. 338, 370 (2011) (Ginsburg, J., dissenting) (quotations omitted) ("Women fill 70 percent of hourly jobs in the retailer's stores but make up only 33 percent of management employees.").

12. CAHN ET AL., *supra* note 1, at 28.

intended to shield workers, customers, citizens, or the environment from harm. David Weil coined the term “the fissured workplace” to describe companies that carve off their workers into other contractors to sever the employment relationship, despite the fact that these workers continue to perform critical roles within these companies’ businesses.¹³ Other companies routinely ask their employees to break the law, such as Wells Fargo asking workers to stick their customers with fake accounts¹⁴ or General Electric’s focus on profits at all costs, countenancing securities fraud.¹⁵ In her study of bad corporate behaviors, our colleague Claire Hill has developed the following description of a problematic business model or practice: “one that deviates from the ideal, relying on the existence of a party who is not: (a) fully capable, (b) fully willing, (c) fully informed, or (d) transacting for her own account.”¹⁶ Many of the examples in *Fair Shake* detail policies and approaches that are structured to game the system.

The poster child for rogue business practices could well be Uber. Cahn, Carbone, and Levit chronicle the ways in which the entirety of the organization was geared towards disruption. The company’s business plan was to destroy and replace the traditional taxicab—a highly regulated industry.¹⁷ Uber would regularly break the law when entering a geographic market without permission, only later working to amend the laws once a customer base had risen up around their services.¹⁸ The company’s culture under founder Travis Kalanick featured a hard-partying atmosphere, open-beer kegs, and aggressive sales and development targets. Particularly rampant within the company were instances of sexual harassment, sex discrimination, bullying, and inappropriately

13. See DAVID WEIL, *THE FISSURED WORKPLACE: WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT* (2014).

14. CAHN ET AL., *supra* note 1, at 105–21.

15. *Id.* at 52–54.

16. Claire A. Hill, *Marshalling Reputation to Minimize Problematic Business Conduct*, 99 B.U. L. REV. 1193, 1202 (2019).

17. Brishen Rogers, *The Social Costs of Uber*, 82 U. CHI. L. REV. DIALOGUE 85, 91 (2015) (“[I]t seems unquestionable that Uber aims to undermine traditional taxi service, and it seems manifestly unfair that taxi drivers and Uber drivers can operate in the same market subject to different rules.”).

18. Elizabeth Pollman & Jordan M. Barry, *Regulatory Entrepreneurship*, 90 S. CAL. L. REV. 383, 384 (2017) (discussing high-profile companies such as Uber that “have devoted an enormous amount of resources to pursuing lines of business that carry tremendous legal risk” in which existing laws “are unclear, unfavorable, or even prohibit the activity outright”).

aggressive behavior.¹⁹ A law firm investigation yielded 215 complaints of workplace violations.²⁰

Allegations of Uber's "bro" culture and sexualized environment point to an ongoing rogue business culture of men behaving badly. Sadly, frustratingly, and infuriatingly, such cultures pervade far too many workplaces. And elite, highly-educated industries are not immune; indeed, they can offer the worst examples. *Fair Shake* discusses at length the culture at Silicon Valley venture capital firm Kleiner Perkins and the manifold ways in which male domination warped job expectations and evaluations of talent.²¹ Another example is the ultra-rich global party circuit, where young women are hired to adorn the festivities and signal the power, social status, and desirability.²² As described by professor Ashley Mears, the "girls"—young women between sixteen and twenty-five who were tall, thin, and preferably models—were necessary to the milieu but had little long-term career opportunities as a result of it; only the men were there to network.²³ Even without overt sex discrimination, many systemic barriers to sex and gender equality remain embedded within the culture.²⁴

The third instantiation of the lawless workplace is authoritarian governance. When one person can control, rewrite, and override internal rules and policies, the rule of law is replaced with rule by fiat. The Wagner Act was passed to provide for "industrial democracy" within company walls.²⁵ That purpose, however, remains largely unrealized. Instead, Americans have acclimated themselves to dictatorial governance.²⁶ Kalanick's reign

19. CAHN ET AL., *supra* note 1, at 130.

20. *Id.*

21. *Id.* at 85–104.

22. ASHLEY MEARS, VERY IMPORTANT PEOPLE: STATUS AND BEAUTY IN THE GLOBAL PARTY CIRCUIT xi–xiii (2020).

23. *Id.* at 16, 36–37 ("Their beauty generates enormous symbolic and economic resources for the men in their presence, but that capital is worth far more to men than to the girls who embody it.")

24. See KERRI LYNN STONE, PANES OF THE GLASS CEILING: THE UNSPOKEN BELIEFS BEHIND THE LAW'S FAILURE TO HELP WOMEN ACHIEVE PROFESSIONAL PARITY (2022).

25. Craig Becker, *Democracy in the Workplace: Union Representation Elections and Federal Labor Law*, 77 MINN. L. REV. 495, 501 (1993) ("The ideal of industrial democracy figured prominently in the legislative debates that preceded the passage of the Wagner Act, and the Act cut deeply into employers' legal authority in the workplace.")

26. See ELIZABETH ANDERSON, PRIVATE GOVERNMENT: HOW EMPLOYERS RULE OUR LIVES (AND WHY WE DON'T TALK ABOUT IT), at x (Stephen Macedo ed., 2017); Mark Barenberg, *Democracy and Domination in the Law of Workplace Cooperation*:

at Uber was characteristic of this approach, with a tyrant's penchant for making up his own rules as he went along. But we can see this phenomenon and the "dark triad" personality traits—narcissism, psychopathy, and Machiavellianism²⁷—in many firms.²⁷ As much of the Western world has reoriented around the importance of impartiality, the democratic restraint of power, the rule of law, and adherence to abstract principles, the authoritarian firm resembles the tribal, clannish, chieftain-oriented social structures of most of human history.²⁸ It is devolution—a departure from what we should expect from our organizing institutions. And it deprives us of a sense of order.

Elon Musk represents the apex of this particular type of leader—impulsive, grandiose, compelling, and imperious. He rules not one or two but three major companies, and he has remade them in his own image. He fired many Twitter employees when he took over the company, and he failed to follow through on contractually-required payments and bonuses, leading to lawsuits.²⁹ Musk has shown no patience for any efforts to constrain his authority. Unfair labor practice charges from the National Labor Relations Board against SpaceX led to counter-litigation alleging the agency is unconstitutional.³⁰ Musk has ignored orders from the Securities and Exchange Commission³¹ and has engaged in an ongoing battle with the Delaware judiciary.³² And ruling his many kingdoms is not sufficient; over the last election cycle, Musk directed hundreds of millions of dollars towards electing Donald Trump.³³ Now that he

From Bureaucratic to Flexible Production, 94 COLUM. L. REV. 753, 932 (1994) ("The law's default position in the employment contract is nonunion governance—from the employees' point of view, that is, authoritarian governance.").

27. CAHN ET AL., *supra* note 1, at 139.

28. See JOSEPH HENRICH, *THE WEIRDEST PEOPLE IN THE WORLD: HOW THE WEST BECAME PSYCHOLOGICALLY PECULIAR AND PARTICULARLY PROSPEROUS* 21–24 (2020) (introducing the ideals and psychology of WEIRD individuals—Western, Educated, Industrialized, Rich, and Democratic).

29. KATE CONGER & RYAN MAC, *CHARACTER LIMIT: HOW ELON MUSK DESTROYED TWITTER* 284–86 (2024).

30. Robert Iafolla, *SpaceX's Constitutional Challenge to NLRB Gets Judicial Support*, BLOOMBERG NEWS (July 23, 2024), <https://news.bloomberglaw.com/daily-labor-report/spacexs-constitutional-challenge-to-nlrbs-gets-judicial-support> [<https://perma.cc/X9Y4-93ZH>].

31. Aarian Marshall, *SEC: Elon Musk Fully Ignored a Key Term of Settlement*, WIRED (Mar. 18, 2019), <https://www.wired.com/story/elon-musk-tesla-sec-lawsuit-twitter-court-filing/> [<https://perma.cc/LYF8-FVUT>].

32. Christiaan Hetzner, *Tesla Fumes Over Delaware Judge's Final Ruling to Block Paying Elon Musk 'What He's Worth'*, YAHOO! FIN. (Dec. 5, 2024), <https://finance.yahoo.com/news/tesla-fumes-over-delaware-judge-144742627.html> [<https://perma.cc/T4XB-3S5T>].

33. Greg Sargent, *Elon Musk's Stunning \$250 Million Favor to Trump Should*

owns Twitter, Musk can take concrete steps to ensure that his voice is amplified over everyone else's.³⁴

These three attributes—failed enforcement, rogue business models, and authoritarian governance—constitute and reflect the lawlessness of the modern for-profit enterprise. But as the authors of *Fair Shake* make clear, there are ways to fight back.

II. Towards A Lawful Workplace

Many features of the lawless workplace are not new and have proven stubbornly intractable in the face of modernizing efforts. But the decline in unionization, the growth of employment arbitration, the widening income equality, and the pace of technological change have all contributed to the degradation of policies, cultures, and norms that made the workplace less arbitrary and oppressive. In a “winner take all” economy, the “winners” get more and more, and they can accelerate the pace of accumulation for themselves as they gain power and resources. *Fair Shake* does not leave us hopeless, however; the authors lay out prescriptions for changes that would fight back against the forces that make the economy less fair and women less empowered within it. Below I build on their suggestions with ideas for addressing the three manifestations of lawlessness illustrated above: failed enforcement, rogue business models, and authoritarian governance.

Failed enforcement is perhaps the most straightforward to reform: we must simply commit to greater funding for our federal, state, and local governments as they set about enforcing the laws.³⁵ The Trump Administration has been hell-bent on eviscerating the federal workforce, but many state and local laws echo or amplify federal protections, and worker-friendly states could amp up their enforcement in creative ways.³⁶ Greater protections for

Wake Up Dems, NEW REPUBLIC (Dec. 9, 2024), <https://newrepublic.com/article/189147/musk-250-million-campaign-finance> [https://perma.cc/37LM-MSES].

34. CONGER & MAC, *supra* note 29, at 394–97.

35. Charlotte Garden, *Enforcement-Proofing Work Law*, 44 BERKELEY J. EMP. & LAB. L. 191, 199 (2023).

36. Terri Gerstein, *How District Attorneys and State Attorneys General Are Fighting Workplace Abuses*, ECON. POL'Y INST. & HARV. LAB. AND WORKLIFE PROGRAM (May 17, 2021), <https://www.epi.org/publication/fighting-workplace-abuses-criminal-prosecutions-of-wage-theft-and-other-employer-crimes-against-workers/> [https://perma.cc/9TYT-U6TZ]; Terri Gerstein, *Workers' Rights Protection and Enforcement by State Attorneys General*, ECON. POL'Y INST. & HARV. LAB. AND WORKLIFE PROGRAM (Aug. 27, 2020), <https://www.epi.org/publication/state-ag-labor-rights-activities-2018-to-2020/> [https://perma.cc/4MPZ-F9TU].

whistleblowers are critical—this is one area where the Supreme Court has been willing to read legal protections in an expansive and employee-positive way.³⁷ Arbitration agreements must either be eliminated from the employment realm or more closely scrutinized to ensure that they do not deprive workers of their legal rights.³⁸ Unions can also assist in workplace enforcement, particularly working in concert with authorities.³⁹ Although somewhat rare in this country, works councils have demonstrated an ability to manage the shop floor in a much more democratic and lawful way, creating systems for participation and regulation that are not simply top-down edicts.⁴⁰

In combatting rogue business models, we need to attack the root causes of these models and cut off their sustenance. Enforcement will be critical here as well, as these variants generally thrive when existing laws are not minded.⁴¹ But we also need to eliminate the incentives for these rogue business models. Here, economic incentives and norm shaming can play important roles in reshaping the economic playing field away from these harmful business models.⁴² Investors now care more about the social and legal ramifications of their investments, and these expectations are influencing capital markets worldwide.⁴³ Professional associations and codes of ethics can provide meaningful roadblocks to rogue activities.⁴⁴ Even for workers who may lack significant market

37. Matthew T. Bodie, *The Roberts Court and the Law of Human Resources*, 34 BERKELEY J. EMP. & LAB. L. 159, 195 (2013) (arguing that “the Roberts Court recognized that a well-functioning internal complaint system needs protections against retaliation in order to function”).

38. Cynthia Estlund, *The Black Hole of Mandatory Arbitration*, 96 N.C. L. REV. 679 (2018).

39. See Janice Fine, *Enforcing Labor Standards in Partnership with Civil Society: Can Co-Enforcement Succeed Where the State Alone has Failed?*, 45 POL. & SOC’Y 359 (2017); Seema Patel & Catherine Fisk, *California Co-Enforcement Initiatives That Facilitate Worker Organizing*, HARV. L. & POL’Y REV. (Jan. 1, 2018), <https://journals.law.harvard.edu/lpr/wp-content/uploads/sites/89/2017/11/Patel-Fisk-CoEnforcement.pdf> [<https://perma.cc/NAT5-QZ67>].

40. Stephen F. Befort, *A New Voice for the Workplace: A Proposal for an American Works Councils Act*, 69 MO. L. REV. 607, 608 (2004).

41. CAHN ET AL., *supra* note 1, at 240–41 (discussing the need to strengthen the rule of law).

42. See Hill, *supra* note 16, at 1213–18.

43. Michal Barzuza, Quinn Curtis & David H. Webber, *Shareholder Value(s): Index Fund ESG Activism and the New Millennial Corporate Governance*, 93 S. CAL. L. REV. 1243 (2020).

44. See, e.g., Claire Hill, Brett McDonnell & Aaron Stenz, *Bad Agent, Good Citizen?*, 88 FORDHAM L. REV. 1631, 1632 (2020) (“[W]e should ask whether lawyers acting as bad agents are also harming society, or whether they may actually be promoting the public interest even though they are not promoting their clients’ interests.”).

power, an association with its own vocational norms and expectations can provide friction when companies want to depart from those norms.⁴⁵

Breaking the grip of toxic male cultures will prove a harder task, given the extent to which they are engrained. Enforcement of existing laws requires victims to speak up, and the #MeToo movement has hopefully changed the internal cost-benefit analysis of reporting that individuals must assess before coming forward. But interventions have many types and angles, and creative approaches can pay off. Daniel Hemel and Dorothy Lund have explored the use of corporate governance and securities fraud in punishing companies where sexual harassment and sex discrimination have flourished.⁴⁶ Even failed—or temporarily successful—initiatives can have an effect. In 2018—following the leads of countries like France, Norway, and Sweden⁴⁷—California enacted SB 826, which required publicly-held corporations to have female representation on their boards.⁴⁸ Prior to 2019, women only held 17% of California director positions.⁴⁹ Almost 30% of firms headquartered in California had no female directors.⁵⁰ The new law was enacted to change that, mandating women on boards and imposing six-figure fines for noncompliance.⁵¹ A federal circuit court held that the act required shareholders to engage in sex

45. See Jeffrey M. Hirsch & Joseph A. Seiner, *A Modern Union for the Modern Economy*, 86 FORDHAM L. REV. 1727, 1765–82 (2018) (discussing the possibility of a guild for Uber drivers).

46. Daniel Hemel & Dorothy S. Lund, *Sexual Harassment and Corporate Law*, 118 COLUM. L. REV. 1583, 1593 (2018) (“[T]he #MeToo movement has revealed (or reinforced our understanding) that widespread sexual harassment stands as an obstacle to the efficient allocation of human and financial capital.”).

47. Bryce Covert, *The Secret to Getting More Women on Corporate Boards: The \$100,000 Threat*, POLITICO (Feb. 25, 2022), <https://www.politico.com/news/magazine/2022/02/25/california-companies-women-boards-quotas-00010745> [<https://perma.cc/KER4-F59Z>].

48. CAL. CORP. CODE § 301.3(b) (requiring one or more female directors for boards with four or fewer directors, two or more female directors for boards with five directors, and three or more female directors for boards with six or more directors).

49. Brian Melley, *Judge Says California Law Requiring Women on Corporate Boards is Unconstitutional*, PBS NEWS (May 16, 2022), <https://www.pbs.org/newshour/politics/judge-says-california-law-requiring-women-on-corporate-boards-is-unconstitutional> [<https://perma.cc/YB6K-9NDD>].

50. Margeaux Bergman, *How the “Exception” Becomes the Standard*, 17 HASTINGS BUS. L. J. 405, 418 (2021) (“188 of the 650 firms headquartered in California did not have any female members on their boards . . .”).

51. Joan MacLeod Heminway, *Me, Too and #MeToo: Women in Congress and the Boardroom*, 87 GEO. WASH. L. REV. 1079, 1094 (2019); CAL. CORP. CODE § 301.3(e).

discrimination,⁵² and a state court struck down the law as violating equal protection under the California Constitution.⁵³ But the law had called attention to the dramatic misrepresentation and pushed private actors into action.⁵⁴ One study found that the legislation led to a “surge” in women’s representation, even with the ongoing questions about the act’s enforceability.⁵⁵

Authoritarian governance is likely the toughest nut to crack, given the ability of company tyrants to reinforce their own power internally and externally. We must take on considerable changes to workplace structure that shift the balance of power within firms. Pushing for greater shareholder power is one option; it is often in shareholders’ interest to prevent CEOs and directors from entrenching their personal power.⁵⁶ But as Grant Hayden and I have argued, shareholder primacy can no longer claim to be the only logical and societally efficient approach to corporate governance.⁵⁷ Involving stakeholders in governance will further splinter the accumulation of power and share the responsibilities of governance more widely. Tech titans like Elon Musk and Mark Zuckerberg may have taken the reins from shareholders to assume untrammelled control, but stakeholder power-sharing would reintroduce checks and balances into their companies. Codetermination legislation has made it to the U.S. Congress and should be considered a top-ten priority for corporate reformers.⁵⁸

Other potential outlets for worker voice range from traditional to unconventional. Our legal system installs unions as the primary vehicle for worker participation through collective bargaining. And

52. *Meland v. Weber*, 2 F.4th 838, 849 (9th Cir. 2021).

53. *Crest v. Padilla*, No. 19STCV27561 (Super. Ct. L.A. Cnty., 2022), <https://s.wsj.net/public/resources/documents/Crest-et-al-v-Padilla-05-13-2022.pdf> [<https://perma.cc/EMH7-AX6A>].

54. Sung Eun (Summer) Kim, *Mandating Board Diversity*, 97 IND. L. J. 31, 42 (Supp. 2022) (“The true value of the California Board Diversity Bills is to be measured by not only the changes they propel in the companies they regulate but also by the attention they have brought to the issue of lack of diversity on corporate boards and the alternative solutions they have inspired.”).

55. Daniel Greene, Vincent Intintoli & Kathleen M. Kahle, *Do Board Gender Quotas Affect Firm Value? Evidence from California Senate Bill No. 826*, 60 J. CORP. FIN. 1, 3 (2019) (finding a 23% increasing in female board representation between January and June 2019).

56. Lucian Arye Bebchuk, *The Case for Increasing Shareholder Power*, 118 HARV. L. REV. 833, 836 (2005).

57. See GRANT M. HAYDEN & MATTHEW T. BODIE, RECONSTRUCTING THE CORPORATION: FROM SHAREHOLDER PRIMACY TO SHARED GOVERNANCE (2021); Grant M. Hayden & Matthew T. Bodie, *Codetermination in Theory and Practice*, 73 FLA. L. REV. 321, 322–23 (2021).

58. Accountable Capitalism Act, S. 3348, 115th Cong. § 6 (2018); Reward Work Act, S. 915, 116th Cong. § 3 (2019).

yet even in this day and age, a company can engage in an extraordinary anti-union campaign, involving hundreds of alleged and adjudged unfair labor practices, and suffer relatively little sanction.⁵⁹ This needs to change. Unions are not the only method of collective workplace action; the Google Walkout for Change provides one example of workers joining together to press for meaningful changes despite the lack of a labor organization.⁶⁰ Companies have also explored some alternative governance structures that depart from the standard hierarchical organizational chart to disperse power more equitably. A constellation of participatory management systems such as holacracy, works councils, and total quality management include employees within the firm's internal governance structures.⁶¹ Some organizational forms, such as the cooperative or the employee stock ownership plan (ESOP), invest employees with actual ownership rights.⁶² These alternative paths deserve continued exploration and trail-blazing.

Finally, given the dearth of collective worker power at this moment in time, we must also re-empower the individual employee. Employment at-will has long given managers and supervisors arbitrary power to fire workers "for any reason, or no reason at all."⁶³ Exercised by collective decision-making bodies, at-will employment would be less dangerous, but its pairing with unabridged power reinforces the authoritarian dynamic. At-will should either be further limited with more areas of protection within it, or it should be replaced with a just-cause system.

59. Matthew T. Bodie, *Labor Relations at the Woke Corporation*, 79 N.Y.U. ANN. SURV. AM. L. 171, 186–88 (2023) (discussing Starbucks' campaign against its internal unionization drive).

60. Noam Scheiber, *Google Workers Reject Silicon Valley Individualism in Walkout*, N.Y. TIMES (Nov. 6, 2018), <https://www.nytimes.com/2018/11/06/business/google-employee-walkout-labor.html> [<https://perma.cc/D6BU-EVKU>].

61. See, e.g., FREDERIC LALOUX, REINVENTING ORGANIZATIONS: A GUIDE TO CREATING ORGANIZATIONS INSPIRED BY THE NEXT STAGE OF HUMAN CONSCIOUSNESS 55–61 (2014) (introducing "Teal Organizations" as new structure of organization that emphasizes "self-management," "wholeness," and "evolutionary purpose"); BRIAN J. ROBERTSON, HOLACRACY: THE NEW MANAGEMENT SYSTEM FOR A RAPIDLY CHANGING WORLD 16–26 (2015) (describing "Holacracy," new paradigm of organization which distributes authority to all individuals in organization).

62. See, e.g., Robert Hockett, *What Kinds of Stock Ownership Plans Should There Be? Of ESOPs, Other SOPs, and "Ownership Societies"*, 92 CORNELL L. REV. 865 (2007).

63. See, e.g., *Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 280 (Iowa 2000).

Workplace surveillance is another way in which tyrannical managers can exercise control and domination over their labor force.⁶⁴ Barriers against the collection, use, and disclosure of sensitive data will insulate workers from being manipulated, embarrassed, and otherwise subjugated by the power this data provides.

Conclusion

In *Fair Shake*, Naomi Cahn, June Carbone, and Nancy Levit provide a powerful indictment against the ongoing structural inequality found in workplaces today. One of their insights is the role of lawlessness in promoting inequality across a variety of metrics, particularly gender. The United States has long tolerated one of the most disordered, rogue, and authoritarian employment climates of any of the industrialized and prosperous nations. It is time to take on the lawless workplace and disempower those who most benefit from its predations.

64. Ifeoma Ajunwa, Kate Crawford & Jason Schultz, *Limitless Worker Surveillance*, 105 CAL. L. REV. 735, 735–736 (2017).

Interview of Renee Jones by June Carbone

This conversation occurred at the start of the conference on “Women at Work” on Friday, October 25, 2024, 9:00 to 9:30 a.m. What follows is the conversation with Renee Jones,[†] edited for clarity. June Carbone’s questions are in italics, and Renee Jones’ responses are in regular type.

June: As I read Renee’s work in getting ready for this conference. I was impressed at the richness of her experiences in examining modern business enterprises and gratified that she saw many of the same things we discovered, without necessarily focusing on women at all. So, Renee, why don’t you start by saying something about your background at the SEC?

Renee: I was privileged to serve as the Director of the SEC’s Division of Corporation Finance from mid-2021 to early 2023. In that role, I oversaw a division of more than 400 lawyers, accountants, and analysts charged with interpreting and ensuring compliance with the principal securities statutes: the Securities Act of 1933 and the Securities Exchange Act of 1934. The bulk of the Division’s staff (about 300 lawyers and accountants) works in its disclosure review program, reviewing corporate filings to ensure compliance with the securities laws’ disclosure requirements. Division staff reviews filings for securities offerings such as IPOs, offerings in connection with mergers, and offerings by Special Purpose Acquisition Companies (SPACs). Staff also reviews ongoing disclosure by public companies including annual reports, quarterly reports, and proxy statements. The staff reviews these filings and provides comments to companies to improve the quality of disclosure. The disclosure review process and staff comments also inform the Commission and the entire SEC staff on important market trends and possible areas for reform.

[†]. Renee Jones is a professor and Dr. Thomas F. Carney Distinguished Scholar at Boston College Law School. She teaches Corporations, Securities Regulation, Startup Company Governance, and Financial Regulation. After serving as an associate dean, she escaped herding faculty in 2021 to become the Director of the Division of Corporation Finance at the U.S. Securities and Exchange Commission. As Division Director, Professor Jones led a team of more than 400 lawyers, accountants and analysts charged with interpreting, implementing and ensuring compliance with the Securities Act of 1933, the Securities Exchange Act of 1934 and related statutory provisions.

The other major component of the Division's work is legal and regulatory policy, with a focus on rulemaking. During my tenure, we worked to advance Chair Gensler's ambitious rulemaking agenda. Our Division had more than twenty items within our purview on the rulemaking agenda. I oversaw our staff's work in making recommendations to the Commission and drafting proposals and final rules for the Commission's approval. We made remarkable progress on these projects, moving twenty-three proposed and final rules through the Commission during my tenure. Among the most significant newly proposed and final rules were rules governing climate-related disclosures, rules governing disclosure in SPAC transactions, and reforms that closed loopholes in insider trading rules by amending Rule 10b5-1.

June: Based on your experiences, can you describe any changes in corporate America you have observed regarding how business is conducted or overseen?

Renee: One of the biggest changes I've seen that impacts corporate financing practices is a series of deregulatory reforms that have reduced the insights investors, regulators, and the public have into a large swath of the economy occupied by large private companies.

This deregulatory trend began in the 1980s with the adoption of Regulation D and Rule 506, which eliminated disclosure obligations in connection with securities offerings to financial institutions and wealthy individuals. This trend accelerated in the mid-1990s when Congress adopted the National Securities Market Improvement Act (NSMIA) which eliminated investor caps for private investment funds and preempted state regulation of most private securities transactions. Then, in 2012, Congress adopted the Jumpstart Our Business Startups Act (JOBS), which eliminated the longstanding requirement that companies with 500 shareholders or more register with the SEC and become public reporting companies.

Once the 500-shareholder rule was eliminated, all bets were off in terms of constraining the growth of private securities markets. The amount of capital flowing into private markets grew dramatically after the 1996 NSMIA reforms. The JOBS Act allowed startups to stay private indefinitely. With this combination of legal reforms and changes in market structures, startup founders began to amass more power, and existing mechanisms for investor oversight of startups began to fail.

June: When you're talking about investor oversight, are you talking about venture capital firms or boards?

Renee: In the traditional venture capital financing model, venture capitalists (VCs) raised money from limited partners—mostly public and private pension funds, university endowments, and some wealthy individuals. The VCs put all that money in a big pot, the VC fund, and went out and looked for promising new companies to finance. Traditionally, VCs doled out money to startups in small increments, with continued funding conditioned on the startup meeting certain milestones. VCs got seats on the startup board when they invested, and as they increased their investment the VCs eventually acquired control over the board. So, in the traditional VC financing model, the investors were in control and could replace the founders if they weren't doing a good job and dictate pivots in business strategy when necessary.

We now have a lot more money in private markets seeking to invest in startups. So, VCs are now competing with other categories of private funds (hedge funds, private equity, sovereign wealth funds) for the opportunity to invest in promising startups. With all that money chasing startup deals, founders began to gain the upper hand when negotiating with potential investors. This competition among funders led to a new financing model, which I call the “unicorn governance model.”

It's now common for founders of successful startups to be handed control over the board by being granted a special class of stock with super-voting powers. When founders control the board, it is difficult for VCs and other investors to exercise proper oversight, or to discipline founders who engage in misconduct. Without an imminent IPO on the horizon, there are fewer incentives for startups to adopt the bureaucratic structures and internal controls that are essential for effective management of large complex enterprises.

June: What can go wrong?

Renee: A lot has gone wrong. In the traditional VC Model, a successful VC-funded startup would either go public or be sold within five to seven years from founding. In 1996, the median age at IPO for tech-based startups was seven years. By 2022, the median age at IPO had increased to fifteen years. Once founders gained the upper hand in the startup financing system, we began to see major scandals at well-known startups. Uber, Theranos, and WeWork are the most famous examples, but there are dozens of other lesser-known startup founders who have been implicated in significant frauds. We have also seen a number of startup founders convicted for fraud, including Elizabeth Holmes, founder of the

blood-testing startup Theranos, and Sam Bankman-Fried, founder of the crypto trading platform FTX.

Corporate scholars and policy makers have long focused on addressing governance problems at public companies related to the separation of ownership from control. We are now seeing the same types of problems that triggered the Sarbanes-Oxley reforms of public company governance occurring at private companies.

June: When interest rates spiked, the amount of VC money declined from a high last seen in the nineties. What happened with the VC downturn?

Renee: Since the downturn in VC funding that began in 2022, we're seeing more startups fold when they run out of cash, so not as many startups are staying alive for ten or twelve years without an exit. Some newer, younger startups are having trouble finding money. But the large, mature private companies (the unicorns and the decacorns—companies valued at \$1 billion and \$10 billion, respectively) will continue along waiting for an opportunity for a lucrative exit. In the crypto asset and artificial intelligence (AI) spaces, where a lot of VC money is being invested, we're seeing a troubling lack of concern about the potential negative social impacts of the products that are being developed. There is a singular emphasis on achieving rapid growth at any cost and emerging as the market leader. As a result, investors are pouring as much money as possible into companies in these sectors in the hopes of backing the next winner in the category.

June: So, do you have any insight into what this does to the relationships between the start-ups and their employees, customers, and others who lose in this environment?

Renee: I have concerns about how the unicorn governance model impacts startup employees. From the perspective of employees as investor—most startup employees are compensated with equity (stock options or restricted shares), where they accept a reduction in pay in exchange for equity in the company they work for. These employees need to stay at the firm for an extended period (four to five years) before they realize the full value of any equity grant. Unfortunately, most startup employees lack good insight into the market valuation of their firms. There are often lofty valuations tossed around in the press with each new financing round, but these valuations do not reflect the value of the employees' common shares.

Employees often face difficult investment decisions, including whether to stay at a firm until their options vest, and whether to exercise their options or let them expire. In these situations, startup employees often take on significant debt to exercise options and pay

the taxes due on exercise. Other employees sell their shares in private markets, sometimes at a significant discount. In any case, when employees are making these consequential decisions, they often lack reliable information about the firm's future prospects, the value of their equity stake, and the likely timing of an exit transaction.

June: Are things improving or worsening? Is the situation spiraling, or is it stable? Is it like charter schools, where 20% are outright frauds, 20% are run by dedicated teachers, and the rest produce about the same as public schools? What's happening?

Renee: Fraud in private markets seems to be increasing, but we don't really have good insight into that question. When problems develop at startups, there are strong incentives for employees, directors, and investors to try to keep a lid on it, so they can achieve a lucrative exit or go public.

June: So, what are the solutions?

Renee: I have been thinking about this a lot as I work on my forthcoming book, *Untamed Unicorns*, which makes recommendations for reforming regulation of private markets.

Part of the solution is increased transparency and enhanced disclosure from the largest private companies. Under traditional securities law rules, when companies sold securities in private transactions, they were required to provide investors with substantive disclosure, similar to what would be provided in a registration statement filed with the SEC. In 1982, when Regulation D was adopted, these rules changed. Now companies can sell securities to wealthy institutions and individuals without providing disclosure. We now see some transactions, including some of the largest private offerings, where some investors are not getting disclosure at all.

Not only are some investors not receiving information when they initially invest, they are not always receiving updates after their investment is made. Traditionally, VCs bargained for extensive information rights and could withhold additional funding if the information was not provided. Now we see some startup investors forgoing information rights, or not enforcing their rights when founders fail to provide required updates. If we had ongoing disclosure requirements for large private companies, directors, investors, and employees would have better insight into their companies' operations.

June: I'm going to ask the final two questions together. Do you see room for a different kind of leadership? Does the diversity of people selected as leaders serve as part of the problem or the solution?

Renee: Yes, we need a different model of leadership for startups. There is a huge problem in the VC industry (some call it the “Elephant in the Valley”) which is that 82% of the VCs who make funding decisions are men, almost all of whom are white.¹ These white, male VCs who make most of the funding decisions mainly invest in startups whose founders have a similar social background. A leading VC partner once said that the most successful entrepreneurs “all seem to be white, male, nerds who’ve dropped out of Harvard or Stanford and they have absolutely no social life.” He added, “when I see that pattern coming in, it was very easy to decide to invest.”²

We have a lot of survey data on the experiences of women founders and women working in tech. In one survey, 65% of women founders reported being told they would raise more money if they were men, or if they had a male co-founder. 40% of women founders reported being harassed, with half of those reporting sexual harassment stating they were propositioned for sex in exchange for funding. Women working in tech also reported high levels of harassment. Other surveys show that most women who report their harassment receive an unsatisfactory response. These data suggest there are significant leadership problems in Silicon Valley, both in VCs’ investment practices and in VCs’ failure to police sexual harassment by their partners and at the startups that they fund.

One thing that troubles me is that a good chunk of the money managed by VC funds is the public’s money, invested by states, cities, and towns to fund pension obligations. The public officials who control the flow of resources to VCs do not focus enough on VC demographics, the history of discriminatory practices at VC firms, or governance flaws now prevalent in the startup sector. Pension fund managers are more focused on a VC’s record for producing returns than governance, fairness, and equity. From the perspective of a citizen whose tax dollars are being deployed in a way that perpetuates historic inequities in entrepreneurial finance, pension funds’ failure to hold VCs accountable for partner misconduct and for their lax oversight of the startups is highly problematic.

1. *Diversity, Equity, and Inclusion in the VC Industry*, DELOITTE (2023), <https://www.deloitte.com/us/en/pages/audit/articles/diversity-venture-capital-human-capital-survey-dashboard.html> [<https://perma.cc/LT3Q-A56N>].

2. MARGARET O’MARA, *THE CODE: SILICON VALLEY AND THE MAKING OF AMERICA* 75 (2020).

June: I would note that one of the things we found in the book is that the number of women receiving VC funding has increased. However, the percentage of funding going to all female founders has stayed under 2% of VC funding. The number of women co-founders has increased, partly because it helps the men get money. But when the downturn occurred, firms with women founders did better. Why? The limited evidence we have suggests that because women pay themselves less, they burn through cash less quickly, and they are quicker to get to an exit, meaning an IPO or acquisition by a larger company, which ultimately involves greater transparency and accountability. So, what Renee is describing remains not only a male dominant system, but maybe even more male dominant than it was before the recent downturn.

I see the SEC as having been defanged over the last several decades—defanged by the courts, defanged by lack of funding, and defanged by the reforms in the law you describe. Do you see the SEC, especially right now, as being any more effective?

Renee: When I was at the SEC, we focused on improving market transparency, improving the efficiency of securities markets, and improving investor protections. We made a lot of progress over the past three years. The industry has been fighting back hard, and getting a huge assist from the 5th Circuit, so there is a lot left to do. Part of the reason for the lack of continued progress is industry resistance, Congressional pressure, and fear of litigation, all of which have impeded the ability of regulators make greater progress during periods when Democrats control the federal agencies.

On Triple Bind Remedies in *Fair Shake* and Gender Bias Remedies in Psychological Science

Eugene Borgida & Nicholas M. Alia[†]

Introduction

Despite the federal regulations and judicial precedents that protect employees from gender discrimination, women continue to face challenges in the workforce. The winner-take-all (WTA) economy, in which institutional power and rewards are disproportionately reserved for those higher up the corporate ladder, has perpetuated these challenges. In *Fair Shake: Women and the Fight to Build a Just Economy* (hereafter referred to as *Fair Shake*), Naomi Cahn, June Carbone, and Nancy Levit propose a powerful tripartite framework called the “Triple Bind” to understand how the WTA economy has established an unspoken set of rules that disadvantage women in the workforce.¹ For decades now, social and organizational psychologists have studied the nature of gender stereotypes and prejudice and the ways in which these cognitive and motivational processes undermine and disadvantage women in workplaces and, more broadly, in the economy as depicted in *Fair Shake*.

In this Article, we suggest that the body of theory and research on gender stereotypes and prejudice complements our understanding of the social and organizational psychological dynamics associated with the “Triple Bind” framework. Gender stereotypes, for example, have two distinct properties: a descriptive belief about the *typical* characteristics of each gender and a prescriptive belief about the *expected* behaviors of each gender.² These stereotypes facilitate biased judgments at the individual and

[†]. Eugene Borgida, Professor of Psychology & Law, University of Minnesota; Nicholas M. Alia, Department of Psychology, University of Minnesota. We thank Katy Isackson-Papp and Evelyn Turocy for their invaluable research assistance. We would also like to thank June Carbone and Joseph Vitriol for their thoughtful comments on this paper.

1. NAOMI CAHN, JUNE CARBONE & NANCY LEVIT, *FAIR SHAKE: WOMEN AND THE FIGHT TO BUILD A BETTER ECONOMY* 14–16 (2024).

2. Madeline E. Heilman, Suzette Caleo & Francesca Manzi, *Women at Work: Pathways from Gender Stereotypes to Gender Bias and Discrimination*, 11 ANN. REV. ORG. PSYCH. & ORG. BEHAV. 165, 166–68 (2024).

interpersonal levels, and influence the perceptions and evaluations of women in work contexts such that stereotypically masculine traits are conflated with the attributes of successful workers.³ In addition, as implied by the “Triple Bind” framework, women who exhibit stereotypically feminine traits such as warmth and collaboration are negatively evaluated for not meeting male gender-typed job requirements and are not granted the same options for career advancement as their male co-workers.⁴ Thus, consistent with the first bind of the “Triple Bind” discussed in *Fair Shake*, these women are essentially punished for embodying descriptive stereotypes of women and for not adhering to the prescriptive expectations for masculine behavior required by the WTA economy.

Unfortunately, as the “Triple Bind” framework suggests, women who do not embody stereotypically feminine traits, but rather demonstrate counter-stereotypical behavior, still encounter challenges and obstacles to success in the workforce.⁵ In contrast to research demonstrating that the presence of counter-stereotypical women would *reduce* gender stereotypes,⁶ these women are subject to biased judgments for violating the normative expectations associated with female behavior. As such, these women and their work contributions are more likely to be harshly devalued for any transgressions than their male co-workers. Bringing to mind counter-stereotypical women who fit masculine defaults (such as women with stereotypically masculine characteristics and behaviors) can reinforce the importance of masculinity in majority-male fields by implying that these characteristics are necessary and

3. See Sapna Cheryan & Hazel Markus, *Masculine Defaults: Identifying and Mitigating Hidden Cultural Biases*, 127 PSYCH. REV. 1022, 1025–26, 1029 (2020).

4. See CAHN ET AL., *supra* note 1, at 14–15.

5. See *id.* at 15.

6. See, e.g., Eimear Finnegan, Jane Oakhill & Alan Garnham, *Counter-stereotypical Pictures as a Strategy for Overcoming Spontaneous Gender Stereotypes*, 6 FRONTIERS PSYCH., Aug. 2015, at 12–14 (finding that counter-stereotypical pictures were effective for overcoming gender stereotypes); Vidhi Chhaochharia, Mengqiao Du & Alexandra Niessen-Ruenzi, *Counter-stereotypical Female Role Models and Women’s Occupational Choices*, 196 J. ECON. BEHAV. & ORG. 501, 507–516 (2022) (finding that counter-stereotypical female role models were associated with female labor supply and women’s occupational choices); cf. Calvin K. Lai, Maddalena Marini, Steven A. Lehr, Carlo Cerruti, Jiyun-Elizabeth L. Shin, Jennifer A. Joy-Gaba, Arnold K. Ho, Bethany A. Teachman, Sean P. Wojcik, Spassena P. Koleva, Rebecca S. Frazier, Larisa Heiphetz, Eva E. Chen, Rhiannon N. Turner, Jonathan Haidt, Selin Kesebir, Carlee Beth Hawkins, Hillary S. Schaefer, Sandro Rubichi, Giuseppe Sartori, Christopher M. Dial, N. Sriram, Mahzarin R. Banaji & Brian A. Nosek, *Reducing Implicit Racial Preferences: I. A Comparative Investigation of 17 Interventions*, 143 J. EXPERIMENTAL PSYCH.: GEN. 1765, 1771–72 (2014) (describing counter-stereotypes on racial prejudice).

desirable for success.⁷ Related research on the efficacy of diversity initiatives in organizations also has found that unintended effects, such as “backfire” effects, can result in increased discrimination against targeted groups.⁸ In other words, consistent with the second bind of the “Triple Bind,” counter-stereotypical women are essentially punished for contradicting prescriptive stereotypes of women, even if they embody the masculine attributes required by the WTA economy. And, as suggested by the third bind of the “Triple Bind,” when women learn about the unspoken rules stacked against them and feel stymied by the numerous roadblocks that undermine their professional advancement, they opt out and remove themselves from the game.⁹ The combination of these three binds establishes a corporate culture in which women struggle to attain equality with their male co-workers and, assuming that they have not already been pushed out, refuse to engage with such culture.

Most important to the focus of our Article, *Fair Shake* also proposes a three-step *remedy* to counteract the “Triple Bind” and minimize gender disparity in the workforce (see Figure 1). First, the overarching injustices of the WTA economy should be revealed to evoke a sense of public outrage.¹⁰ Second, an explicit connection should be made with the WTA practices that not only enable gender discrimination but are also counterproductive to society.¹¹ Third, women should have the opportunity and the platform to voice their own experiences without being penalized by the WTA economy.¹²

7. See Jennifer L. Berdahl, Marianne Cooper, Peter Glick, Robert W. Livingston & Joan C. Williams, *Work as a Masculinity Contest*, 74 J. SOC. ISSUES 422, 428 (2018) (discussing how counter-stereotypical women may affect the masculine contest culture in organizations); e.g., Sapna Cheryan, John Oliver Siy, Marissa Vichayapai, Benjamin J. Drury & Saenam Kim, *Do Female and Male Role Models Who Embody STEM Stereotypes Hinder Women’s Anticipated Success in STEM?*, 2 SOC. PSYCH. & PERS. SCI. 656, 661 (2011) (finding that non-stereotypical female role models in STEM did not improve women’s belief in their potential success); Sapna Cheryan, Benjamin J. Drury & Marissa Vichayapai, *Enduring Influence of Stereotypical Computer Science Role Models on Women’s Academic Achievement*, 37 PSYCH. WOMEN Q. 72, 76–77 (2012) (finding that non-stereotypical female role models in computer science did not increase women’s interest in the field).

8. See Lisa M. Leslie, Y. Lillian Kim & Emily R. Ye, *Diversity Initiatives: Intended and Unintended Effects*, 61 CURRENT OP. PSYCH. 101942, Feb. 2025, at 3–4; Joseph A. Vitriol & Gordon B. Moskowitz, *Bias in Individuals and their Organizations: When does Increasing Awareness of Bias Translate into Egalitarian Motivations and Support for Anti-Bias Policies?* 55–58 (Feb. 12, 2025) (unpublished manuscript) (on file with authors).

9. CAHN ET AL., *supra* note 1, at 15.

10. *Id.* at 231.

11. *Id.* at 232–33.

12. *Id.* at 233.

In this brief Article, we suggest that the efficacy of this three-step solution in eliminating the “Triple Bind” and preserving gender equity hinges on a significant cultural change taking place: abolishing (or, at the very least, loosening the grip on women in) the WTA economy. Achieving change at this social structural level is certainly a significant and worthy goal, but there are many challenges to taming the excesses of the WTA economy. Notably, systemic reform in the private and public sectors will take a long time to accomplish, especially in the current political climate. A more modest approach with a slower growth curve to attaining such systemic reform, we suggest, is anchored in the science-based interventions that target gender (and other forms of) bias at the individual and interpersonal levels of analysis. These interventions, as we overview in the next sections, are informed by decades of theory and research in social and organizational psychology on gender bias. Most important, this body of work on remedies for gender bias has evolved from an almost exclusive focus of remedies at the individual level to remedies that take into consideration *both* the individual level of analysis (“hearts and minds”) *and* the organizational level (“policies and practices”) *and* their interaction.¹³

This trend toward a multi-level analysis of organizational discrimination, fueled by peer-reviewed systematic reviews and quantitative meta-analyses, in our view, represents the field’s response to concerns that the past prioritization of individual-level remedies most likely meant *not* focusing on the systemic-level approach to remedying gender bias. An exclusive empirical focus on the efficacy of remedies at the individual level threatens an inattentiveness toward the organizational-level remedies to address the kinds of policies (as articulated in *Fair Shake*) that seek to bring about systemic change to the WTA economy.

I. Individual-Level Remedies to Reduce Workplace Bias

Over the past several decades, the psychological research literature has predominantly explored interventions to remedy gender bias at the individual level. These interventions primarily focused on reducing biased beliefs and attitudes of individuals within hypothetical organizational contexts. However, such interventions often relied on experimental designs with limited generalizability to actual organizational contexts. The disconnect

13. Nicole M. Stephens, Lauren A. Rivera & Sarah S.M. Townsend, *The Cycle of Workplace Bias and How to Interrupt It*, 40 RSCH. ORG. BEHAV. 100137, 1–3 (2020).

between the abundant research on individual-level interventions and the focus of *Fair Shake* on systemic remedies is quite apparent.

Understandably, a significant portion of psychological science has focused on understanding the intra-individual mechanisms and processes that connect biased attitudes with discriminatory behaviors. For example, researchers have developed and experimentally tested influential theoretical frameworks of gender stereotyping and bias, such as the one developed by Madeline Heilman and her colleagues.¹⁴ As seen in Figure 2, the mental activation of descriptive and prescriptive stereotypes leads to biased evaluations and judgments of women in work contexts, which in turn are hypothesized to be associated with gender discrimination.

As Elizabeth Levy Paluck and colleagues suggest, however, these interventions, predominantly tested in laboratory (vs. field) settings, are often characterized as “light touch” interventions that involve minimal time, money, and energy.¹⁵ Though such interventions unjustifiably claim to produce both enduring attitudinal and behavioral changes, most of the studies, in fact, exclusively demonstrate attitudinal change. Others have replicated the findings that “light touch” or passive interventions are largely ineffective in changing behavior.¹⁶ Moreover, the overwhelming majority of studies do not examine the persistence of the effects over time,¹⁷ or whether and to what extent these effects translate to the organizational level.

II. Organizational-Level Remedies to Reduce Workplace Bias

In contrast to focusing on individual-level remedies within work contexts, organizational-level interventions address the codified, procedural, and systemic cues that enable biased attitudes and behaviors in the workforce. A recent systematic review by Theresa Treffers and colleagues, for example, offered four different categories of organizational-level interventions, each with varying

14. Heilman et al., *supra* note 2, at 169–83

15. Elizabeth Levy Paluck, Roni Porat, Chelsey S. Clark & Donald P. Green, *Prejudice Reduction: Progress and Challenges*, 72 ANN. REV. PSYCH. 533, 549–50 (2021).

16. See, e.g., Elaine Costa, *Examining the Effectiveness of Interventions to Reduce Discriminatory Behavior at Work: An Attitude Dimension Consistency Perspective*, 109 J. APPLIED PSYCH. 1669, 1681–83 (2024).

17. Katerina Bezrukova, Chester S. Spell, Jamie L. Perry & Karen A. Jehn, *A Meta-Analytical Integration of Over 40 Years of Research on Diversity Training Evaluation*, 142 PSYCH. BULL. 1227, 1242–43 (2016).

degrees of effectiveness by the organizational outcome and by the group affected by discrimination.¹⁸ As summarized in Figure 3, *structural interventions* alter their communications and procedures to establish an environment of inclusivity. Treffers and colleagues reported that these interventions were found to be most effective at minimizing biases in hiring, pay, and promotional decisions, particularly among marginalized groups related to disability status, ethnicity, and sexual minorities (gender was not included in their review).¹⁹ Also seen in Figure 3, *similarity-building interventions* were found to minimize the perceived differences between the majority and the marginalized groups, either by not disclosing one's minority status (if possible) or by ensuring equity amongst groups.²⁰ Overall, all four types of organizational interventions were effective but different types of interventions were effective for different minority groups.

Unlike the Treffers and colleagues' review that did not directly address gender bias, other researchers have specifically proposed strategies to reduce gender bias at the organizational level. Cheryan and Markus, for example, focus on identifying and modifying "masculine defaults" in organizational cultures.²¹ These defaults reflect values that advantage men in organizations. Cheryan and Markus review a broad swath of research establishing the existence of masculine defaults and advocate for organizations to conduct company-specific needs assessments to consider whether and how to reduce or remove masculine defaults. As seen in Figure 4, the needs assessment that Cheryan and Markus propose involves three phases: identify masculine defaults on multiple levels of the culture, determine whether masculine defaults are essential, and evaluate the pros and cons of removing masculine defaults.²²

Finally, as seen in Figure 5, other social and organizational researchers have proposed an array of strategies to reduce gender bias at the organizational level. Some research has focused on de-emphasizing WTA features and replacing them with more collaborative practices.²³ Others examine the role of organizational

18. Theresa Treffers, Ann-Carolin Ritter, Nadja Born & Isabell Welpé, *A Systematic Review of Experimental Evidence on Interventions Against Bias and Discrimination in Organizations*, 34 HUM. RES. MGMT. REV. 101029, 4–8 (2024).

19. *Id.* at 10–11.

20. *Id.* at 11.

21. Cheryan & Markus, *supra* note 3, at 1024–25.

22. *Id.* at 1034–36.

23. See, e.g., Sophie L. Kuchynka, Jennifer K. Bosson, Joseph A. Vandello & Curtis Puryear, *Zero-Sum Thinking and the Masculinity Contest: Perceived Intergroup Competition and Workplace Gender Bias*, 74 J. SOC. ISSUES 529, 545–47

leadership and the extent to which leaders play a crucial role in attenuating gender bias and recognizing characteristics beyond masculine defaults.²⁴ And other research suggests the efficacy of structured, merit-based, and data-driven practices to reduce gender bias in organizations.²⁵

III. Multi-Level Remedies to Reduce Workplace Bias

Multi-level approaches to remedying gender bias in the workplace are exemplified by what Nicole M. Stephens and colleagues refer to as “bias cycle theory”—interventions designed to cut across individual (bias embedded in hearts and minds) and organizational levels (bias embedded in policies and practices).²⁶ As Cheryan and Markus suggested—and consistent with the “Triple Bind” framework developed in *Fair Shake*—gender bias never occurs at only one level of analysis.²⁷ As seen in Figure 6, workplace bias operates as a cycle requiring multi-level interventions that disrupt bias across individual, interpersonal, and organizational levels. Individual-level interventions aimed at “hearts and minds” (how individual organizational members think, feel, and behave) affect and are affected by how organizational members interact with each other (the interpersonal level of analysis) and how organizational-level policies and practices are used within an organization.²⁸ Stephens and colleagues review individual-level bias reduction efforts and sociology/management research on reducing bias at the organizational level. They suggest that some individual-level gender bias interventions are promising (e.g., using social norm information from the organizational culture to reduce

(2018); Robin J. Ely & Michael Kimmel, *Thoughts on the Workplace as a Masculinity Contest*, 74 J. SOC. ISSUES 628, 632 (2018).

24. See, e.g., Margaret M. Hopkins, Deborah Anne O’Neil, Diana Bilimoria & Alison Broadfoot, *Buried Treasure: Contradictions in the Perception and Reality of Women’s Leadership*, 12 FRONTIERS PSYCH. 684705, 9–10 (2021); Ely & Kimmel, *supra* note 23, at 631–32; Crystal T. Clark & Jennifer L. Payne, *Gender Diversity in the Psychiatric Workforce: It’s Still a (White) Man’s World in Psychiatry*, 42 PSYCHIATRIC CLINIC N. AM. 271, 275–76.

25. See, e.g., Leanne S. Son Hing, Nouran Sakr, Jessica B. Sorenson, Cailin S. Stamarski, Kiah Caniera & Caren Colaco, *Gender Inequalities in the Workplace: A Holistic Review of Organizational Processes and Practices*, 33 HUM. RES. MGMT. REV. 100968, 3–11 (2023).

26. Stephens et al., *supra* note 13, at 1–3.

27. Cheryan & Markus, *supra* note 3, at 1029–32; see also Vienne W. Lau, Veronica L. Scott, Meg A. Warren & Michelle C. Bligh, *Moving from Problems to Solutions: A Review of Gender Equality Interventions at Work Using an Ecological Systems Approach*, 44 J. ORG. BEHAV. 399, 401 (2023).

28. Stephens et al., *supra* note 13, at 1–3.

gender bias), but overall there is a dearth of studies testing such interventions in actual workplace settings. They also suggest that organizational-level interventions supported by published empirical data represent promising options for organizations to reduce gender bias at the organizational level (e.g., increasing transparency, increasing accountability, making job-related evaluations more systematic and structured). Relatedly, based on a quantitative meta-analysis of seventy studies that tested interventions to reduce discriminatory behavior at work, Elaine Costa found that so-called “light-touch” interventions were ineffective at reducing workplace discriminatory behaviors.²⁹ But, as seen in Figure 7, and consistent with the analysis offered by Stephens and colleagues, Costa reports stronger effect sizes for interventions that target work behaviors directly (rather targeting individual beliefs and attitudes) by the organization holding individuals accountable for biased behavior or changing social norms in organizations that reinforce biased behaviors.³⁰

Conclusion

In this Article, we focus on *Fair Shake*’s three-step remedy approach to counteracting the ways in which the “Triple Bind” disadvantages women in the WTA economy. We suggest a more modest, empirically-based approach to understanding and attaining systemic reform than that proposed in *Fair Shake*. While we most certainly endorse the kinds of changes to the WTA economy discussed in *Fair Shake* (e.g., capping the accumulation of power at the top, reforming management practices, investing in individuals, children, and communities, and strengthening the rule of law), our fundamental premise is that systemic reforms and individual-level interventions are profoundly intertwined.

In Parts I through III we provided a brief review of science-based interventions that target gender (and other forms of) bias at the individual, interpersonal, and organizational levels of analysis. We suggest that this body of theory and research from social and organizational psychology complements an understanding of the psychological and organizational dynamics associated with the “Triple Bind” framework. As discussed in Part III, for example, it makes good scientific sense for bias interventions to shift from a focus on changing interpersonal attitudes to changing intergroup behaviors (e.g., via social norm interventions) to impact gender (and

29. Costa, *supra* note 16, at 1681–83.

30. *Id.* at 1681–883.

other forms of) bias in organizational contexts.³¹ What we learn from individual, interpersonal, organizational-level, and multi-level interventions, in our view, should guide efforts to deploy multi-level interventions to achieve the kind of systemic reforms advocated in *Fair Shake*.

Figure 1. Steps to Escape the Triple Bind³²

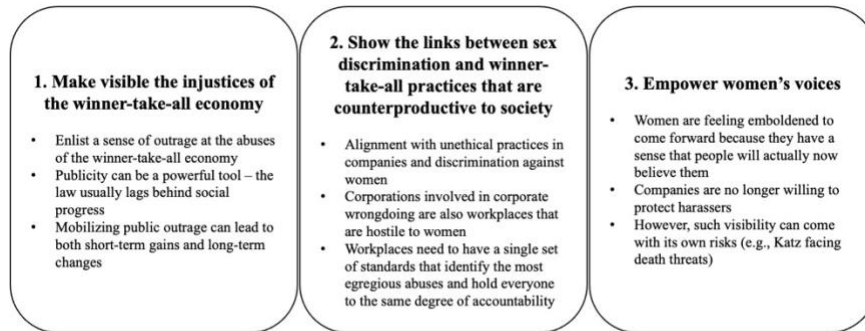
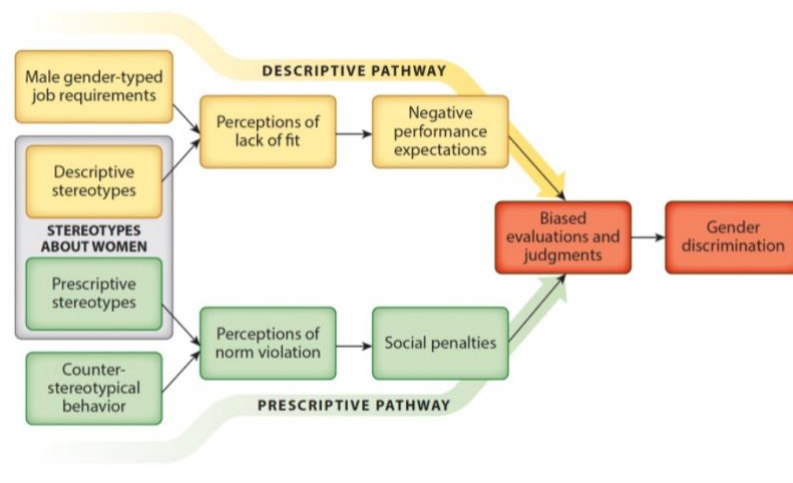


Figure 2. Pathways From Stereotypes About Women to Gender Bias and Discrimination³³



31. See Markus Brauer, *Stuck on Intergroup Attitudes: The Need to Shift Gears to Change Intergroup Behaviors*, 19 PERSPS. PSYCH. SCI. 280, 288–90 (2024).

32. See CAHN ET AL., *supra* note 1.

33. See Heilman et al., *supra* note 2.

Figure 3. Intervention Effectiveness Against (Other Than Gender) Bias and Discrimination in Organizations³⁴

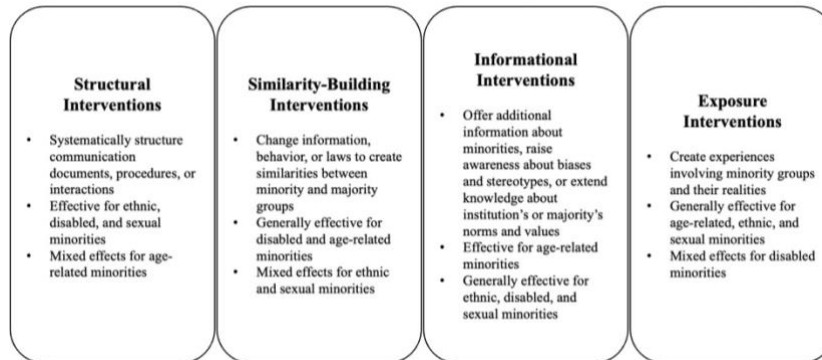
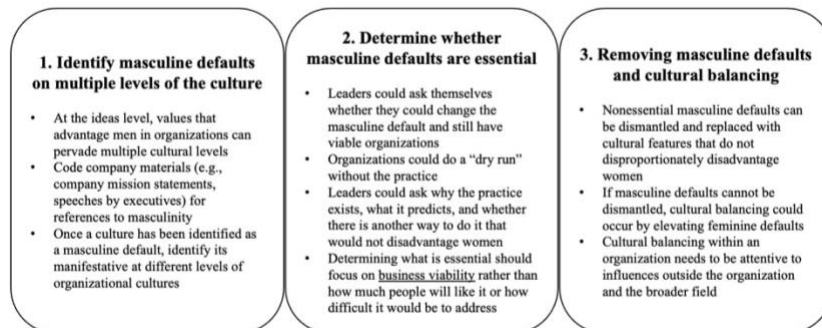


Figure 4. Steps for Reducing Masculine Defaults³⁵



34. See Treffers et al., *supra* note 18.

35. See Cheryan & Markus, *supra* note 3.

Figure 5. Themes of Other Social Psychological Strategies to Reduce Organizational Gender Biases

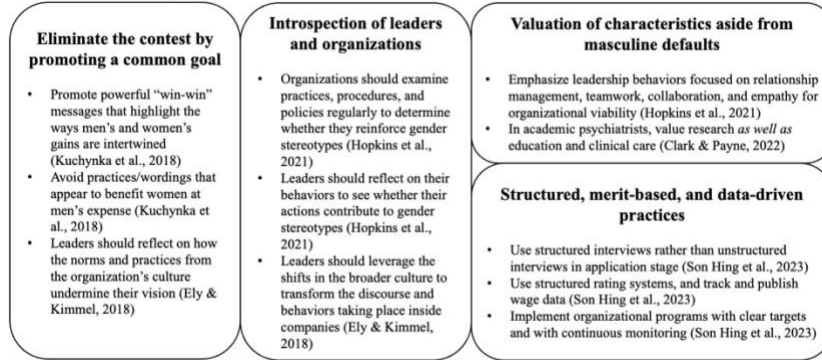
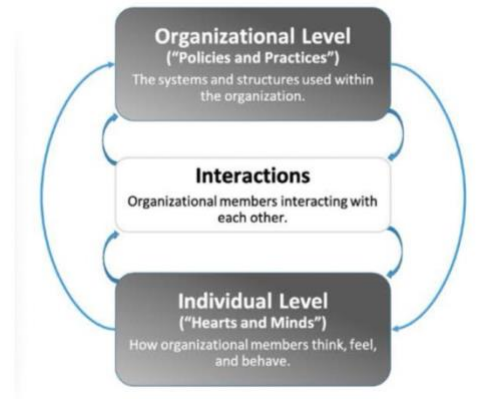
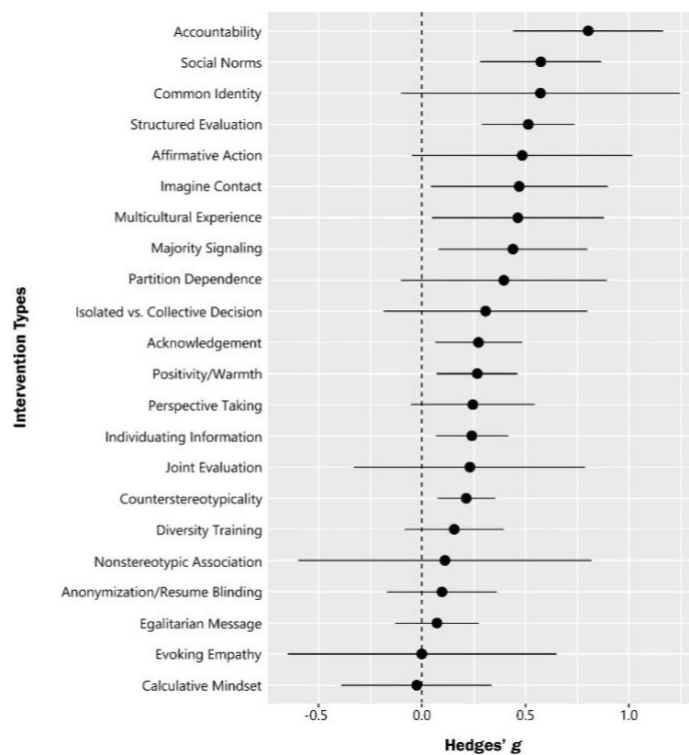


Figure 6. Cycle of Workplace Bias³⁶



36. See Stephens et al., *supra* note 13.

Figure 7. Effectiveness of Bias Reduction Interventions³⁷

37. See Costa, *supra* note 16.

Exploring Mutable Characteristics and Discriminatory Perceptions in Justice Systems

Daniel Chen[†]

Both sophisticated analyses of historical evidence and simple real-world observation indicate that judicial decisions demonstrate systematic racial and gender bias. For example, Republican-appointed federal judges sentence Black defendants more severely and female defendants more leniently.¹ Federal judges behave more politically before presidential elections,² especially for judges residing in states with close races in presidential elections.³ A judge's political party of appointment can be predicted by the citations they choose to motivate their decisions.⁴

[†]. Daniel L. Chen is an Evelyn Green Davis Fellow at the Radcliffe Institute for Advanced Study at Harvard, the Director of Research at the French National Centre for Scientific Research (CNRS), a Professor at the Toulouse School of Economics (TSE), a Senior Fellow at the Institute For Advanced Study in Toulouse (IAST), and a Co-Chair of Moral AI at Artificial and Natural Intelligence Toulouse Institute (ANITI). Chen received his B.A. (summa cum laude) and M.S. from Harvard University in Applied Mathematics and Economics, completed his Economics Ph.D from MIT, and obtained a J.D. from Harvard Law School. Chen is the founder of oTree Open Source Research Foundation. oTree is the leading open-source ecosystem for conducting strategic interaction and survey experiments in the lab, online, and in the field. He is the Lead Principal Investigator for AMICUS (Analytical Metrics for Informed Courtroom Understanding and Strategy), a team of computer scientists, economists, and lawyers aiming to revolutionize how justice systems' legitimacy and equality are measured, understood, and enhanced. They use cutting-edge research techniques to measure efficiency, quality, and access to justice and impacts on downstream outcomes such as economic growth, conflict and violence, and corruption. Chen's research is in law and economics. Many of his recent papers focus on judicial bias, AI, and court reform.

1. Alma Cohen & Crystal S. Yang, *Judicial Politics and Sentencing Decisions*, 11 AM. ECON. J. ECON. POL'Y 160 (2019).

2. Carlos Berdejó & Daniel L. Chen, *Electoral Cycles Among US Courts of Appeals Judges*, 60 J.L. & ECON. 479, 492 (2017).

3. Daniel L. Chen, *Priming Ideology: Why Presidential Elections Affect U.S. Judges* 18 (SSRN Working Paper No. 2816245, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2816245 [<https://perma.cc/34KE-84SW>].

4. Wei Lu & Daniel L. Chen, *Motivated Reasoning in the Field: Polarization of Prose, Precedent, and Policy in U.S. Circuit Courts, 1891–2013*, PLoS ONE, Mar. 3, 2025, at 1, 4, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0318790> [<https://perma.cc/8WXB-2WFH>].

In their examination of these issues, Naomi Cahn, June Carbone, and Nancy Levit's *Fair Shake* probes similar patterns of bias across diverse sectors.⁵ They explore how deeply-ingrained societal prejudices shape outcomes for marginalized groups and argue that systems often fail to provide equitable treatment to all, even when impartiality is purportedly a guiding principle.⁶ Like the judges whose behaviors fluctuate with political pressures, institutions and individuals—as described in *Fair Shake*—often operate on biases rooted in history, culture, and deeply internalized norms.⁷ The book presents a tapestry of narratives demonstrating how systemic inequities manifest not only in legal contexts but also in everyday life, perpetuating cycles of disadvantage.⁸

The data on the justice system reveals sustained bias, both in arbitrary decisions that correspond with the identity of the assigned judge⁹ (e.g., a judge's racial identity is predictive of the disparities in their sentencing decisions) and also those that correspond with trivialities like whether or not a judge's hometown football team won or lost,¹⁰ whether a defendant shares with a judge the same first letter in their name,¹¹ whether it is the litigant's birthday,¹² etc. Furthermore, minoritized groups consistently bear the punitive brunt of these deviations from objectivity.

As we grapple with bias in our societies, one controversial yet crucial battleground has emerged: artificial intelligence (AI). The digital world mirrors the analog, and our systems of AI are susceptible to our inherent biases. However, there is hope; unlike humans, AI is fundamentally flexible. It can be reprogrammed and adjusted to mitigate biases, a process far more direct than attempting to reshape deeply-ingrained human prejudices.

5. NAOMI CAHN, JUNE CARBONE & NANCY LEVIT, *FAIR SHAKE: WOMEN AND THE FIGHT TO BUILD A JUST ECONOMY* (2024).

6. *Id.*

7. *Id.*

8. *Id.*

9. Abrams D., Bertrand M. & Mullainathan S., *Do Judges Vary in Their Treatment of Race?*, 41 J. LEGAL STUD. 347 (2012).

10. Özkan Eren & Naci Mocan, *Emotional Judges and Unlucky Juveniles*, 10 AM. ECON. J. APPL. ECON. 171, 199–200 (2018); Markus Loecher & Daniel L. Chen, *Mood and the Malleability of Moral Reasoning: The Impact of Irrelevant Factors on Judicial Decisions*, J. BEHAV. & EXPERIMENTAL ECON., June 2025, at 1, 10.

11. See Daniel L. Chen, *The Judicial Superego: Implicit Egoism, Internalized Racism, and Prejudice in Three Million Sentencing Decisions*, 77 KYKLOS 1004, 1016 (2024).

12. Arnaud Philippe & Daniel L. Chen, *Clash of Norms: Judicial Leniency on Defendant Birthdays*, 211 J. ECON. BEHAV. & ORG. 324, 335 (2023).

Using a study on gender attitudes in U.S. Circuit Courts as a case in point,¹³ I will illustrate how AI holds the potential to counter biases more efficiently than humans. It can do so by diagnosing bias in a manner that humans cannot.¹⁴

The study in question uses Natural Language Processing (NLP), a branch of AI, to detect judges' attitudes toward females.¹⁵ The researchers developed a "gender slant" measure to gauge how judges associate men with careers and women with families in their written opinions.¹⁶ This nuanced approach brought to light subtle gender biases not captured by direct ruling analysis.¹⁷

The unique strength of AI here is the ability to aggregate and analyze enormous amounts of data objectively, far beyond human capacity. NLP provided a quantitative, unambiguous measure of gender slant by examining 380,000 published opinions,¹⁸ something that would be impractical if not impossible for humans to achieve in a comparable timeframe. AI, therefore, holds an exceptional potential for bias detection that goes beyond human capabilities.

Gender slant is a convincing proxy for bias.¹⁹ Female and younger judges display lower gender slant.²⁰ Having a daughter reduces gender slant.²¹ Lower gender slant is also associated with more frequent use of gender-neutral pronoun constructions, such as "he or she" or "they."²² Finally, judges with higher slant tend to express less empathy toward women in their writing.²³

Judges not only systematically differed in the way they write about gender; these differences are also predictive of how they decide gender rights cases and how they treat their female colleagues.²⁴ The study examines how judges with different gender slant levels interact with female judges in three areas: reversals of lower court decisions, opinion assignments, and citations.²⁵ Results

13. Elliott Ash, Daniel L. Chen & Arianna Ornaghi, *Gender Attitudes in the Judiciary: Evidence from U.S. Circuit Courts*, 16 AM. ECON. J.: APPL. ECON. 314 (2024).

14. *See generally id.* at 316 (describing the "growing literature using word embeddings to analyze bias in text").

15. *Id.* at 315.

16. *Id.*

17. *Id.*

18. Ash et al., *supra* note 13, at 323.

19. *Id.* at 334.

20. *Id.* at 316.

21. *Id.*

22. *Id.*

23. *Id.*

24. Ash et al., *supra* note 13, at 317.

25. *Id.* at 338, 341, 344.

show that judges with higher gender slant are more likely to reverse decisions by female district judges, less likely to assign opinion authorship to female judges, and less likely to cite female judges' opinions.²⁶ These judges also tend to vote more conservatively in gender-related cases.²⁷ Findings suggest that gender bias could hinder female judges' career progression and reinforce gender disparity in the judiciary.²⁸

The underrepresentation of women at the top of the legal profession is an issue that has received considerable attention in the United States. It's troubling that although nearly 45% of law school graduates since the 1990s have been women, females still account for only 20% of equity partners in large law firms and 30% of state and federal judgeships.²⁹ The disparities in these numbers speak to a systemic problem: the differential treatment of female judges, possibly due to gender attitudes among their colleagues.

Gender attitudes, or the biases and preconceptions one holds about social groups, notably women and racial minorities, are known to significantly influence judgments and choices. These biases affect decisions in a range of contexts, from physician treatments and hiring decisions to employer-employee interactions and even the effectiveness of teachers. If these attitudes imply differential treatment of female judges, they could be a contributing factor to the underrepresentation of women in the judiciary.

It's challenging to examine these issues among justice actors due to the lack of traditional measures of gender attitudes for judges. However, researchers have innovatively used recent developments in natural language processing (NLP) to propose a novel measure of gender attitudes.³⁰ By analyzing a large corpus of written text from appellate judges, researchers have developed a measure of gender bias based on how strongly judges associate men with careers and women with families in their writing.³¹ Using a technological tool called word embeddings, the researchers calculated a judge-specific gender bias measure.³²

26. *Id.* at 347.

27. *Id.*

28. *Id.* at 317.

29. *Women in the Legal Profession*, AM. BAR ASSOC. (2024), <https://www.americanbar.org/news/profile-legal-profession/women> [<https://perma.cc/Z79T-E9HN>].

30. Ash et al., *supra* note 13, at 315.

31. *Id.*

32. *Id.*

Unlike humans, where bias can become deeply entrenched over time, AI can be swiftly and effectively adjusted once a bias is detected. There's no need for lengthy educational or societal campaigns to alter AI behavior—a programmer can do it with a few lines of code.

Besides the text, there is voice. Voice, long considered a neutral channel of expression, is revealed by Chen, Halberstam, and Yu's studies³³ to be a surprisingly potent driver of biased decision-making within the U.S. Supreme Court bar. Their work, which delves into the influence of perceived masculinity and femininity in advocates' voices on case outcomes, raises critical questions about implicit bias, systemic inequality, and mutable characteristics that Cahn, Carbone, and Levit explore with equal vigor in *Fair Shake*.³⁴ In *Fair Shake*, Cahn, Carbone, and Levit argue for a reimagined vision of justice and equality—one that moves beyond traditional markers of equity and embraces deeper, more nuanced understandings of how individuals navigate the world through mutable and immutable aspects of their identities.

This essay reflects on the ways vocal traits serve as battlegrounds for broader social biases and how such subtle but pervasive discrimination often denies a “fair shake” to those who diverge from traditional norms. Chen, Halberstam, and Yu's studies provide an examination of how voice-based judgments influence Supreme Court outcomes. Their analysis of 1,901 oral arguments from 1998 to 2012 finds that male petitioners perceived as having less masculine voices are significantly more likely to succeed.³⁵ In contrast, women with more feminine-sounding voices fare better.³⁶ These patterns indicate that voice, a mutable characteristic, carries weighty consequences in high-stakes legal contexts—ones that ostensibly should be free from prejudicial influence.

One of the most poignant intersections between Chen, Halberstam, and Yu's studies and *Fair Shake* lies in their shared exploration of “covering”—the demand that individuals downplay

33. Daniel Chen, Yosh Halberstam & Alan C. L. Yu, *Perceived Masculinity Predicts U.S. Supreme Court Outcomes*, 11 PLOS ONE (2016) [hereinafter Chen et al., *Perceived Masculinity*], <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0164324> [https://perma.cc/AYX9-VZ7V]; Daniel Chen, Yosh Halberstam & Alan Yu, *Covering: Mutable Characteristics and Perceptions of Voice in the U.S. Supreme Court*, J.L. & EMPIRICAL ANALYSIS (forthcoming 2025) [hereinafter Chen et al., *Covering*] (on file with authors).

34. See Chen et al., *Covering*, *supra* note 33 (manuscript at 20).

35. Chen et al., *Perceived Masculinity*, *supra* note 33, at 7.

36. Chen et al., *Covering*, *supra* note 33 (manuscript at 20).

aspects of their identity to gain social acceptance.³⁷ Chen and colleagues note that lawyers may adopt vocal strategies to cover their natural speaking patterns to conform to expectations. Cahn, Carbone, and Levit emphasize that covering extends far beyond the legal arena, shaping how individuals navigate every facet of their lives. The authors recount examples of professionals who consciously alter their speech, behavior, or appearance to fit within rigid social norms, often at great personal cost.

The concept of covering underscores a tension at the heart of both works: assimilation often serves as a prerequisite for success in systems purportedly based on merit. Yet, as Chen, Halberstam, and Yu show, lawyers who don't conform to the masculine norm can be punished for being different: individuals misperceive more masculine-sounding lawyers as winners or have a taste for being around masculine-sounding lawyers. This pressure to conform can become dehumanizing, stripping individuals of their authenticity and perpetuating a cycle of marginalization.

Workplace practices that prioritize "cultural fit," an often-coded term used to enforce homogeneity and limit true diversity, can limit the opportunities for a fair shake. Just as law firms and judicial actors may inadvertently (or purposefully) penalize lawyers with voices that deviate from perceived norms, so too do workplaces often judge individuals harshly for failing to assimilate fully into dominant workplace cultures. By drawing attention to the stakes involved—whether in the form of a legal ruling or job security—both works highlight how mutable characteristics become barriers to equitable outcomes.

The correlation between voice-based perceptions and Supreme Court outcomes mirrors the discriminatory practices Cahn, Carbone, and Levit critique in *Fair Shake*. This subtle form of prejudice serves as a reminder that discrimination has evolved into more insidious and less overt forms. In both cases, individuals are judged based on attributes that deviate from the perceived "norm." In the courtroom, as on other societal stages, such judgments create a new class of outsiders and insiders—those who fit and those who do not.

A key reflection emerging from this integration is that bias does not operate solely at the level of conscious prejudice. It can manifest as statistical discrimination—where judgments are made

37. See *id.* (manuscript at 2) ("[W]hen dominant groups or courts enforce 'covering', or assimilation, on subordinate groups, it perpetuates a form of second-class citizenship."); CAHN ET AL., *supra* note 5, at 14.

based on assumed characteristics or misperceptions. Chen and colleagues' experiment using incentives and information illustrates that voice-based perceptions can be mitigated when individuals are made more aware of their biases or incentivized to make accurate judgments. Cahn, Carbone, and Levit similarly call for educational and structural reforms to promote empathy, challenge stereotypes, and create spaces where marginalized voices are heard on their own terms.

Chen, Halberstam, and Yu's experimental efforts to debias perceptions through information and incentives offer a glimmer of hope. By making biases explicit and offering incentives to counteract prejudice, they demonstrate that it is possible to attenuate the influence of voice-based judgments. This finding resonates with Cahn, Carbone, and Levit's call for systemic change through awareness-building, education, and policy reforms aimed at creating more inclusive institutions.

However, both works caution against over-reliance on individual efforts to address structural issues. As Cahn, Carbone, and Levit emphasize, achieving a "fair shake" requires not just debiasing individuals but transforming the structures that enable discrimination to persist. The studies by Chen and colleagues provide a starting point, revealing how mutable characteristics shape outcomes in high-stakes environments. But they also highlight the limits of individual adaptation in the face of entrenched systemic biases.

The intersection of Chen, Halberstam, and Yu's studies and *Fair Shake* reveals a complex tapestry of identity, perception, and justice. Mutable characteristics like voice may seem superficial, but they carry profound implications for how individuals are perceived and treated in society's most powerful institutions. For lawyers arguing before the Supreme Court, as for professionals in every field, success often hinges on the ability to navigate a web of biases that privilege conformity over authenticity.

The call to action from both works is clear: true justice requires dismantling the systems that perpetuate inequality, challenging the biases that shape perception, and creating environments where all individuals—regardless of their voices, gender, or other mutable traits—can receive a fair shake. By integrating empirical evidence with personal narratives, Chen, Halberstam, and Yu's studies and Cahn, Carbone, and Levit's book invite us to reflect deeply on the kind of society we wish to build—one where equity is not contingent on conformity but is grounded in respect for each individual's unique voice.

This vision of equity is particularly relevant in the context of emerging technologies like AI, which at once mirror, magnify, and mute human intent. The dichotomy of AI and bias highlights a crucial truth: AI is neither inherently good nor bad, but a tool whose impact depends on how we choose to wield it. While it has the potential to amplify existing prejudices, it also offers an unprecedented opportunity to reduce biases and foster greater fairness. The challenge lies in ensuring that AI aligns with the equitable society we aspire to create.

For instance, as we advance from the analysis phase to the application phase in the study on gender attitudes in U.S. circuit courts, AI could be utilized to counter the detected gender biases. Systems can be programmed to prompt human judges to self-reflect and reconsider potential implicit biases.

Ultimately, the goal of leveraging AI isn't to replace human judgment but to enhance it, to make us more aware of our inherent biases, and aid us in countering them. Just as a spellchecker alerts us to a misspelled word, AI could alert us to potential bias, pushing us toward a more fair and just society.

AI is only as good or as bad as we allow it to be. As researchers, programmers, and users, we must remain vigilant to the biases we could be unknowingly encoding into our AI systems. Only then can we truly unlock the potential of AI to reduce bias and discrimination, making strides toward a more equitable world and a more inclusive and unbiased environment.

Conferences, Lightbulbs, and Gender

June Carbone[†]

Let me begin by thanking Claire Hill, who, as usual, has put together an amazing group of people. And thanks to you all for coming. It is humbling to be the subject of attention, and incredibly gratifying to see how many resonances there are between *Fair Shake*, the observations of the other speakers, and the work they have presented. In concluding, I want to express my excitement about some of the themes that have emerged over the last two days.

The first is the idea of optimism versus pessimism.

Nancy Levit started us off by noting that our original title was “Shafted: How Women Lose in a Winner Take All Economy” and how Simon & Schuster rejected it as too phallic. I have a hard time believing that a popular book ever fails for being too phallic. Instead, what Simon and Schuster told us from the beginning is that what sells is optimism; they wanted anything that sounded like “losing” out of the title.

The problem is that three of us are just not congenitally optimistic. To this day, we prefer “Shafted” and, if anything, we are less optimistic today than we when we started this project before Donald Trump’s first election as President. But one of the important takeaways from this conference is that there is reason for optimism. What the talks presented over the last two days demonstrate is that change is possible. We even know how to do it. Addressing the unconscious biases and stereotypes that hold women back can be done and, indeed, by 2021, in financial services—one of the most male-dominated sectors of the economy—women made up 52% of entry-level hires, and in the preceding three years, the “share of women grew by 40% at the senior-vice-president (SVP) level and 50% at the C-suite level.”¹ Now, the financial services industry has never been characterized by substantial diversity, and even with the improvements, 64% of C-Suite executives in the financial

[†]. Robina Chair in Law, Science and Technology, University of Minnesota Law School.

1. Kweilin Ellingrud, Alexis Krivkovich, Marie-Claude Nadeau & Jill Zucker, *Closing the Gender and Race Gaps in North American Financial Services*, MCKINSEY & CO. (Oct. 21, 2021), <https://www.mckinsey.com/industries/financial-services/our-insights/closing-the-gender-and-race-gaps-in-north-american-financial-services> [https://perma.cc/K43Y-WFC5].

services are still white men.² But a 40% increase after the decimation of women's ranks during the financial crisis is cause for hope.³

In listening to the psychologists and their confidence that they can address workplace bias, however, the pessimist in me is reminded of a classic joke: "How many psychologists does it take to change a light bulb? Only one, but the light bulb has to really want to change." With the recovery from the financial crisis, the financial services industry did want to change, and once that determination occurred, change happened fairly rapidly. The question is whether corporate America more generally wants to change.

That takes us to the second takeaway. Jessica Clarke, prescient as always, raised the question: even if the picture we presented in the book of women's stalled progress is accurate, does it help—or hurt—to discuss it as a women's issue? We were pleased that Jessica emphasized that the issue was not whether we presented too essentialist a view of women and acknowledged our efforts to show that women are not one monolithic group.⁴ In a book highlighting the fate of women, however, we struggled with the question of whether the story we were telling was really a story about women at all; are women in a "winner take all world"?⁵

2. *Id.*

3. See Margo Epprecht, *The Real Reason Why Women Are Leaving Wall Street*, ATLANTIC (Sept. 5, 2013), <https://www.theatlantic.com/business/archive/2013/09/the-real-reason-why-women-are-leaving-wall-street/279379/> [https://perma.cc/65D6-LEHN] (describing a more than 15% drop in the number of women aged twenty to thirty-five in finance between 2000 and 2010, including both the boom years that preceded the financial crisis and the crash in employment that accompanied it).

4. We acknowledged, for example, that women both played a critical role in implementing Wells Fargo's fake accounts scandal and paid a disproportionate part of the price of cleaning it up. See Brayan Tayan, *The Wells Fargo Cross-Selling Scandal*, HARVARD L. SCH. F. ON CORP. GOVERNANCE (Feb. 6, 2019), <https://corpgov.law.harvard.edu/2019/02/06/the-wells-fargo-cross-selling-scandal-2/> [https://perma.cc/7FEQ-W2VL] (describing how Carrie Tolstedt, once called the "[m]ost [p]owerful [w]oman in [b]anking" had overseen implementation of the practices that produced the scandal); see also Susan Antilla, *When Brokers Act Badly at Wells Fargo, Women Take the Fall*, INTERCEPT (July 1, 2019), <https://theintercept.com/2019/07/01/wells-fargo-brokers-gender-bias/> [https://perma.cc/K4C7-22HB] (observing that women produced "fewer customer disputes, lower settlement costs, and fewer tangles with regulators, on average, making them less of a risk to Wells Fargo than the firm's men"). Cf. Mark Egan, Gregor Matvos & Amit Seru, *When Harry Fired Sally: The Double Standard in Punishing Misconduct*, 130 J. POL. ECON. 1184, 1187–88 (2022).

5. In *Fair Shake*, we defined the concept of a "winner take all economy" as one in which a few dominant players can appropriate a disproportionate share of institutional resources for themselves and their lieutenants. NAOMI CAHN, JUNE CARBONE & NANCY LEVIT, *FAIR SHAKE: WOMEN AND THE FIGHT TO BUILD A JUST ECONOMY* 2 (2024).

incidental players in their own stories? While the story the book tells about women's stalling progress in the fight for economic equality is an important one for women, we also recognized as we finished the research that it is a story about abuse of power that disadvantages all but a handful of predominately white men. The more we proceeded, however, the more we also recognized that the story of abuse of power is about gender: gender as a societal construct with its own dynamic that, whether or not it pits men against women, celebrates individualism at the expense of community, competition over collaboration, and hierarchy as an inevitable triumph of the superior undermining the very idea of equality as an appropriate objective. These themes ran through the conference and will be the basis for our next project.

In exploring these ideas, we have asked the question that Jessica asked: does it help or hurt to acknowledge that the construct we are describing, the rise of a set of winner-take-all practices in which power becomes personalized, institutions serve to enrich those who call the shots, and in which employees are set in opposition to each other in high stakes competitions, is gendered at all? One of the many things that got edited out of the book was our effort to refine the modern gender project and to emphasize that what we have discovered is not new and need not be about differences between men and women at all.

To illustrate that, let us take a story from the 1930s. The Great Depression, like our more recent financial crisis and the other abuses we describe in *Fair Shake*, had been engineered by "ruthless" men of finance, who enriched themselves at the expense of their customers and ultimately society as a whole.⁶

A single day focused the nation's attention on the excesses that had triggered the Great Depression—and turned the tables on the avatars of Wall Street.⁷ On February 20, 1933, the Republican-led Senate Banking Committee, holding hearings on what had led to the stock market crash of 1929, called its most important witness,

6. See generally Charles R. T. O'Kelley, *The Evolution of the Modern Corporation: Corporate Governance Reform in Context*, 2013 U. ILL. L. REV. 1001, 1029–30; Franklin Delano Roosevelt, Commonwealth Club Address (Sept. 23, 1932) (transcript available at <http://www.americanrhetoric.com/speeches/fdrcommonwealth.htm> [<https://perma.cc/YSCQ-JCFW>]) (describing how "ruthless" men created systems of government and industry, as given by then-candidate Roosevelt).

7. See generally June Carbone, *Once and Future Financial Crises: How the Hellhound of Wall Street Sniffed Out Five Forgotten Factors Guaranteed to Produce Fiascos*, 80 UMKC L. REV. 1021 (2012) (offering an account of the hearings).

“Sunshine Charley” Mitchell, the celebrated head of National City Bank (today Citibank), which had been at the epicenter of the stock market crash.⁸ Mitchell had risen to prominence as the premier bond salesman of his era. When he became the head of City Bank, he used the bank to sell securities. He recognized that the average citizens of the 1920s, who had deposited their meager earnings into City Bank’s coffers, could be persuaded to be more adventurous. He primed his bankers to talk them into investing in stocks and bonds and speculative ventures that made Charley Mitchell incredibly wealthy—and the average citizens destitute when the stock market crashed. City Bank stayed solvent despite the crash, and the top executives, in 1929 like 2008, still got their bonuses.⁹

As Franklin Roosevelt prepared to take office in March 1933, no one had seriously attempted to hold Mitchell or other Wall Street executives accountable. The government officials who tried to do so found the bankers to be too smart, their lawyers too clever, and their financial dealings too complicated to investigate effectively. Then the committee hired Ferdinand Pecora, a New York prosecutor and Sicilian immigrant, to take charge of the Senate Banking Committee hearings. Pecora riveted the nation’s attention and discredited the financiers by focusing on a simple, previously unknown fact: Charley Mitchell’s salary.¹⁰

The startling revelation on the first day of the hearings, which shocked the Senate panel and caused headlines throughout the country, was that, between 1927 and 1929, Mitchell had been paid a total of \$3.5 million—or \$500 million today.¹¹ In 1929, the year of the stock market crash, he had even taken home \$1 million (about \$140 million today) in salary and bonuses. Furthermore, Mitchell had avoided paying one single penny in income taxes.¹² He prospered, as the hearings later revealed, through a systematic campaign to squeeze as much as possible from the bank’s customers. He also did it by rigging City Bank’s bonus system to ensure that he and his top lieutenants profited above everyone else.

8. While Mitchell came to symbolize the greed that led to the stock market crash, there is a revisionist debate about how much responsibility Mitchell personally bears for the Great Depression. See Thomas F. Huertas & Joan L. Silverman, *Charles E. Mitchell: Scapegoat of the Crash?*, 60 BUS. HIST. REV. 81, 81–82 (1986).

9. Carbone, *supra* note 7, at 1023.

10. See generally MICHAEL PERINO, *THE HELLHOUND OF WALL STREET: HOW FERDINAND PECORA’S INVESTIGATION OF THE GREAT CRASH FOREVER CHANGED AMERICAN FINANCE* (2010) (offering a full account of the hearings).

11. Carbone, *supra* note 7, at 1023.

12. PERINO, *supra* note 10, at 154.

The cry in response to the hearings became: “[N]o man can be worth \$1,000,000 a year.”¹³ As a result of the hearings, President Roosevelt changed his inaugural address to declare that the “money changers have fled from their high seats in the temple of our civilization.”¹⁴ Roosevelt’s New Deal reforms, together with World War II, an era of shared sacrifice, tamed Wall Street and ushered in a new, more stable, and relatively egalitarian era.

When we read about Pecora and the role of high stakes bonuses and oversized executive compensation, we thought “this is a description of our book.” But what did the excesses of the twenties and the reforms of the thirties have to do with women? We reasoned, in the excerpt Simon & Schuster deleted, nothing—and everything. Women were there, after all, in the Roaring Twenties of the stock market boom, behind the scenes as women often are. It is little remembered, but in the 1920s, women constituted the majority of shareholders in many blue-chip companies,¹⁵ and the rallying cry of the Congressional New Dealers pushing reform in the thirties was to curb the power of the “shrewd and crafty men, skilled in the tricks of a crooked game” in order to make the markets safe for “widows and orphans.”¹⁶ Underneath the references to widows, who like orphans needed protection, is a construct that is clearly gendered and paternalistic and it’s not just the stereotype of women in need of protection. Instead, the invocation of the images of “shrewd and crafty men” who by “resorting to every conceivable trick of financial legerdemain”¹⁷ had looted an unwary public represent what might today be called “toxic masculinity”¹⁸ or, in the workplace sphere, “masculinity contest cultures.”¹⁹

13. Harwell Wells, “No Man Can be Worth \$1,000,000 a Year”: *The Fight over Executive Compensation in 1930s America*, 44 U. RICH. L. REV. 689, 736 (2010).

14. Franklin Delano Roosevelt, First Inaugural Address (Mar. 4, 1933) (transcript available at <http://historymatters.gmu.edu/d/5057/> [<https://perma.cc/R39P-T934>]).

15. Sarah C. Haan, *Corporate Governance and the Feminization of Capital*, 74 STAN. L. REV. 515, 522 (2022).

16. 77 CONG. REC. 2935 (1933) (statement of Rep. Chapman).

17. *Id.*

18. The idea of toxic masculinity is not necessarily a description of masculinity per se but rather a description of a dynamic in which men are judged by stereotypically masculine characteristics and which dictates that “real men” act “tough, competitive, and independent and encourages them to suppress their emotions and exert their power over women and weaker men.” Rula Odeh Alsawalqa, Maissa Nasr Alrawashdeh & Shahedul Hasan, *Understanding the Man Box: The Link Between Gender Socialization and Domestic Violence in Jordan*, 7 HELIYON 2 (2021).

19. Jennifer L. Berdahl, Marianne Cooper, Peter Glick, Robert W. Livingston &

At the core of the construct that modern social scientists identify with “masculinity contests” and which historically has been used to describe the Hobbesian war of all against all for power, riches, and glory is hierarchy. Masculinities theory emphasizes that the status of men vis-à-vis each other is contingent and precarious: it must be earned.²⁰ The explosion in CEO pay²¹ and CEO use of high stakes bonuses increase the stakes as the winners receive outsized gains. This dynamic then makes everyone insecure as it creates steeply banked hierarchies within society in which inequality grows exponentially, and within organizations as companies pit individuals against each other in competitions that are by definition zero sum (if one person wins, it can only be at the expense of someone else).²² The winners gain increased power, riches, and glory—and greater ability to rig the system to ensure that they stay on top. The system cannot be changed from within. The competitive status of a company depends on how well it masters competition with other companies; the value of executive stock options tracks the company’s stock market performance, which in turn responds to reported earnings; and employees’ relative status within an organization reflects their success in meeting management objectives better than other employees. If you are not winning in these workplaces, you are losing; the only way to escape is to leave, or to compel changes from without.

This brings us to the question of whether it is worth describing this dynamic in gendered terms. The short answer is that we set out to write a book describing what happened to women, and the gendered nature of the enterprise is essential to the explanation. Women today are inside of the workplace, not outside of it. What we showed in *Fair Shake* is that it has been the masculinity contest cultures where women have most lost ground. Indeed, differences in incentive awards, not base pay, account for 93% of the gender disparities in executive pay.²³ And studies more generally find that

Joan C. Williams *Work as a Masculinity Contest*, 74 J. SOC. ISSUES 422, 430 (2018) (defining masculinity contest culture as a “zero-sum game,” in which “men compete at work for dominance by showing no weakness, demonstrating a single-minded focus on professional success, displaying physical endurance and strength, and engaging in cut-throat competition.”).

20. See June Carbone & Clare Huntington, *Fatherhood, Family Law, and the Crisis of Boys and Men*, 124 COLUM. L. REV. 2153, 2166–67 (2024).

21. Josh Bivens & Jori Kandra, *CEO Pay Has Skyrocketed 1,460% Since 1978*, ECON. POL’Y INST. (Oct. 4, 2022), <https://www.epi.org/publication/ceo-pay-in-2021/> [<https://perma.cc/KH6W-M84X>] (“In 2021, the ratio of CEO-to-typical-worker compensation was 399-to-1 under the realized measure of CEO pay . . .”).

22. CAHN ET AL., *supra* note 5, at 13.

23. Stefania Albanesi, Claudia Olivetti & María José Prados, *Gender and*

high stakes bonus pay tends to produce greater emphasis on self-interest, distrust that undermines teamwork, homogeneity in corporate management, more politicized decision-making, less managerial accountability, and more ethically questionable behavior.²⁴ In short, in-group favoritism increases, and these environments emphasize selection for traits such as confidence to the point of hubris,²⁵ narcissism,²⁶ and dominance that are not only more associated with men but are actively disliked when displayed by women. At the same time, male managers with these traits are more likely to harass and bully their subordinates,²⁷ often driving them out of the workplace. Understanding this dynamic is accordingly critical to understanding the fate of women in corporate America.

On the other hand, Jessica may well be right in questioning whether presenting the dynamic in gendered terms is the right way to combat it, either legally or politically. Let us revisit one of the cases we discussed in the book. Our opening chapter describes *Wal-Mart v. Dukes*,²⁸ the largest sex discrimination case in U.S. history.

Dynamic Agency: Theory and Evidence on the Compensation of Top Executives, FED. RSRV. BANK OF N.Y. 1 (Mar. 2015), https://www.newyorkfed.org/media/https://www.sec.gov/litigation/complaints/2009/comp21166.pdf.library/media/research/staff_reports/sr718.pdf [https://perma.cc/QU9W-5WUU].

24. Lynne L. Dallas, *A Preliminary Inquiry into the Responsibility of Corporations and Their Officers and Directors for Corporate Climate: The Psychology of Enron's Demise*, 35 RUTGERS L.J. 1, 45–50 (2003). See generally Donald C. Langevoort, *Resetting the Corporate Thermostat: Lessons from the Recent Financial Scandals About Self-Deception, Deceiving Others and the Design of Internal Controls*, 93 GEO. L.J. 285, 288 (2004) (describing antisocial corporate behavior at the executive level).

25. TOMAS CHAMORRO-PREMUZIC, WHY DO SO MANY INCOMPETENT MEN BECOME LEADERS (AND HOW TO FIX IT) 53 (2019) (“[N]arcissists are significantly more prone to counterproductive and antisocial work behaviors, such as bullying, fraud, white-collar crime, and harassment, including sexual harassment.”). See also Lynn A. Stout, *Killing Conscience: The Unintended Behavioral Consequences of ‘Pay for Performance’*, 39 J. CORP. L. 525, 526, 534, 559 (2014) (“Meanwhile, incentive pay has been statistically linked with opportunistic, unethical, and even illegal executive behavior, including earning manipulations, accounting frauds, and excessive risk-taking.”).

26. See generally Emily Grijalva, Daniel A. Newman, Louis Tay, M. Brent Donnellan, P. D. Harms, Richard W. Robins & Taiyi Yan, *Gender Differences in Narcissism: A Meta-Analytic Review*, 141 PSYCHOL. BULL. 261, 283 (2015) (finding that men are more likely to have grandiose narcissistic personality disorders, which can reinforce antisocial and counterproductive behaviors at work).

27. See Shannon L. Rawski & Angela Workman-Stark, *Masculinity Contest Cultures in Policing Organizations and Recommendations for Training Interventions*, 74 J. SOC. ISSUES 607, 608 (2018).

28. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011).

Betty Dukes became the class representative for more than a million female hourly workers who alleged that they had been denied access to the company's management training program because of their sex.²⁹ The statistics were stunning; two-thirds of hourly employees were women in comparison with women as only 10 to 15% of store managers³⁰ at a time when, in other retail companies, 50% or more of the managers were typically female.³¹ In addition, the plaintiffs showed that Walmart had many practices, including an insistence that managers be willing to move on short notice, a failure to announce openings, and a lack of criteria for selection associated with gender disparities in other circumstances. What we showed in the chapter, however, was that the practices linked to gender disparities—the failure to announce criteria, the insistence on relocating managers, and the high stakes bonus system in which two-thirds of a manager's income could come from bonuses—were all part of a national system of labor suppression: Walmart had been fined for violating the wages and hours laws more than any other company in the United States.³²

Justice Scalia wrote the majority decision, denying the plaintiffs in the case class certification. He emphasized that Dukes's lawyers' had shown only a general corporate policy "of allowing discretion by local supervisors over employment matters" and concluded that "is just the opposite of a uniform employment practice that would provide the commonality needed for a class action; it is a policy against having uniform employment practices."³³ And this is exactly what it was—a policy against explicit employment practices that would implicate corporate

29. *Id.* at 370, 342.

30. Declaration of Richard Drogin, Ph.D. in Support of Plaintiffs' Motion for Class Certification 14 (Apr. 23, 2003), <https://www.cohenmilstein.com/sites/default/files/Drogin.pdf> [https://perma.cc/P6Z9-4CZG]; Richard Drogin, *Statistical Analysis of Gender Patterns in Wal-Mart Workforce* 15 (Feb. 2003), <https://wikirate.s3.amazonaws.com/files/1780928/12666770.pdf> [https://perma.cc/4JDQ-WQRS] (describing statistics showing that only 10 to 15% of Walmart store managers were women in the time period relevant to the case.)

31. Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. REV. 97, 154 n.223 (2009) (citing Roger Parloff, *The War over Unconscious Bias*, FORTUNE, Oct. 15, 2007, at 98) (describing how other firms in the industry typically had over 50% female managers).

32. See Philip Mattera, *Grand Theft Paycheck: The Large Corporations Shortchanging Their Workers' Wages*, GOODJOBSFIRST.ORG 8 (2018) [hereinafter *Grand Theft Paycheck*], https://www.goodjobsfirst.org/sites/default/files/docs/pdfs/wagetheft_report.pdf [https://perma.cc/L774-7ERX].

33. *Dukes*, 564 U.S. at 355.

headquarters in efforts to evade the wages and hours laws.³⁴ Walmart, which micromanaged the temperature of its warehouses from corporate headquarters in Bentonville, delegated personnel matters and only personnel matters to the stores.³⁵ Justice Ginsburg, in dissent, responded that “[t]he practice of delegating to supervisors large discretion to make personnel decisions, uncontrolled by formal standards, has long been known to have the potential to produce disparate effects” for women and minorities, and prior cases, with a similar showing of the disparate impact of discretionary policies on women or other protected classes, had justified class treatment.³⁶ The case thus narrowed plaintiffs’ ability to use statistical differences to establish sex discrimination, without the parties or the courts ever acknowledging the role of wage theft in driving Walmart’s personnel practices.

We argued in *Fair Shake* that Walmart’s labor suppression policies and its gender disparities were intrinsically linked. Legally, however, there was no way to address the interrelationship. Had plaintiffs maintained that Walmart’s policies had a business purpose (albeit an illegitimate one), it would have undermined the claim that the motive was sex discrimination. And had Walmart had transparent criteria for what it wanted in its managers, *i.e.*, an ability to exploit employees without triggering a Labor Department compliance action, it would still end up with a managerial labor force that was primarily male—women are, in fact, less inclined to exploit their subordinates, less likely to apply for positions that involve competitive bonus pay,³⁷ and less able to get away with breaking the rules when they are willing to do so.³⁸ Walmart’s gender stereotypes about willingness to engage in employee exploitation were probably accurate, however much it is also true that the system overlooked women who could have done as good, if not better, a job than many of the men. Walmart, as the joke about

34. Cf. Donald C. Langevoort, *Organized Illusions: A Behavioral Theory of Why Corporations Mislead Stock Market Investors (and Cause Other Social Harms)*, 146 U. PA. L. REV. 101, 128 (1997) (describing how “plausible deniability” involves systems that allow senior management to signal what they want while insulating them from knowledge about how illegal or unethical objectives are accomplished).

35. CAHN ET AL. *supra* note 5, at 26.

36. *Dukes*, 564 U.S. at 372 (Ginsburg, J., concurring in part and dissenting in part).

37. See Jeffrey A. Flory, Andreas Leibbrandt & John A. List, *Do Competitive Workplaces Deter Female Workers? A Large Scale Natural Field Experiment on Gender Differences in Job-Entry Decisions*, 82 REV. ECON. STUD. 122, 136 (2015).

38. See Egan et al., *supra* note 4, at 1188.

the light bulb suggests, had a number of bright lights running the company who did not want to change, and an anti-stereotyping effort could never have persuaded them to adopt a different business model from the one that made the company so successful.

That poses the political dilemma at the core of Jessica's question. If women's disadvantages at workplaces like those in *Dukes v. Wal-Mart* come from quite conscious policies motivated not by antipathy toward women but by a desire to evade federal regulations, why should the story be about the women who failed to gain entry to the management ranks at all? Isn't the bigger story about Walmart's lawbreaking, the inability of the Labor Department to address it, the role of campaign contributions in blocking increases in the minimum wage (an issue that disproportionately affects Walmart's overwhelmingly female labor force), and a host of other issues that affect both male and female workers?³⁹ Betty Dukes, after all, thought that what qualified her to be a Walmart manager was the fact that she thought that the company shared her Christian values and would value her deep roots in the community.⁴⁰ She never thought she was fighting for an equal opportunity to oppress her fellow employees.

The short answer is that dynamic we have described—and linked to practices that inevitably disadvantage women in the workplace—may not principally be about women any more than the financial abuses that produced the Great Depression were principally about women. But they are about a dynamic that can be linked to masculinity and that dynamic is now remaking politics as well as industry. In almost every chapter, we have—in addition to a heroine who sues for sex discrimination—a villain who remade the institution he headed to enhance his personal power: Sam Walton at Walmart, Jack Welch at GE, Richard Kovacevic, the Wells Fargo CEO who set the stage for the fake accounts scandal, Travis Kalanick at Uber, and Chris Christie, who as governor of New Jersey tried to take down public school teachers. In each case, the villains sought to exercise leadership by enhancing their personal power at the expense of institutionalized power. They did so in large part by announcing outsized objectives only they could accomplish, ramping up the insecurities of those under them,

39. See, e.g., Steven Greenhouse, *American Unions Have Been Decimated. No Wonder Inequality Is Blooming*, GUARDIAN (Aug. 15, 2019), <https://www.theguardian.com/commentisfree/2019/aug/15/valuing-corporations-over-workers-has-led-to-americas-income-inequality-problem> [<https://perma.cc/UDG5-9VMZ>].

40. CAHN ET AL., *supra* note 5, at 22–23.

pitting people against each other in zero sum competitions, rewarding those who advanced the leaders' personal objectives, and treating those who objected as failures; in short, they created masculinity contest cultures and used them for their own ends.

These tactics are remaking American society and while they explain women's lack of progress in a more unequal economy, they have more fundamentally remade the lives of men. Yes, women college graduates have lost ground, but women without college degrees have narrowed the gap with men—in large part because of the declining fortunes of blue-collar males. The median wages for men without college degrees have fallen almost in half since the 1970s⁴¹ and the longstanding pay gap between Black men and white men has steadily increased over the last several decades.⁴² In addition to the drops in income, employment has become less secure. The days of the corporation man of the fifties who joined a company, whether as an executive or a union laborer, and stayed with the same employer through retirement are largely gone. The economy creates more good jobs—that have become more competitive and insecure—and more bad jobs, like the hourly positions at Walmart that pay so badly Walmart has had canned food drives for its own employees.⁴³ What remains of the center of

41. See Steven Ruggles, *Patriarchy, Power, and Pay: The Transformation of American Families, 1800–2015*, 52 DEMOGRAPHY 1797, 1809–10 fig.12(b) (2015) (marking a 44% decline in median wages from a peak of \$41,000 in 1973 to \$23,000 in 2013). See also *id.* at 1811 (“In 1961, young men were making four times what their fathers had made at about the same age. For the past three decades, the younger generation has consistently done worse than their fathers. Overall, generational relative income dropped a stunning 80 % since its peak in 1958.”); David H. Autor, *The Labor Market Impacts of Technological Change: From Unbridled Enthusiasm to Qualified Optimism to Vast Uncertainty* 5, 6 fig.2 (Nat’l Bureau of Econ. Rsch., Working Paper No. w30074, 2023) (“Between 1979 and 2017, the real weekly earnings of full-time, full-year working men with a post-baccalaureate degree rose Conversely, real earnings *fell* substantially among men without a four-year degree.”).

42. See VALERIE WILSON & WILLIAM DARITY JR., ECON. POL’Y INST., UNDERSTANDING BLACK-WHITE DISPARITIES IN LABOR MARKET OUTCOMES REQUIRES MODELS THAT ACCOUNT FOR PERSISTENT DISCRIMINATION AND UNEQUAL BARGAINING POWER 11 fig.H (2022), <https://files.epi.org/uploads/215219.pdf> [<https://perma.cc/7SQD-43F5>] (showing that the gap between Black and white male hourly wages increased from 14.9% in 1979 to 22.2% in 2019).

43. Hayley Peterson, *Wal-Mart Asks Workers to Donate Food to Its Needy Employees*, BUS. INSIDER (Nov. 20, 2014), <https://www.businessinsider.com/walmart-employee-food-drive-2014-11> [<https://perma.cc/BDE2-8ZZ3>]; see also ARNE L. KALLEBERG, GOOD JOBS, BAD JOBS: THE RISE OF POLARIZED AND PRECARIOUS EMPLOYMENT SYSTEMS IN THE UNITED STATES: 1970S TO 2000S 2 (2011) (“[There] has been a polarization of jobs and employment relations with regard to aspects of job quality, such as security and stability, economic compensation, control over work

the economy is dominated by two types of positions: jobs in health care, education, and infrastructure development that depend on public financing; and jobs in construction, agriculture, and entrepreneurship (including everything from dental offices to food trucks) that involve volatile income and little buffering from cyclical economic shocks.⁴⁴ Combine the loss of status that comes with greater economic inequality⁴⁵ with greater economic precarity, and the same characteristics that dominate toxic work environments—quests for dominance, bullying and harassment, distrust and grievance, and in-group favoritism—play a greater role in society as a whole. That should terrify us.

So, the question becomes not whether the psychologists can change the light bulb but how we can convince the light bulb it wants to change. And here, the gender gap has become a gender gulf, with young women globally polling as the most liberal in human history while young men are more focused on “competition, bravery, and honor” and more patriarchal in their attitudes than women or older men.⁴⁶ We have argued that women, precisely

activities, and time spent on the job.”).

44. *80 Highest Paying Jobs without a Degree (Over \$50k)*, U.S. CAREER INST. (Sept. 2019), <https://www.uscareerinstitute.edu/blog/80-Jobs-that-pay-over-50k-without-a-degree> [<https://perma.cc/4BFG-C8ZT>]. See also *Labor Force Statistics from the Current Population Survey*, U.S. BUREAU LAB. STAT., <https://www.bls.gov/cps/cpsaat18.htm> [<https://perma.cc/MA85-WUJR>] (showing that more men worked in construction, wholesale and retail trade, and repair and maintenance than women in 2023). These jobs, however, are often less secure than the positions open to those with college degrees, with more income volatility and more cyclical employment opportunities. See Evgeniya A. Duzhak, *How Do Business Cycles Affect Worker Groups Differently?* 3–5, FED. RESRV. BANK OF S.F. (2021), <https://www.frbsf.org/wpcontent/uploads/el2021-25.pdf> [<https://perma.cc/KLD9-EQ8D>] (showing that male dominated fields such as agriculture, construction, and mining are more sensitive to cycle variations, particularly for Black and Hispanic men).

45. See RICHARD WILKINSON & KATE PICKETT, *THE INNER LEVEL: HOW MORE EQUAL SOCIETIES REDUCE STRESS, RESTORE SANITY AND IMPROVE EVERYONE'S WELL-BEING* 41–68 (2018) (“Among the countries in this study, status anxiety was highest in more unequal countries . . . and lowest in more equal countries.”); RICHARD WILKINSON & KATE PICKETT, *THE SPIRIT LEVEL: WHY GREATER EQUALITY MAKES SOCIETIES STRONGER* 44 (2011) (“Greater inequality is likely to be accompanied by increased status competition and increased status anxiety.”).

46. Thomas B. Edsall, *The Gender Gap Is Now a Gender Gulf*, N.Y. TIMES, May 29, 2024, <https://www.nytimes.com/2024/05/29/opinion/gender-gap-biden-trump-2024.html> [<https://perma.cc/M8VW-R9HV>] (quoting Martijn Lampert & Panos Papadongonas, *Polarization Extends into Gender via Young Adults Who Lose Hope*, GLOCALITIES, (2024), <https://glocalities.com/reports/trend-report-polarization> [<https://perma.cc/Q4L3-DUAR>]) (describing studies that show that globally, “young women are likely the most liberal group in human history” while young men are “more focused on competition, bravery and honor” and “are more patriarchal in their orientations overall when compared with women and even when compared with older men.”).

because they cannot win masculinity contests, are an important source of opposition to societies and workplaces built on such practices. To prevail, however, requires recognition that these zero-sum competitions inevitably become negative sum—and that harms all of us.

I want to thank all of those who joined together in the exploration of these ideas and particularly Claire Hill for her graciousness and wisdom.



LAW & INEQUALITY

UNIVERSITY OF MINNESOTA LAW SCHOOL