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The Plight of Women in Positions of Corporate Leadership in the United States, the European Union, and Japan: Differing Laws and Cultures, Similar Issues

Bettina C. K. Binder
Pforzheim University

Terry Morehead Dworkin
Indiana University

Niculina Nae
Nagoya University of Commerce and Business

Cindy A. Schipani
University of Michigan

Irina Averianova
Nagoya University of Commerce and Business

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THE PLIGHT OF WOMEN IN POSITIONS OF CORPORATE LEADERSHIP IN THE UNITED STATES, THE EUROPEAN UNION, AND JAPAN: DIFFERING LAWS AND CULTURES, SIMILAR ISSUES†

*Bettina C K Binder**
*Terry Morehead Dworkin***
*Niculina Nae****
*Cindy A Schipani*****
*Irina Averianova******

ABSTRACT

Gender diversity in corporate governance is a highly debated issue worldwide. National campaigns such as "2020 Women on Boards" in the United States and "Women on the Board Pledge for Europe" are examples of just two initiatives aimed at increasing female representation in the corporate boardroom. Several European countries have adopted board quotas as a means toward achieving gender diversity. Japan has passed an Act on Promotion of Women's Participation and Advancement in the Workplace to lay a foundation for establishing targets for promoting women.

This Article examines the status of women in positions of leadership in the United States, several major countries in the European Union, and Japan. We focus on the legal backdrop in each jurisdiction regarding gender discrimination and studies

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* Professor of Business Administration and Engineering, Pforzheim University, Germany.

** Wentworth Professor of Business Law, Emerita, Indiana University and Scholar in Residence, Seattle University School of Law.

*** Professor, Nagoya University of Commerce and Business.

**** Merwin H. Waterman Collegiate Professor of Business Administration and Professor of Business Law, University of Michigan.

***** Professor, Nagoya University of Commerce and Business.

tending to demonstrate the economic benefits of gender diversity. We conclude that although important steps have been taken in the direction of narrowing the gender gap in all jurisdictions examined, progress has been slow and difficult across the board. The issue of too few women at the top will not be resolved until there is a wider acceptance that female leaders can benefit their organizations and contribute to social and economic progress. Moreover, the presence of women on corporate boards is valuable in and of itself and the status quo ought to be further challenged in international business.

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Introduction

Gender diversity on corporate boards is a highly debated issue worldwide. In addition to providing equal opportunity, promoting equality and inclusion of women in positions of leadership is believed to have positive effects on the financial performance of a company. National campaigns such as "2020 Women on Boards" in the U.S.[1] or "Women on the Board Pledge for Europe" in the E.U.[2] are just two examples of initiatives that aim to increase female representation in boardrooms. Rising female representation on boards has been identified as a trend for 2020,[3] while board configuration is considered to be a "strategic resource of the organization."[4] The European Commission has stressed the economic importance of gender diversity on corporate boards, quoting several studies showing correlations between women's presence on boards and various improved financial metrics.[5] Japan's Act on Promotion of Women's Participation and Advancement in the Workplace, enacted in 2016, lays a foundation for establishing targets for promoting women to decision-making positions.[6] Furthermore, we agree with those who argue that the status quo ought to be challenged in international business, both in terms of economic importance and for considerations of equal opportunity and fairness.[7]

This Article compares gender issues in corporate leadership among the United States, a sampling of countries in the European Union, and Japan. There are multiple reasons for this selection of jurisdictions for our comparative analysis. First, all three jurisdictions reflect highly developed industrial powers with well-established corporate cultures. Sec-

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1. 2020 WOMEN ON BOARDS, GENDER DIVERSITY INDEX 2 (2018), https://www.2020wob.com/sites/default/files/2020WOB_GDI_Report_2018_FINAL.pdf.
2. European Commission Memoranda/11/124, EU Justice Commissioner Reding Challenges Business Leaders to Increase Women's Presence on Corporate Boards with "Women on the Board Pledge for Europe" (March 1, 2011).
3. Pedro Nuendo, *10 Trends for the Board of 2020*, 29 IESE INSIGHT 45, 47 – 48 (2016).
4. CB. Ingley & N.T. van der Walt, *Board Configuration: Building Better Boards*, 3 CORPORATE GOVERNANCE 5, 5 (2003).
5. *Progress Report on Women in Economic Decision-Making in the EU*, at 7 (2012), http://ec.europa.eu/justice/gender-equality/files/women-on-boards_en.pdf.
6. Act on Promotion of Women's Participation and Advancement in the Workplace, Act No. 64 of September 4, 2015, (Japan), translated in *An Act on Promotion of Women's Participation and Advancement in the Workplace (Tentative Translation)*, http://www.japaneselawtranslation.go.jp/law/detail_main?re=02&vm=02&id=3018.
7. *See* Patrizia Zanoni et al., Editorial, *Unpacking Diversity, Grasping Inequality: Rethinking Difference Through Critical Perspectives*, 17(1) ORGANIZATION 9, 9 – 11, 20 (2012).

ond, each jurisdiction has a noteworthy history of tackling the problems of gender equality and a more or less established recognition of women's potential to contribute to the economic and social development of their countries. Finally, despite the industrial progress of these jurisdictions, none of them can boast of creating a sufficiently supportive environment for women to rise to positions of leadership.

We begin in Section I with an examination of the status of women in positions of leadership in the United States, various countries in the European Union, and Japan. Section II continues with analysis of the legal backdrop regarding gender discrimination and efforts to eradicate it. In Section III, we offer some proposals for reform. Concluding remarks follow.

I. Women in Positions of Leadership

This Section examines the status of women in positions of leadership in the United States, various countries in the European Union, and Japan. As discussed below, although opportunities for women to advance in firms have risen in all these jurisdictions in recent years, the environment for women aspiring to positions of leadership leaves much to be desired.

A. *The United States*

The United States has historically seen low female representation in corporate leadership roles. Although female gains have been accelerating in recent years,[8] women remain underrepresented on corporate boards. Greater progress has been made, however, regarding managerial and other leadership positions: a slight majority of all American management and professional positions are held by women,[9] but this is not without caveats, which are discussed below. This Section examines the history and current status of women on boards and in management in the United States, including current statistics, trends, and a review of proposed causes of disparities.

8. 2020 WOMEN ON BOARDS, *supra* note 1.

9. John Baker & Joseph Canegmi, *Why Are There So Few Women CEOs and Senior Leaders in Corporate America?*, ORGANIZATIONAL DEV. J., 2016, at 31, 33.

1. Women on Corporate Boards

Although women served on American corporate boards as early as 1900,[10] they still remain a small minority. As of 2017, women held 24.4 percent of board seats within Fortune 100 firms, and just over 20 percent across the Fortune 1000.[11] Seven percent of firms in the Fortune 1000 had no female board members.[12] Progress has been rapid—between 2011 and 2017, the proportion of firms with at least 20 percent female board members rose from 29 percent to well over half—but gender parity is still a long way off.[13] Importantly, the increase in female membership on American corporate boards is often the result of adding new board seats rather than existing members being replaced,[14] raising concerns that women may simply be added to boards as tokens.[15] Effectively, growth in female representation may be somewhat artificial if preexisting board seats remain male.

The U.S. Government Accountability Office estimates that it could take four decades for parity to be reached if present trends continue,[16] with smaller firms especially lagging behind. The boards of the 500 smallest firms within the Fortune 1000 have six percent fewer women than the Fortune 100, at only 18.8 percent versus 24.4 percent.[17] Six percent of firms in the Russell 1000, another index of American firms, have all-male boards, a number that grows to 21 percent among the Russell 3000, illustrating the greater lack of board diversity among smaller firms.[18]

There are also significant disparities in board gender diversity across industries. Among the Fortune 1000, real estate firms have the highest average proportion of women on boards, at 23.1 percent, compared to only 14 percent on energy industry boards.[19] The technology sector has received special attention for its lack of gender diversity:

10. Phyllis King, *Gender Diversity on Corporate Boards: Spotlighting Wisconsin*, 32 WIS. J. L. GENDER, & SOC'Y 1, 7 (2017).
11. 2020 WOMEN ON BOARDS, *supra* note 1.
12. *Id.*
13. *Id.*
14. *Id.*
15. *See, e.g.,* Jan Luca Pletzer et al., *Does Gender Matter? Female Representation on Corporate Boards and Firm Financial Performance - A Meta-Analysis*, 10 PLOS ONE 1, 4 (2015).
16. *Id.*
17. *Id.*
18. *See* Brianna Castro, *Raising the Stakes on Board Gender Diversity*, HARV. L. SCH. F. ON CORP. GOVERNANCE & FIN. REG., 1, 2 (2019).
19. 2020 WOMEN ON BOARDS, *supra* note 1.

among the SV 150, an index of major Silicon Valley firms, 80 percent have one or zero female board members, compared to 18 percent among S&P 500 firms.[20] The disparities suggest that solutions might need to be tailored to specific industries.

2. Women in Management

Compared with corporate boards, management has historically seen more equal representation, with women holding nearly 40 percent of all managerial roles in the U.S. in 2018,[21] a figure largely unchanged since 2015.[22] Women also have taken up the bulk of new management positions: of 4.5 million new management jobs created between 1980 and 2010, women took 2.6 million, or about 58 percent.[23] The proportion of women falls, however, as one moves further up the managerial ladder: among S&P 500 companies, women make up 44.7 percent of the total workforce, 36.9 percent of line managers, 26.5 percent of senior level managers, and only five percent of CEOs.[24] Women are so underrepresented in the executive suite that just six female CEOs leaving their firms in 2018 caused the total number of female CEOs among Fortune 500 companies to drop by 25 percent.[25] In North America, the year 2018 saw a drop in the proportion of senior roles being held by women (down to 21 percent from 23 percent),[26] although the proportion of businesses with at least one woman in senior management did jump from 69 percent to 81 percent over the same one-year period.[27] Female managers were also most common in certain "female-

20. FENWICK & WEST LLP, GENDER DIVERSITY IN SILICON VALLEY 9 (2014), https://www.fenwick.com/FenwickDocuments/Gender_Diversity_2014.pdf.
21. *Women in Management: Quick Take*, CATALYST RESEARCH (2019), https://www.catalyst.org/research/women-in-management/.
22. *39 Percent of Managers in 2015 Were Women*, U.S. BUREAU OF LABOR STATISTICS: TED: THE ECONOMICS DAILY (August 1, 2016), https://www.bls.gov/opub/ted/2016/39-percent-of-managers-in-2015-were-women.htm.
23. William Scarborough, *What the Data Says About Women in Management Between 1980 and 2010*, HARV. BUS. REV. (Feb. 23, 2018), https://hbr.org/2018/02/what-the-data-says-about-women-in-management-between-1980-and-2010.
24. *Women in Management*, *supra* note 21.
25. Emily Stewart, *Women Are Running for Office in Record Numbers. In Corporate America, They're Losing Ground.*, VOX (June 8, 2018), https://www.vox.com/policy-and-politics/2018/6/8/17413254/women-fortune-500-ceos-politics-blue-wave.
26. GRANT THORNTON, WOMEN IN BUSINESS: BEYOND POLICY TO PROGRESS 8 (2018), https://www.grantthornton.co.ke/globalassets/1.-member-firms/kenya/insights/pdf/grant-thornton-women-in-business-2018-report-edited-web.pdf.
27. *Id.*

specialized" areas, with over 70 percent of managers in human resources and medical and health services being female.[28] In general, managerial positions have become more segregated, so that "female managers are concentrated in fields that emphasize people-centered caring skills, while men are concentrated in fields dealing with production-centered skills."[29] Although there are improvements, there are still troubling trends.

3. Explanations for Disparities

A diverse literature has developed in recent decades to explain disparities between the success of women as compared to men in rising to positions of corporate leadership. This section addresses some reasons for the disparities.

Given the popularity of the term "glass ceiling" and its pervasiveness in contemporary popular discourse, it is worth clarifying what it means. One comprehensive study defines it as the phenomenon where "gender (or other) disadvantages are stronger at the top of the hierarchy than at lower levels and that these disadvantages become worse later in a person's career."[30] The Federal Glass Ceiling Commission defined it as "artificial barriers to the advancement of women and minorities."[31] The first individual to have used the term, Marilyn Loden, has written that the glass ceiling consists of "the barriers to advancement [of women] that were cultural and not personal."[32] Using more strictly defined empirical criteria,[33] one study found strong evidence of a significant gender penalty among those later in their careers and higher up in their organization.[34] Other studies have noted that, although most research focuses on internal promotion patterns, external recruitment practices may also play a role, especially in the technology sector.[35] In addition to overt dis-

28. *Women in Management*, *supra* note 21.
29. Scarborough, *supra* note 23.
30. *See* David A. Cotter et al., *The Glass Ceiling Effect*, 80 SOC. FORCES 655 (2001).
31. U.S. DEP'T OF LAB., GLASS CEILING COMMISSION - GOOD FOR BUSINESS: MAKING FULL USE OF THE NATION'S HUMAN CAPITAL (1995).
32. Marilyn Loden, *100 Women: 'Why I Invented the Glass Ceiling Phrase,'* BBC NEWS (Dec. 13, 2017), https://www.bbc.com/news/world-42026266.
33. Cotter et al., *supra* note 30, at 657 ("In practice, this means that glass ceilings are measured as the residual differences due to race or gender after controlling for education, experience, abilities, motivation, and other job-relevant characteristics.").
34. *Id*. at 655.
35. *See* Roberto M. Fernandez & Santiago Campero, *Gender Sorting and the Glass Ceiling in High-Tech Firms*, 70 INDUS. & LAB. REL. REV. 1 (2017) (identifying patterns in external hiring processes in 443 small-to-medium-sized firms in the technology sector

crimination, studies have examined a range of other factors as contributing to the glass ceiling phenomenon.[36]

Alongside the "glass ceiling," the term "glass cliff" has become popular recently: it is a phenomenon where women CEOs disproportionately find themselves in charge of firms in imminent danger of failing.[37] Specifically, "women who break through the glass ceiling into the upper echelons of management [tend] to be placed in more precarious leadership positions than men,"[38] which would account for the relatively poorer performance of female CEOs observed by some commentators.[39] The phenomenon has received significant attention since it was first proposed in 2007, and a recent review of the growing literature found that a "decade of research into the glass cliff confirms that it is a robust and pervasive phenomenon and a significant feature of the organizational landscape for women who achieve high office."[40] Therefore, many women in CEO positions within the U.S. face an additional challenge in maintaining the firm's performance and their own reputation.[41]

Implicit biases that hold back women leaders have received more attention recently, particularly the role of stereotypes. Characteristics deemed important in leaders, and indeed, leadership in general, are culturally associated with masculinity within the United States, meaning that women in leadership positions are essentially in "gender-stereotype-

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to find that the seeds of the glass ceiling are evident in candidate pools, as women seek entry-level jobs more than they do executive positions or stereotypically male IT/engineering positions and men are more likely than women to be interviewed, receive offers, and be hired).

36. *See* Marianne Bertrand, *Coase Lecture - The Glass Ceiling*, 85 ECONOMICA 205 (2018) (reviewing scholarship that attributes the gender gap to gender-based psychological attributes, competing demands on women's time in the workplace and at home, women's need for greater flexibility in the workplace, and penalties associated with such flexibility).
37. *See, e.g.*, Michelle K. Ryan & S. Alexander Haslam, *The Glass Cliff: Exploring the Dynamics Surrounding the Appointment of Women to Precarious Leadership Positions*, 32 ACAD. OF MGMT. REV. 549 (2007).
38. *Id.* at 563.
39. *See, e.g.*, Elizabeth Judge, *Women on Board: Help or Hindrance?*, TIMES (Nov. 11, 2003), https://www.thetimes.co.uk/article/women-on-board-help-or-hindrance-2c6fnqf6fng (noting that companies with female board leadership underperformed on the Financial Times Stock Exchange 100 Index, whereas companies with male board leadership outperformed the index).
40. Michelle K. Ryan et al., *Getting on Top of the Glass Cliff: Reviewing a Decade of Evidence, Explanations, and Impact*, 27 THE LEADERSHIP Q. 446, 453 (2016).
41. Christy Glass & Alison Cook, *Leading at the Top: Understanding Women's Challenges Above the Glass Ceiling*, 27 THE LEADERSHIP Q. 51, 59 – 60 (2016).

incongruent" positions.[42] Women face the choice of displaying stereotypically masculine characteristics and being judged as cold or excessively argumentative, or, alternatively, of conforming to female stereotypes and being judged as too emotional or as poor leaders.[43]

In addition, one study found that although greater power increased total amount of time spent talking for men, this effect did not appear for women[44]—indeed, women seem to suffer backlash from speaking up.[45] A similar strand of stereotype research has found that women face backlash when engaging in self-promotion (although they are not punished for peer-promoting.)[46] Self-promotion "violates female gender stereotypes yet is necessary for professional success."[47] This conclusion is especially important for women to consider, as much popular literature advocates for women to engage in these more "masculine" behaviors to achieve career success,[48] without consideration of these backlash effects.[49]

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42. *See* Victoria L. Brescoll, et al., *Hard Won and Easily Lost: The Fragile Status of Leaders in Gender-Stereotype-Incongruent Occupations*, 21 PSYCHOL. SCI. 1640 (2010); Anne M. Koenig, et al., *Are Leader Stereotypes Masculine? A Meta-Analysis of Three Research Paradigms*, 137 PSYCHOL. BULL. 616 (2011).
43. Brescoll et al., *supra* note 42, at 1642; *See also* Victoria L. Brescoll & Eric Luis Uhlmann, *Can an Angry Woman Get Ahead?: Status Conferral, Gender, and Expression of Emotion in the Workplace*, 19 PSYCHOL. SCI. 268 (2008) (stating that "men who expressed anger in professional settings were more likely to be hired than men who expressed sadness and were also given more status, power, and independence in their jobs . . . professional women who express anger may experience a decrease, rather than an increase, in their status. Women are expected to be kinder and more modest than men, and they evoke negative responses from other people if they fail to conform to this prescriptive stereotype"); Gary N. Powell, D. Anthony Butterfield & Jane D. Parent, *Gender and Managerial Stereotypes: Have the Times Changed?*, 28 J. OF MGMT. 177, 178 (2002) (stating that male characteristics include "assertiveness, independence, and willingness to take risks").
44. Victoria L. Brescoll, *Who Takes the Floor and Why: Gender, Power, and Volublity in Organizations*, 56 Admin Sci. Q. 622, 622 (2011).
45. *Women Face Backlash for Speaking Up at Work*, ASS'N FOR PSYCHOL. SCI. (Jan. 20, 2015), https://www.psychologicalscience.org/news/minds-business/women-face-backlash-for-speaking-up-at-work.html.
46. Corinne A. Moss-Racusin & Laurie A. Rudman, *Disruptions in Women's Self-Promotion: The Backlash Avoidance Model*, 34 PSYCHOL. OF WOMEN Q. 186, 186 (2010).
47. *Id.*
48. Marguerite Rigoglioso, *Researchers: How Women Can Succeed in the Workplace*, INSIGHTS BY STAN. BUS. (Mar. 1, 2011), https://www.gsb.stanford.edu/insights/researchers-how-women-can-succeed-workplace; *see also* Bonnie Marcus, *Self Promotion Is a Leadership Skill*, FORBES (Mar. 2, 2015), https://www.forbes.com/sites/bonniemarcus/2015/03/02/self-promotion-is-a-leadership-skill/#4dd994234e77.
49. Fortunately, the potential for backlash is occasionally addressed in the popular press. *See, e.g.*, Joan Williams, *Women's Career Advice: Self-Promote Without the Backlash*,

Research has also shown that, in general, women often face obstacles in developing credibility in the workplace.[50] For example, women often need to bring a unique skill to the table to establish credibility. One study found that women contribute unique skills to the board, and that this is the main mechanism through which female board members add value in contrast to new male board members.[51] Other studies have found that female board members cultivate specialties like corporate social responsibility in order to bolster their credibility: "women independent directors can establish or improve their reputational standing within the organization through their expertise" in specialized areas like social responsibility, marketing, or human resources.[52] Women seeking corporate leadership positions thus face an additional challenge when seeking nomination.

It should also be noted that some studies examining the effects of gender diversity on financial outcomes have led to ambiguous results,[53] and some private initiatives to increase leadership diversity have been unsuccessful. According to one report, diversity proposals put forth by shareholders at major firms in 2016 only saw, on average, 25 percent support.[54] Moreover, in one prominent example, Apple's board called the demands of one such proposal "unduly burdensome and not necessary."[55] Thus, the gender disparities noted earlier arise from a variety of factors.

HUFFINGTON POST (Oct. 24, 2011, 6:00 PM), https://www.huffpost.com/entry/womens-career-advice_b_1029059.

50. A. Carol Rusaw, *Achieving Credibility: An Analysis of Women's Experience*, 16 REV. OF PUB. PERS. ADMIN. 19, 30 (1996).

51. *See* Daehyun Kim & Laura T. Starks, *Gender Diversity on Corporate Boards: Do Women Contribute Unique Skills?*, 106 AM. ECON. REV. 267, 269 (2016).

52. Enjung Hyun et al., *Women on Boards and Corporate Social Responsibility*, 8 SUSTAINABILITY 300 (2016).

53. Larelle Chapple & Jacquelyn E. Humphrey, *Does Board Gender Diversity Have a Financial Impact? Evidence Using Stock Portfolio Performance*, 122 J. BUS. ETHICS 709, 722 (2014).

54. Jeff Green & Emily Chasan, *Investors Push Corporate Boards to Add Women, People of Color*, BLOOMBERG News (Mar. 2, 2017), https://www.bloomberg.com/news/articles/2017-03-02/shareholders-target-pale-male-and-stale-corporate-boards.

55. Sara Ashley O'Brien, *Apple's Board Calls Diversity Proposal 'Unduly Burdensome and Not Necessary,'* CNN (Jan. 15, 2016), https://money.cnn.com/2016/01/15/technology/apple-diversity/index.html.

4. The Case for Gender Parity

Much of the discourse surrounding women in American corporate leadership centers around the "business case for [gender] diversity,"[56] rather than the moral or constitutional cases.[57] That is, rather than considering the issue from the perspective of equality and fairness, this research has focused on whether gender equality contributes to success on financial metrics. To this end, a broad literature examines the alleged link between corporate financial performance and board gender diversity,[58] as well as the impact of diversity on corporate social responsibility,[59] compliance with ethical and social standards,[60] and environmental reporting.[61] This argument is also heavily used by American advocacy groups. For example, the "20% by 2020" campaign cites "better decision making," "competitive advantage," and the "huge, untapped pool of [female] talent" to support greater female representation on corporate boards.[62] The Kellogg School of Management has called board gender diversity "a business imperative."[63] Even the Federal Glass Ceiling Commission, which reported on the issue in 1995, cast its argument in terms of the potential for business success, entitling its report "Good for Business: Making Full Use of the Nation's Human Capital."[64] As one researcher notes, "it is usually said that firms will appoint more women to their boards only if doing so results in economic benefits to the firm

56. Julie C. Suk, *Gender Parity and State Legitimacy: From Public Office to Corporate Boards*, 10 INT'L J. OF CONST. L. 449, 464 (2012).
57. *See e.g.*, Marek Szydlo, *Constitutional Values Underlying Gender Equality on the Boards of Companies: How Should the EU Put These Values Into Practice?*, 63 INT'L & COMP. L. Q. 167,180 (2014).
58. *See*, *e.g.*, David A. Carter et al., *The Diversity of Corporate Board Committees and Firm Financial Performance*, 1 SOC. SCI. RES. NETWORK 1, 40 (2007), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=972763.
59. Hyun et al., *supra* note 52.
60. Helena Isidro & Márcia Sobral, *The Effects of Women on Corporate Boards on Firm Value, Financial Performance, and Ethical and Social Compliance*, 132 J. BUS. ETHICS 1, 19 (2014).
61. Michelle Siew Huie Phua & Poh-Ling Ho, *Female Directors on Corporate Boards: Does Female Leadership Drive Corporate Environmental Transparency?*, 34 SHS WEB OF CONFERENCES 1 (2017).
62. 2020 WOMEN ON BOARDS, *supra* note 1.
63. Victoria Medvec, *What Will It Take to Get More Women on Boards?*, KELLOGG INSIGHT (Jul. 6, 2018), https://insight.kellogg.northwestern.edu/article/what-will-it-take-to-get-more-women-on-boards.
64. GLASS CEILING COMM'N, *supra* note 31.

[…] for that reason, the bulk of academic research investigates the economic outcomes for firms that have female directors on their boards."[65]

B. *The European Union*

Gender equality is one of the founding values of the European Union, with the principle of equal pay being included in the Treaty establishing the European Economic Community in 1957 (known as the Treaty of Rome).[66] Gender equality has been promoted ever since, yet progress is slow.[67] The latest policy plan of the E.U., the "Strategic Engagement for Gender Equality 2016 – 2019," aims at advancing gender balance in decision-making, closing the gender pay gap, promoting equal economic independence for women and men, ending gender based violence, and even contains measures promoting gender equality beyond the E.U.[68]

1. Women on Corporate Boards

The corporate world demonstrates that the glass ceiling is still in place, as many large companies in Europe include a low number of women in positions of leadership, although quotas in some countries have improved the numbers on some corporate boards.[69] According to

65. Isidro & Sobral, *supra* note 6o, at 4.
66. Sophie Jacquot, *European Union Gender Equality Policies Since 1957*, ENCYCLOPÉDIE POUR UNE HISTOIRE NOUVELLE DE L'EUROPE (Oct. 30, 2017), https://ehne.fr/en/article/gender-and-europe/gender-citizenship-europe/european-union-gender-equality-policies-1957.
67. Rachael Kennedy, *International Women's Day: EU Progress on Gender Equality is Moving at a 'Snail's Pace,'* EURONEWS (Aug. 3, 2019), https://www.euronews.com/2019/03/08/eu-progress-on-gender-equality-is-moving-at-a-snail-s-pace-according-to-officals.
68. EUR. COMM'N, STRATEGIC ENGAGEMENT FOR GENDER EQUALITY 2016-2019, https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/strategic_engagement_for_gender_equality_en.pdf.
69. Many countries throughout Europe have a dual board structure, with a management board and a supervisory board. The supervisory board is most analogous to the board structure in countries like the U.S. and Japan, utilizing a unitary board. EUROPEAN COMMISSION PRESS RELEASE, WOMEN ON BOARDS: COMMISSION PROPOSES 40% OBJECTIVE (Nov. 14, 2012), https://europa.eu/rapid/press-release_IP-12-1205_en.htm. For more information and a summary of dual board laws in various European nations, *see* Roger Baker, *Board Structures in Europe*, EUR. CONFEDERATION OF DIR. ASS'N, http://ecoda.org/fileadmin/library_private/14_IFC/1_Roger_Barker-_Board_structures_in_Europe.docx.

the 2019 Report on Equality between Women and Men in the E.U., women held 29.3 percent of supervisory board positions (non-executive positions) of large companies in the E.U.-28, but only 16.6 percent of executive positions.[70] Some European countries have tried to improve women's presence on boards with the help of gender quotas. For instance, Norway was the first country to legislate board quotas (in 2004) and many countries followed with laws setting required or optional quotas for women on supervisory boards.[71] The legislative quotas seem to bring positive results, as nine E.U. countries have already registered at least 25 percent women on the boards of their largest companies in October 2017, while France was the only E.U. country[72] in which there were at least 40 percent of each gender at the board level (as of October 2017).[73]

2. Women in Management

Although the supervisory board plays an important role in a company, as it controls the activities of the management board, the management (i.e., executive) board still holds a significant role. According to the 2019 Report on Equality Between Women and Men in the EU, "critical positions within boards are still rarely filled by women."[74] In the E.U., fewer than one in ten companies has a female chair or CEO.[75] Moreover, at the E.U. level, women held 16.6 percent of executive positions, which is regarded by the European Commission as marginal progress.[76]

70. EUR. COMM'N., 2019 REPORT ON EQUALITY BETWEEN MEN AND WOMEN IN THE EU 30 (2019), https://ec.europa.eu/info/sites/info/files/aid_development_cooperation_fundamental_rights/annual_report_ge_2019_en.pdf.
71. Alina Dizik, *Do Quotas for Corporate Boards Help Women Advance?*, CHICAGO BOOTH REV., June 15, 2015, https://review.chicagobooth.edu/magazine/spring-2015/do-quotas-for-corporate-boards-help-women-advance. Norway is not a member state of the European Union.
72. EUR. COMM'N., 2018 REPORT ON EQUALITY BETWEEN WOMEN AND MEN IN THE EU, at 31 (2018), https://publications.europa.eu/en/publication-detail/-/publication/950dce57-6222-11e8-ab9c-01aa75ed71a1.
73. *Id.*
74. EUR. COMM'N, *supra* note 70, at 30.
75. *Id.*
76. *Id.*

3. Explanations for Disparities

The reasons in the E.U. for gender disparities in top management and on boards are similar to the reasons in the U.S. and thus are not repeated here. In Europe, however, there are also institutional factors driving the movement to increase female representation on supervisory boards, such as welfare provisions (e.g. child care provisions, maternity leave provisions, policies to assist with the work-life balance), political coalitions, and a legacy of initiatives.[77] Left-leaning governments are currently more likely to require more female representation on supervisory boards. For example, a survey of 201 Norwegian firms found a correlation between women on boards and an increase in board development activities as well as a decreased level of conflict.[78] Though as presented above, the findings regarding the relationship between gender equality on boards and firm performance are sometimes ambiguous or contradictory, gender equality is still a priority for the E.U.: as stated in 2019 by Věra Jourová, Commissioner for Justice, Consumers and Gender Equality, "[t]he EU cannot fail on enforcing this important right to equality and on making use of the huge potential lying in half of its population."[79] Therefore, though the progress is slow and though the financial effects of an increased female presence on corporate boards in the E.U. still need to be further researched, the E.U. remains committed to its gender equality policy.

4. The Case for Gender Parity

As in the U.S., scholarship in the E.U. has focused on whether there is a significant link between firm performance and the number of women in positions of top leadership. One study found that in Denmark, having a higher percentage of women on supervisory boards could result in better performance.[80] Another study regarding women in European-listed companies suggests positive effects of diverse boards on

77. Siri Terjesen et al., *Legislating a Woman's Seat on the Board: Institutional Factors Driving Gender Quotas for Boards of Directors*, 128 J. OF BUS. ETHICS 233, 246 (2015).

78. Sabina Nielsen & Morten Huse, *The Contribution of Women on Boards of Directors: Going Beyond the Surface*, 18 CORP. GOV.: AN INT'L REV. 136, 145 (2010).

79. EUR. COMM'N., 2019 REPORT ON EQUALITY BETWEEN WOMEN AND MEN IN THE EU, 4 (2019), https://ec.europa.eu/info/sites/info/files/aid_development_cooperation_fundamental_rights/annual_report_ge_2019_en.pdf.

80. *See* Mijntje Lückerath-Rovers, *Women on Boards and Firm Performance*, 17 J. OF MGMT. & GOV. 491 (2011), https://link.springer.com/content/pdf/10.1007%2Fs10997-011-9186-1.pdf.

corporate governance and even on firm performance.[81] A futher study found that companies with a higher proportion of women in top management perform better.[82]

Some studies suggest a positive relationship between the number of female supervisory board members and the number of female officers in management.[83] Small improvements can be seen with a legally mandated quota for women on supervisory boards.[84] Scholars have analyzed the impact of gender on small business performance in the United Kingdom and concluded that there are "some considerable differences by sex in quantitative economic and financial performance measures."[85]

Another study shows that in 3,876 public companies, the presence of independent female directors is necessary on supervisory boards to optimize firms' performance.[86] This means that, when no women are included as supervisory board members, the companies' results were worse (measured by Tobin's Q and shown by the Return on Assets). Another study of 151 of the capital market-listed German firms shows that only after a critical mass of about 30 percent of women in absolute positions is attained, can higher firm performance be reached.[87]

Other studies, however, did not replicate these findings.[88] For example, one study points to a lack of evidence that female representation in supervisory boards improves profitability.[89] In a study

81. Achim Buchwald & Hanna Hottenrott, *Women on the Board and Executive Duration – Evidence for European Listed Firms*, DÜSSELDORF INST. FOR COMPETITION ECON., at 19 (2014), https://www.imf.org/external/pubs/ft/wp/2016/wp1650.pdf.

82. *See* Georges Desvaux et al., *Women Matter: Gender Diversity, a Corporate Performance Driver*, 1 MCKINSEY & CO. 23 (2007), http://www.raeng.org.uk/publications/other/women-matter-oct-2007.

83. *See* Diana Bilimoria, *The Relationship Between Women Corporate Directors and Women Corporate Officers*, 18 J. OF MANAGERIAL ISSUES, 47, 53 (2006); Siri Terjesen et al., *Women Directors on Corporate Boards: A Review and Research Agenda*, 17 CORP. GOV.: AN INT'L REV. 320, 324 (2009).

84. James Corkery & Madeline Taylor, *The Gender Gap: A Quota for Women on the Board*, BOND UNIV. CORP. GOVERNANCE J. (2012), https://pdfs.semanticscholar.org/fe63/02c541de832c14ca340da32497a08677d420.pdf (accessed 12 Sept. 2019).

85. Peter Rosa et al., *Gender as a Determinant of Small Business Performance: Insights from a British Study*, 8 SMALL BUS. ECON. 463, 474 (1996).

86. Siri Terjesen et al., *Does the Presence of Independent and Female Directors Impact Firm Performance? A Multi-Country Study of Board Diversity*, 20 J. OF MGMT & GOVERNANCE 447 (2015).

87. Jasmin Joecks et al., *Gender Diversity in the Boardroom and Firm Performance: What Exactly Constitutes a "Critical Mass?,"* 118 J. BUS. ETHICS 61, 68 (2013).

88. Caspar Rose, *Does Female Board Representation Influence Firm Performance? The Danish Evidence*, 15 CORP. GOVERNANCE: AN INT'L REV. 404, 411 (2007).

89. Daniel Ferreira, *Board Diversity: Should We Trust Research to Inform Policy?*, 23 CORP. GOVERNANCE: AN INT'L REV. 108, 110 (2015).

of 108 large German corporations between 2009 and 2013, there was not enough evidence to indicate a significant relationship between gender diversity and firms' financial performance.[90] The authors of the study believe the results could differ if a larger sample is analyzed or if small companies rather than large companies are considered.

Many actors have urged companies to more effectively use women's talent: for example, the Organization for Economic Cooperation and Development, an international economic coalition to stimulate economic progress, emphasized that women "can provide society with different perspectives and approaches to management, organisation and business issues."[91] The International Labour Organization reported in 2015 that "more concerted efforts and advocacy are needed to share information on the benefits of utilizing women's talent and skills at all levels, including in the boardroom."[92] The European Institute for Gender Equality argues in favor of gender equality by indicating its benefits: "a more gender equal EU would have strong, positive GDP impacts growing over time, a higher level of employment and could respond to challenges related to the ageing population in the EU."[93] Whether these arguments will lead to achieving gender equality at the E.U. level and beyond is still uncertain, yet important steps toward this goal have been made and the measures implemented, such as gender quotas, show results.

C. *Japan*

Japanese women have long been underrepresented in positions of power. In 2016, the female participation rate in administrative and managerial positions was only 13 percent compared to 43.4 percent in

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90. Artur Dick, *Female Directors on German Supervisory Boards and Firms' Financial Performance* at 7 (July 2, 2015) (unpublished Bachelor Thesis, University of Twente) https://essay.utwente.nl/67308/1/DICK_BA_IBA.pdf.

91. ORG. FOR ECON. CO-OPERATION AND DEV., OECD REPORT TO G7 LEADERS ON WOMEN AND ENTREPRENEURSHIP: A SUMMARY OF RECENT DATA AND POLICY DEVELOPMENTS IN G7 COUNTRIES, at 2 (2015), https://www.oecd.org/gender/OECD-Report%20-to-G7-Leaders-on-Women-and-Entrepreneurship.pdf.

92. Women in Business and Management. Gaining Momentum, INTERNATIONAL LABOUR ORGANIZATION (ILO) 4 (2015), http://www.ilo.org/wcmsp5/groups/public/—-dgreports/—-dcomm/—-publ/documents/publication/wcms_334882.pdf.

93. *Economic Case for Gender Equality in the EU*, EUROPEAN INST. FOR GENDER EQUALITY (2017), https://eige.europa.eu/gender-mainstreaming/policy-areas/economic-and-financial-affairs/economic-benefits-gender-equality/economic-case.

the United States and 39.2 percent in Sweden.[94] At listed companies,[95] women occupied only 3.4 percent of the executive positions, compared to 30 percent in France and 17 percent in the United States.[96]

1. Women on Corporate Boards

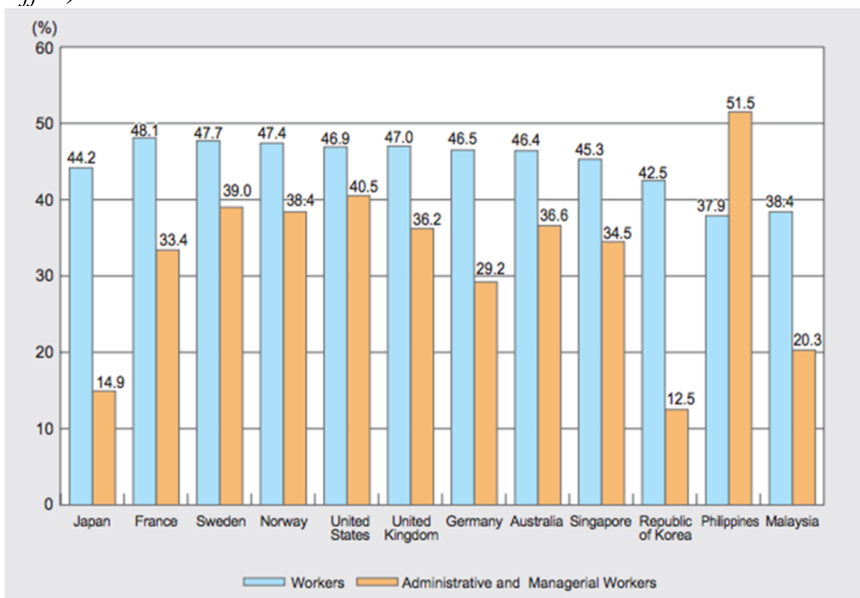
A Morgan Stanley Capital International progress report regarding women on boards found that most companies based in Asian countries such as Japan, South Korea, Taiwan, Hong Kong, and China continue to have all male boards.[97] However, the report showed that in recent years there has been a decline in the proportion of companies with all male boards, from 56.1 percent in 2016 to 45 percent in 2018. Despite this positive trend, Japanese corporate boards continue to be male dominated.[98]

2. Women in Management

As Figure 1 shows, in 2018, there was a considerable gap between the proportion of working women and that of women in managerial positions in many developed countries.

94. *Proportion of Women in Leadership Positions in Various Fields*, at 4 (2018), http://www.gender.go.jp/english_contents/pr_act/pub/pamphlet/women-and-men18/pdf/1-2.pdf.
95. "Firm whose shares are listed (quoted) on a stock exchange for public trading. Also called quoted company," *Listed Company*, BUSINESS DICTIONARY, http://www.businessdictionary.com/definition/listed-company.html.
96. Nobuko Kobayashi, *Let's Get Real About Female Equality in Corporate Japan -The Government Must Push Companies to Set Aside Stereotypes and Promote Women*, NIKKEI ASIAN REV., Jan. 22, 2018, https://asia.nikkei.com/Opinion/Let-s-get-real-about-female-equality-in-corporate-Japan2 (accessed Sept. 3, 2018).
97. Morgan Ellis & Meggin Thwing Eastman, *Women on Boards - Progress Report 2018*, MORGAN STANLEY CAP. INT'L 3 (Dec. 2018), https://www.msci.com/documents/10199/36ef83ab-ed68-c1c1-58fe-86a3eab673b8 (accessed Jul. 21, 2019).
98. *Id.* at 13.

Figure 1: Proportion of women workers and women in administrative and managerial positions in 2018 (Source: Gender Equality Bureau Cabinet Office).[99]



A 2018 document issued by the Japanese Gender Equality Bureau Cabinet Office reveals that, despite Japan ranking 17 of 188 countries on the Human Development Index scale measuring access to healthcare and education,[100] the Gender Gap Index ranks Japan a dismal 114 of 144 countries on female economic participation and opportunity.[101] The 2017 Global Gender Gap Report shows that, although Japan is making progress in closing the gender gap in terms of equal access to health care and education, it lags behind many developed countries in terms of female participation in the workforce, in particular in leadership and lawmaking positions.[102]

99. GENDER EQUITY CABINET OFFICE, *Proportion of Women in Leadership Positions in Vari-*
ous Fields, at 5 (2019), http://www.gender.go.jp/english_contents/pr_act/pub/pamph let/women-and-men19/pdf/1-2.pdf.

100. *Proportion of Women in Leadership Positions in Various Fields*, *supra* note 94.

101. *Id.*

102. *Id.*

3. Explanations for Disparities

Gender roles in family and society differ across cultures. Researchers note that perceptions of female leadership are different in Asia because of different traditions and religious beliefs.[103] For example, in some Asian countries with a strong Confucian tradition such as Japan and Korea, despite women's increased participation in the workforce and improved social status, the idea of women in leadership positions is quite challenging.[104] In Japanese culture, the ideology of "good wife, wise mother," or *ryôsai kenbo*, regarding women as caregivers and nurturers, has influenced generations, and has contributed to a clear delineation of the working spheres of men and women.[105] Women are expected to be nurturing, supportive, intuitive and communicative, and not to engage in typically-male activities such as pursuing a career.[106] Unlike in the United States, where many women work to further their career,[107] Japanese women work to support their family.[108] The idea that women must prioritize their roles of wife and mother has pervaded social, economic, fiscal, and corporate policies, which ascribe distinct realms to men and women and regard them not as equals, but as complementary agents.[109] To this day, these cultural pressures tend to affect modern women's career orientations and their aspirations regarding acceding to leadership positions.[110]

On the other hand, their lack of power in the public sphere is compensated by almost absolute power in the household. One feminist author has found that although traditional roles of women have been changing, women are still facing internal and external pressures to as-

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103. Yonjoo Cho et al., *Asian Women in Top Management: Eight Country Cases*, 18 HUM. RESOURCE DEV. INT'L 407 (2015), http://dx.doi.org/10.1080/13678868.2015.1020717.
104. Young Lan Kim, *The Change of Women's Social Status in Korea: Progress and Reaction*, 27 ASIAN WOMEN 1 (Mar. 2011), http://e-asianwomen.org/xml/00938.pdf.
105. Usui et al., *Women, Institutions, and Leadership in Japan*, 27 ASIAN PERSPECTIVE 3, 86, (2003).
106. *See id.*
107. Margaret A. Shaffer, Janice R. W. Joplin & Yu-Shan Hsu, *Expanding the Boundaries of Work–Family Research: A Review and Agenda for Future Research*, 11 INT'L J. OF CROSS CULTURAL MGMT. 221, 408 (2011).
108. Eun-Suk Lee, Jae Yoon Chang & Hyosun Kim, *The Work–Family Interface in Korea: Can Family Life Enrich Work Life?*, 22 INT'L J. OF HUM. RESOURCE MGMT. 20 (2011), https://www.tandfonline.com/doi/abs/10.1080/09585192.2011.573976; Masako Ishii-Kuntz, *Japanese Fathers: Work Demands and Family Roles*, *in* MEN, WORK, AND FAMILY 45 – 67 (Jane C. Hood ed., 1993).
109. Usui et al., *supra* note 105, at 88.
110. *Id.*

sume their traditional roles.[111] There is also considerable resistance to women becoming involved in spheres in which men have almost absolute hegemony.[112]

The increasing access to higher education of Japanese women, combined with the country's need to align its gender policy with those of other developed countries, has necessitated redefining the status of women in Japanese society.[113] In recent years, the number of Japanese women in higher education has been higher than ever before. Throughout the 1990s and 2000s, the percentage of women attending four-year universities increased from 15 percent to 44 percent.[114] Another important trend is that the number of companies that hire women in career-track jobs has been increasing. The percentage of such companies grew from 11 percent in 2000 to 17 percent in 2008.[115]

The downside is that career-track employment and leadership positions remain a male-dominated field in Japan. Professor Linda Lindsey's phrase "men have careers; women have jobs" has never rung more true.[116] Gendered beliefs and practices are responsible for keeping women away from leadership positions.[117] Professor Kumiko Nemoto talks about the "vertical segregation" of women in the workplace as the main cause for excluding women from management jobs and points out that, despite a change in female working patterns in the past years, the number of female managers has yet to rise.[118] Among factors that bar women from attaining top positions, she identifies prioritizing lifelong employment of male workers, harassment (including maternity harassment),[119]

111. Ayako Kano, *Backlash, Fight Back, and Back-Pedaling: Responses to State Feminism in Contemporary Japan*, 1 INT'L J. ASIAN STUDIES 8, at 53 (2011).

112. *Id.* at 53.

113. Elise K. Tipton, *Being Women in Japan*, 1970-2000, *in* WOMEN IN ASIA 225 (Louise Edwards & Mina Roces, eds., 2000).

114. Mari Osawa, *Gender-Equality and the Revitalization of Japan's Society and Economy Under Globalization*, https://www.jica.go.jp/jica-ri/ja/publication/other/jrft3q00000014pn-att/JICA-RI_Japan_1_Osawa.pdf (last visited Oct. 7, 2019).

115. Kumiko Nemoto, *When Culture Resists Progress: Masculine Organizational Culture and Its Impacts on the Vertical Segregation of Women in Japanese Companies*, 27 WORK, EMP. & SOC'Y 153, 154 (2013).

116. LINDA L. LINDSEY, GENDER ROLES. A SOCIOLOGICAL PERSPECTIVE (4th ed. 2005).

117. *See* Nemoto, *supra* note 115, at 155 – 58.

118. *Id*.

119. According to Matahara Net, a Japanese organization founded by former victim of maternity harassment Sayaka Osakabe, the term "maternity harassment" (abbreviated "matahara" in Japanese), "refers to the unfair treatment of women, namely harassment, both physical and mental, instilled upon working women when they become pregnant or give birth, which may involve termination of their employment, termination of their contract of employment, or forcing them to voluntarily leave their employment. Along with power harassment and sexual harassment, matahara is one of

the government's support of the male-breadwinner model over the dual-income family model through taxation policy, discriminatory views of female managers, and the absence of role models of women with authority.[120]

Women entering career-track jobs are expected to work hard to compete with their male co-workers. This means long hours, after-work drinking parties, and having to cope with the feeling of not belonging in an exclusively male environment.[121] In the Japanese organizational culture there is a clash between organizational masculinity and women in positions of power.[122] Professor Nemoto refers to this phenomenon as "the organizational processes whereby gendered beliefs and customs shape workers' construction of identity in the workplace."[123] In male-dominated organizations, men tend to assert their superiority by displaying demeaning, disrespectful, or exclusionary attitudes regarding the qualities and capacities of women.[124] In order to climb the corporate ladder, and in the absence of female role models, Japanese career women tend either to emulate male patterns of behavior, such as competitiveness or ruthlessness, or to ingratiate themselves to their superiors.[125] While in androcentric organizational cultures like Japan, "bossy" behavior is generally seen as the norm in a male leader, similar behavior in a woman is considered a "marker of deviant femininity" and sanctioned as such.[126] Women are expected to be modest and submissive, qualities that are perceived as "feminine."[127] Career women who sacrifice their "femininity" tend to be regarded as unlikable by male coworkers or subordinates, and aggressive or harsh by female subordinates.[128] They are often perceived by male coworkers as incompetent, unprofessional, or too

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the three major forms of harassment that burden Japanese women in the workforce." MATAHARA NET, http://www.mataharanet.org/en/what-is-matahara/ (last visited June 20, 2019).

120. Nemoto, *supra* note 115, at 154 – 56.

121. SARAH RUTHERFORD, WOMEN'S WORK, MEN'S CULTURES: OVERCOMING RESISTANCE AND CHANGING ORGANIZATIONAL CULTURES 15 – 16 (2011).

122. Nemoto, *supra* note 115, at 156 – 57.

123. *Id.* at 156 (citing Robin Ely & Irene Padavic, *A Feminist Analysis of Organizational Research on Sex Differences*, 32 ACAD. MGMT. REV. 1121 (2007)).

124. *See generally* Patricia Yancey Martin, *'Mobilizing Masculinities': Women's Experiences of Men at Work*, 8(4) ORG. ARTICLES 587 (2001) (discussing how men assert their masculinity at work through analyzing the experiences of six women at work).

125. Nemoto, *supra* note 115, at 157 – 58.

126. *Id.* at 163.

127. *See* GEERT HOFSTEDE, CULTURE'S CONSEQUENCES: COMPARING VALUES, BEHAVIORS, INSTITUTIONS, AND ORGANIZATIONS ACROSS NATIONS 297 (2d ed. 2001).

128. *See* Nemoto, *supra* note 115, at 157–58, 163.

emotional, even hysterical.[129] It seems that Japanese career women can do little to earn the respect of their male co-workers, and must strive harder than their European and Western peers. They have to walk the line between being feminine (and risking appearing weak, immoral or incompetent), and being masculine (and being considered bossy and harsh).

4. The Case for Gender Parity

Women's potential to boost economic development has been debated in Japan since the 1990s. In 2012, the International Monetary Fund's managing director Christine Lagarde said, "Women can save Japan . . . Today you have five out of ten Japanese women out of the job market, as opposed to two out of ten men."[130] In a report issued in 2012, the IMF predicted that an increase in female workforce participation from 63 percent in 2010 to 70 percent by 2030 would add four percent to the GDP.[131] Researcher Kathy Matsui compares the male-heavy Japanese workforce to an athlete "running a marathon with one leg."[132] She estimates that having more women in the workforce and in leadership positions would help boost the country's GDP by as much as 12.5 percent.[133] In a so-called "blue sky scenario," Matsui predicts that, should the large proportion of women currently involved in part-time employment work longer hours or be hired in full-time jobs, the GDP increase could be as high as 15 percent.[134] Moreover, at the micro-economic level, a study based on the data on female managers disclosed by 297 firms between June 2018 and April 2019 showed that the firms with the highest numbers of female managers (above 15 percent) had

129. *Id.* at 163.
130. WILLIAM PESEK, JAPANIZATION: WHAT THE WORLD CAN LEARN FROM JAPAN'S LOST DECADES 40 (2014).
131. Emma Dalton, *Womenomics, 'Equality' and Abe's Neo-liberal Strategy to Make Japanese Women Shine*, 20 SOC. SCI. JAPAN J. 95, 96 (2017) (citing Chad Stienbert & Masato Nakane, *Can Women Save Japan?* 5 (Int'l Monetary Fund, Working Paper No. WP/12/248)).
132. PESEK, *supra* note 130, at 41.
133. Kathy Matsui et al., *Womenomics 4.0: Time to Walk the Talk*, GOLDMAN SACHS JAPAN: PORTFOLIO STRATEGY, 1, 5 (May 30, 2014), https://www.goldmansachs.com/insights/pages/macroeconomic-insights-folder/womenomics4-folder/womenomics4-time-to-walk-the-talk.pdf.
134. Kathy Matsui et al., *Womenomics 5.0: 20 Years On Progress, Areas for Improvement, Potential 15% GDP Boost*, GOLDMAN SACHS JAPAN: PORTFOLIO STRATEGY, 1,10 (Apr. 18, 2019), https://www.goldmansachs.com/insights/pages/womenomics-5.0/multimedia/womenomics-5.0-report.pdf.

the highest 5-year average sales growths (over six percent), as well as the highest return on equity compared to those with fewer female leaders.[135]

II. Legal Backdrop: Gender Discrimination and Quotas

In this Section, we analyze the legal environments in the U.S., several countries in the E.U., and Japan surrounding gender discrimination and efforts to eradicate it. The imposition of gender quotas has been legally mandated with some success in some E.U. countries, but such a strategy would face significant legal hurdles in the United States. In Japan, government-sanctioned targets have yielded rather disappointing results.

A. *The United States*

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment based on certain protected characteristics.[136] These protected characteristics include an individual's "race, color, religion, sex, or national origin."[137] Congress conceived of the Act as a way to help minorities attain a level playing field in society, and Title VII of the Act was designed to do that in employment.[138] Protection for women was not originally part of the bill because their issue—unequal pay for equal work—was considered solved by the Equal Pay Act, passed the prior year.[139] Sex was added to the bill as a protected characteristic at the last minute, however, as a way to derail the legislation.[140] It passed despite

135. *Id.*

136. 42 U.S.C. § 2000e-2 (Westlaw through P.L. 116 – 50).

137. 42 U.S.C. § 2000e-2(a)(1) (Westlaw).

138. *See* Price Waterhouse v. Hopkins, 490 U.S. 228, 243 (1989) ("The intent to drive employers to focus on qualifications rather than on race, religion, sex, or national origin is the theme of a good deal of [Title VII]'s legislative history.").

139. 29 U.S.C. § 206(d)(1) (Westlaw through P.L. 116 – 50).

140. Cynthia Deitch, *Gender, Race and Class Politics and the Inclusion of Women in Title VII of the 1964 Civil Rights Act*, 7 GENDER & SOC'Y 183, 186 (1993) ("The gender discrimination proposal conveniently fit all three prongs of the southern strategy. It was potentially divisive, it could easily have sidetracked the debate, and it promised to complicate matters for the enforcement agency (the Equal Employment Opportunity Commission, or EEOC) created by Title VII. When the civil rights bill passed the House, two days after the debate over the gender amendment, all but one of the men who had voted for the amendment voted against the whole bill."); Jo Freeman, *The Origins of the Women's Liberation Movement*, 78 AM. J. OF SOC., 792, 798 (1973) (discussing how opponents of the bill aimed to defeat it by adding an objectionable term so as to divide the coalition that supported the legislation); Mary E. Guy &

the addition, and protection against discrimination on the basis of sex (subsequently interpreted as gender) was added to the groups protected from discrimination.[141] Because of the lack of legislative history and agreement on what it meant, protection for women under Title VII has usually lagged behind that of other groups.[142] Thus, advances in protection for minorities are often cited when women initially seek those same rights.[143]

Through subsequent case law, sexual harassment was also recognized as discrimination based on sex under Title VII.[144] The Act allows courts to mandate "appropriate affirmative action" as a remedy in cases of intentional unlawful discrimination.[145] Additionally, in the 1989 case *Price Waterhouse v. Hopkins*, the Supreme Court held that the female plaintiff could bring suit against Price Waterhouse under a "mixed motive" gender discrimination theory, where discriminatory reasons were a "motivating" factor to a plaintiff's adverse employment decision.[146] This motivating factor language was then included in the Civil Rights Act of 1991.[147]

Vanessa M. Fenley, *Inch by Inch: Gender Equity Since the Civil Rights Act of 1964*, 34 REV. OF PUB. PERSONNEL ADMIN., 1, 44 (2013).

141. Joni Hersch & Jennifer Bennett Shinall, *Fifty Years Later: The Legacy of the Civil Rights Act of 1964*, 34 J. OF POL'Y ANALYSIS & MGMT. 251, 430 (2015).

142. *See* Deitch, *supra* note 140, at 189, 199 ("[W]hen the state makes policy that supposedly benefits women or expands women's rights, it does so within a framework that also reinforces women's subordination. . . [T]he EEOC initially attempted to ignore women in the implementation process.") (citing CATHARINE MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 226-27 (1989)); Vicki Schultz, *Telling Stories about Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument*, 103 HARV. L. REV. 1749, 1770-71 (1990).

143. *See, e.g.*, DOROTHY SUE COBBLE, THE OTHER WOMEN'S MOVEMENT: WORKPLACE JUSTICE AND SOCIAL RIGHTS IN MODERN AMERICA 185 (2005); ALICE S. ROSSI, FEMINISTS IN POLITICS: A PANEL ANALYSIS OF THE FIRST NATIONAL WOMEN'S CONFERENCE 16 (1982) ("The primary goals of NOW (National Organization for Women) in its founding year were closely modeled after those of civil rights organizations and of the Kennedy Commission itself; that is, to expand women's economic rights and opportunities. NOW was to be a kind of NAACP for women.").

144. Williams v. Saxbe, 413 F. Supp. 654 (D.D.C. 1976), *vacated on other grounds sub nom.* Williams v. Bell, 587 F.2d 1240 (D.C. Cir. 1978).

145. 42 U.S.C. § 2000e-5(g)(1) (Westlaw through P.L. 116 – 53).

146. Price Waterhouse v. Hopkins, 490 U.S. 228, 250, 258 (1989). However, the defendant could escape liability by showing that "it would have made the same decision even if it had not taken the plaintiff's gender into account."

147. *See* 42 U.S.C. § 2000e-2(m) (Westlaw). Unlike in *Price Waterhouse v. Hopkins*, if the defendant can show it would have made the same employment decision, the defendant is still liable; however, plaintiff's relief is limited. § 2000e-5(g)(2)(B) (Westlaw).

Modern affirmative action is a product of the 1960s, when there was a push to correct social disparities and to give equal access to the resources that could help every American achieve a good life in society.[148] These resources included decent housing, education, and employment.[149] In the educational context, the Supreme Court did away with a long-standing precedent that held segregated schools were legal.[150] This, in turn, led to integration in public schools.[151] It took the passage of the Civil Rights Act of 1964, however, to address other areas such as private employment.[152]

Quotas are a form of affirmative action that mandate numbers such as the percentage of women or minorities that must be in certain positions. Quotas aim to address the under-representation of minority groups,[153] and speed up attainment of equality by mandating specific minimum numbers for representation. Quotas have been used in European countries with regard to equality for women on boards.[154] Quotas, however, face legal hurdles in the United States, as will be explained below. Instead, affirmative action has been used in the United States.[155] Affirmative action uses goals, the attainment of which is not required, for the same purpose.[156] It is an inferior method that is explained by the history of the drive for equality by the legislatures and courts in the last 50-plus years.

In the late 1970s, companies, universities, and governmental institutions began to give preferences on the basis of race to groups that traditionally suffered discrimination.[157] Governmental racial preferences were challenged under the Equal Protection Clause of the Constitu-

148. *See* Hugh Davis Graham, *The Origins of Affirmative Action: Civil Rights and the Regulatory State*, 523 ANNALS AM. ACAD. POL. & SOC. SCI. 50 (1992).

149. *See, e.g.*, JAMES W. BUTTON, BLACKS AND SOCIAL CHANGE: IMPACT OF THE CIVIL RIGHTS MOVEMENT IN SOUTHERN COMMUNITIES (1989).

150. Brown v. Board of Educ., 347 U.S. 483 (1954).

151. In this context, the Constitution protects citizens against discrimination by government action. It does not address actions by private actors such as schools.

152. 42 U.S.C. § 2000e *et seq.* (Westlaw).

153. Thekla Morgenroth & Michelle K. Ryan, *Quotas and Affirmative Action: Understanding Group-Based Outcomes and Attitudes*, 3 SOC. & PERSONALITY PSYCHOL. COMPASS, 2 https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/spc3.12374.

154. *See infra* Section II.B for a discussion of the use of quotas for women on boards in some European countries.

155. Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978).

156. *See* R.G., *What is Affirmative Action?*, THE ECONOMIST (June 15, 2018), https://www.economist.com/open-future/2018/06/15/what-is-affirmative-action.

157. Terry Morehead Dworkin et al., *The Role of Networks, Mentors, and the Law in Overcoming Barriers to Organizational Leadership for Women with Children*, 20 MICH. J. GENDER & L. 83, 88 (2013).

tion.[158] In *Regents of the University of California v. Bakke,* the Supreme Court laid the groundwork for allowing racial preferences.[159] Justice Powell, who cast the deciding vote, cited one of the school's justifications for the preference—the educational benefits that flow from an ethnically diverse student body—to be a constitutionally permissible goal.[160] At the same time, explicit racial quotas were found unconstitutional because they completely excluded non-preferred groups from admission seats.[161] Subsequent decisions laid out the parameters of affirmative action and goals, as these preferences are known,[162] and courts extended the concepts to workers in the private sector.[163] Justice Powell's ban on quotas in *Bakke* still stands, however.

Almost a decade later, affirmative action was extended to women.[164] In *Johnson v. Transportation Agency,* the Court held that an affirmative action plan that considered being female to be a "plus factor" in the hiring process was valid when there was a "manifest imbalance" in terms of women's representation.[165] The Court noted that no men were automatically excluded from the program and no positions were set aside for women, i.e., that there were no quotas.[166] According to the Court, in order for an affirmative action program to be valid, there must be: 1) evidence of a manifest imbalance or past discrimination; 2) an existing plan under which the woman was favored; 3) a temporary plan (lasting only until the imbalance was corrected); 4) only qualified people selected; 5) no unnecessary trammeling of the interests of the majority; and 6) goals, not quotas.[167]

Subsequent court decisions have shown that the legitimacy of an affirmative action plan turns on the level of scrutiny to be applied.[168] A divergence developed between public sector affirmative action plans and those voluntarily adopted by private sector organizations. Public sector

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158. *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).
159. *Bakke*, 438 U.S. at 317-18. The Court was split 4-1-4. Justice Powell, in casting the deciding vote, found that the University's program could not be sustained. *Id.*
160. *Bakke*, 438 U.S. at 311-12.
161. The Court cited Harvard's program as an example of a successful, race-conscious program that does not use quotas. *Bakke*, 438 U.S. at 316 – 20.
162. When Title VII was enacted, affirmative action in private employment was mentioned only as a remedy to intentional discrimination. *See* 42 U.S.C.A. § 2000e-5(g)(1) (Westlaw through P.L. 116 – 56).
163. *See, e.g.*, United Steel Workers of Am. v. Weber, 443 U.S. 193, 208-09 (1979).
164. Jonathan S. Leonard, *Women and Affirmative Action*, 3 J. ECON. PERSP., 61, 62 (1989).
165. Johnson v. Transp. Agency, 480 U.S. 616, 631 – 34 (1987).
166. *Johnson*, 480 U.S. at 638.
167. *See Johnson*, 480 U.S. at 640 – 41.
168. *See* Univ. & Cmty. Coll. Sys. v. Farmer, 930 P.2d 730, 735 (Nev. 1997).

plans have been subjected to much closer scrutiny because they involve discrimination by the government, necessarily implicating the Constitution's demand for equal treatment.[169] In general, the courts have become much more restrictive regarding what is sufficient to justify affirmative action in the public sector, while the private sector has been relatively unaffected because the same constitutional constraints are not applicable.[170] Thus, private sector affirmative action plans are examined under the Title VII rules discussed in *Johnson*.

Voluntarily-adopted plans in the private sector, if they follow the restrictions listed above, can also be sustained. Having a preference for a woman outside of an established affirmative action program, though, can subject the employer to suits for "reverse discrimination."[171] Beginning with the 1989 case of *City of Richmond v. J.A. Croson*,[172] which involved set-asides in public works projects, and continued in *Adarand Constructors, Inc. v. Pena*,[173] the Supreme Court has demanded a strict scrutiny analysis for affirmative action in the public sector, which requires a compelling governmental interest to justify the affirmative treatment and that the plan be narrowly tailored to achieve that interest.[174]

The use of quotas in the United States to rectify racial and gender imbalances has a long and troubled history. At times, quotas were used to limit or prevent certain groups from emigrating to the U.S.[175] Quotas have also been used in other sectors such as employment and education for the same purpose.[176] For example, many of the most prestigious universities, such as Princeton, Yale, and Harvard, had quotas on the number of Jewish people whom they would admit in the first half of the

169. *See, e.g.*, City of Richmond v. J.A. Croson Co., 488 U.S. 469, 490–92 (1989).
170. Dworkin et al., *supra* note 157, at 91–92.
171. *See, e.g.*, Bd. of Regents of Univ. of Neb. v. Dawes, 522 F.2d 380, 381 (8th Cir. 1975) (suit by men who earned less than women after minimum wages for women were set to redress wage imbalance); Rudebusch v. Arizona, 436 F. Supp. 2d 1058, 1064-67 (D. Ariz. 2006) (regarding a raise in women's pay for equity purposes without adjusting men's pay). The plaintiff in a reverse discrimination case usually has the additional proof requirement of showing that the employer is one of those unusual employers who discriminates against the majority.
172. *J.A. Croson Co.*, 488 U.S. at 477–78.
173. *See, e.g.*, Adarand Constructors v. Pena, 515 U.S. 200, 227 (1995).
174. *See, e.g.*, *J.A. Croson Co.*, 488 U.S. at 477–78; *Adarand Constructors*, 515 U.S. at 227.
175. Mae M. Ngai, *The Architecture of Race in American Immigration Law: A Reexamination of the Immigration Act of 1924*, 86 J. AM. HIST., 67, 67 (1999).
176. MARCIA GRAHAM SYNNOTT, THE HALF-OPENED DOOR: DISCRIMINATION AND ADMISSIONS AT HARVARD, YALE AND PRINCETON, 1900-1970 (Greenwood Press 1979).

twentieth century.[177] Stanford University limited the number of women admitted in order to avoid the "feminization" of the University, a limitation that persisted into the 1960s.[178] Jane Stanford, who endowed the University, felt that having too many women was not consistent with honoring her deceased son, in whose memory the University was founded.[179] Thus, quotas in the United States have been used to control a group that, at the time, was considered undesirable in some way. Today, Harvard University is being sued for allegedly setting quotas on Asian-Americans in a variation on that theme.[180] Harvard allegedly is using quotas in the name of diversity or racial balancing, otherwise known as affirmative action.[181] The Harvard suit is seen as an attempt to bring an affirmative action case before the current Supreme Court, viewed by some as conservative, in the hope that it will lead the Court to ban affirmative action.[182]

B. *The European Union*

This Section briefly discusses the laws and regulations with regard to gender diversity in seven E.U. countries. These countries, France, Germany, Spain, Italy, Netherlands, Belgium, and Finland, were the home countries of the largest and most liquid stocks of the Eurozone in 2015.[183] All seven countries are represented by companies included in the EURO STOXX 50 index, and each of the countries has regulations

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177. Shira Telushkin, *The Vanishing Ivy League Jew*, TABLET (Oct. 15, 2018, 9:30 PM), https://www.tabletmag.com/jewish-news-and-politics/272350/the-vanishing-ivy-league-jew; *see also*, Ben Sales, *Harvard Once Capped the Number of Jews. Is It Doing the Same Thing to Asian Americans Now?*, JEWISH TELEGRAPHIC AGENCY (Oct. 17, 2018, 12:47PM), https://www.jta.org/2018/10/17/united-states/harvard-once-capped-the-number-of-jews-is-it-doing-the-same-thing-to-asians-now.
178. Sam Scott, *Why Jane Stanford Limited Women's Enrollment to 500*, STANFORD MAG., Sept. 2018, at 48. She pictured the university as being a rival to Harvard and Oxford, neither of which admitted women. *Id.* at 50.
179. The total number was eventually set at 500. Susan B. Anthony was appalled that a woman would do this to other women. *Id.*
180. *See, e.g.*, Melissa Korn & Nicole Hong, *Harvard Faces Probe over Admissions Policy*, WALL ST. J., Nov. 22, 2017, at A1.
181. Anemona Hartocollis, *Harvard Rated Asian-American Applicants Lower on Personality Traits, Suit Says*, N.Y. TIMES, June 16, 2018, at A1. The class of 2021 is 22.2 percent Asian-American. *Id.*
182. *See id.*
183. *EURO STOXX 50*, STOXX, https://www.stoxx.com/index-details?symbol=SX5E (last visited Mar. 3, 2017).

regarding the inclusion of women on corporate boards.[184] Excepting Finland, where board gender diversity is regulated in the country's corporate governance code, all other countries have integrated these regulations into national laws.[185] In France, Spain, and the Netherlands, the regulations apply to companies surpassing certain thresholds regarding their number of employees or their turnover.[186] In Germany, the law applies to listed companies that are fully obliged to employee co-determination, or the right of the employees to participate in the decision-making process of a company.[187]

Five of the seven countries have a target quota for women on corporate boards.[188] France and Italy instituted a two-step approach. In these countries, one quota was required to be reached by the companies within a given period of time with a stricter quota required thereafter.[189] The laws on quota requirements for women on boards tend to focus on the supervisory board.[190] Within the EURO STOXX 50 countries, only in the Netherlands does the quota for women also apply to management boards.[191] This index has a fixed number of components and is part of the STOXX blue-chip index family.[192] Apart from the rules in Finland, which are based on company self-regulation, all other quota requirements for women are compulsory.[193] Nevertheless, in Spain and the Netherlands the laws do not include any sanctions for companies failing to achieve the defined female quota.[194] Hence, it is questionable whether these quotas are, in reality, binding.

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184. *Women's Quota*, DIW BERLIN, https://www.diw.de/de/diw_01.c.412682.de/presse/diw_glossar/frauenquote.html (last updated Jan. 2019).
185. *Gender Quotas*, FINNISH INST. FOR HEALTH & WELLNESS, https://thl.fi/en/web/gender-equality/gender-equality-in-finland/decision-making/gender-quotas (last updated June 26, 2018); *Women's Quota*, *supra* note 184.
186. *Women's Quota*, *supra* note 184.
187. *Quote für Mehr Frauen in Führungspositionen: Privatwirtschaft*, BUNDESMINISTERIUM FÜR FAMILIE, SENIOREN, FRAUEN UND JUGEND (May 5, 2017), https://www.bmfsfj.de/bmfsfj/themen/gleichstellung/frauen-und-arbeitswelt/quote-privatwitschaft/quote-fuer-mehr-frauen-in-fuehrungspositionen—privatwirtschaft/78562?view=DEFAULT.
188. *Women's Quota*, *supra* note 184.
189. *Id.*
190. *Id.*
191. *Id.*
192. *EURO STOXX 50*, *supra* note 183.
193. *Women's Quota*, *supra* note 184.
194. *Id.*

In 2007, Spain implemented the Law for the Effective Equality of Women and Men, or the Equality Law.[195] The law establishes a 40 percent quota for women on corporate boards. Sanctions, however, are not integrated into the law.[196] The Amendment of the Companies Act, effective December 2014, requires companies to define targets for female representation on the board and to prepare a plan on how to achieve that target.[197]

Belgium, France, and Italy introduced quotas for women on boards in 2011.[198] All three laws are compulsory and sanction companies that are noncompliant.[199] The Belgian law guarantees that women constitute a minimum percentage of the board of directors; it requires a quota of at least 33 percent women.[200] In France, the regulation was codified as part of the constitution as an extension of the parity clause to "social and professional responsibilities."[201] The law targets supervisory boards and requires 20 percent women on the boards by 2014 and 40 percent by 2017.[202] The sanction in France is identical to the one in Belgium.[203] In both countries, board seat appointments violating the law are invalid and must be vacated.[204] The Italian Golfo-Mosca Act requires boards to be comprised of 20 percent women by 2012 and 33 percent by 2015.[205] However, the regulation is only valid for three consecutive elections of the supervisory board after the implementation of the law.[206] Companies not reaching the quotas face financial penalties—the minimum fine is

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195. Reyes Palá-Laguna & Luisa Esteban-Salvador, *Gender Quota for Boards of Corporations in Spain*, 17 EUR. BUS. ORG. L. REV. 379, 379–80 (2016).
196. Tània Verge & Emanuela Lombardo, *The Differential Approach to Gender Quotas in Spain: Regulated Politics and Self-Regulated Corporate Boards*, *in* EUROPEAN UNIVERSITY INSTITUTE WORKING PAPERS 7 (2015).
197. Palá-Laguna & Esteban-Salvador, *supra* note 195, at 383–84.
198. *Women's Quota*, *supra* note 184.
199. *Id.*
200. Petra Meier, *Gender Quotas in Belgium: A Never Ending Story of Gendering Compartmentalized Citizenship?* 3 (European University Institute, Working Paper Law 2015/25, 2015), https://cadmus.eui.eu/bitstream/handle/1814/35975/LAW_2015_25.pdf.
201. European Parliament, *The Policy on Gender Equality in France* 12 (2015), http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/510024/IPOL_IDA(2015)510024_EN.pdf.
202. *Id.* at 12.
203. *Women's Quota*, *supra* note 184.
204. *Id.*
205. Giulia Ferrari et al., *Gender Quotas: Challenging the Boards, Performance, and the Stock Market*, INSTITUTE FOR THE STUDY OF LABOR (IZA), DISCUSSION PAPER NO. 10239 4 (2016).
206. *Id.*

€100,000, while the maximum fine is €1,000,000—and a breakup of the supervisory board.[207]

In 2013, the Netherlands integrated a 30 percent quota for women on boards into the Dutch Civil Code.[208] The quota is compulsory but without sanctions, and it applies to the supervisory and the management boards of a company.[209] Originally, the quota was only intended to be in effect until 2016, with the idea that the percentages of women on boards would reach the 30 percent target by then.[210] The target was not achieved, however. In 2017, the existing law was extended, requiring companies to attain 20 percent female board membership by 2019.[211] If the 20 percent target is achieved, companies will have until 2023 to achieve 30 percent female board membership.[212] If the 20 percent target is not then achieved, the government will impose a 30 percent target on the company and combine it with sanctions.[213]

In Germany, the law requires supervisory boards to meet a quota of 30 percent women.[214] If companies do not fulfill the quota, any vacant seats on the supervisory board stay unoccupied until filled with a woman to achieve the quota.[215] Moreover, companies must define targets for the percentage of women on their supervisory and management boards as well as for their top management-level positions.[216] These targets must be disclosed and may not be set any lower than the current percentage of women in these positions.[217] The time span to achieve these targets is five years.[218]

207. *Women's Quota*, *supra* note 184.

208. *See* Sonja A. Kruisinga & Linda Senden, *Gender Diversity on Corporate Boards in the Netherlands: Waiting on the World to Change*, *in* 1 GENDER DIVERSITY IN THE BOARDROOM: THE USE OF DIFFERENT QUOTA REGULATIONS 177, 177 (Cathrine Seierstad et al., eds., 2017).

209. *See id.* at 187.

210. *Id.* at 177.

211. *Id.* at 187.

212. *Id.* at 189.

213. *Id.*

214. Gesetz für die gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst [FüPoG] [Law for the Equal Participation of Women and Men in Leadership Positions in the Private and Public Sector], Apr. 24, 2015, BUNDESGESETZBLATT, TEIL I [BGBL l], at 654, art. 3 (Ger.), http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl115s0642.pdf.

215. *Id.*

216. *Id.*

217. *Id.* at 654, art. 3.

218. *Id.*

Finland has a self-regulated system in which companies set their own goals for the percentage of women on their corporate boards.[219] The regulation applies to companies that have been listed since 2008. If only one gender is represented on a corporate board, the company must publicly explain the reason for it.[220]

The above laws and regulations are summarized in the following table.

Table 1: Laws regarding gender quota in countries having companies in the EURO STOXX index (Main Source: DIW Berlin, 2018, Women Quota).[221]

Country	Law promulgation	Quota	Deadline	Boards	Company type	Sanctions
Belgium	2011	30%	2017	Management board	Listed companies & state-owned enterprises	Any new appointment is void if the quota is not met
Finland	-	-	-	-	-	-
France	2011	20% / 40%	2014/ 2017	Supervisory board	Listed companies, companies with over 500 employees or more than 50 million Euro sales	Any new appointment is void if the quota is not met
Germany	2015	30%	2016	Supervisory board	Listed companies and companies subjected to co-determination	The position remains vacant if the quota is not met
Italy	2011	20% / 30%	2012/ 2015	Supervisory board	Listed companies & state-owned enterprise	Financial penalty up to one million Euro
Netherlands	2011	30%	2016	Supervisory and management board	Listed companies & companies with over 250 employees	No
Spain	2007	40%	2015	Management board	State-owned enterprises and corporations & companies with over 250 employees	No

We conducted an empirical examination of the companies of the EURO STOXX index as of 2015 to establish whether these companies

219. *See* Virginie Issumo et al., *Country Tables – Länderberichte*, 19 DJBZ ZEITSCHRIFT DES DEUTSCHEN JURISTINNENBUNDES [DJBZ] 119, 122 (2016).

220. *Id.*

221. *Women's Quota*, *supra* note 184. Finland does not have gender quota legislation. Section 8 of the Corporate Governance Code set by the Securities Market Association for listed companies, which applies to all companies listed on the Helsinki Stock Exchange, includes a recommendation that both genders be represented on the board, and requires a public statement if it deviates from the recommendation. This approach has been successful in Finland. See FINNCHAM WOMEN LEADERS PROGRAM, RECORD NUMBER OF WOMEN DIRECTORS IN FINISH LISTED COMPANIES, The Seventh WOMEN DIRECTORS AND EXECUTIVES REPORT, 11–13 (2017), https://naisjohtajat.fi/wp-content/uploads/sites/28/2016/05/eng-keskuskauppa kamarin-naisjohtajaselvitys-2017.pdf.

have successfully fulfilled the board gender diversity requirements of their respective jurisdictions. We examined the percentage of female members in supervisory positions. The EURO STOXX 50 Index was selected to represent the 50 largest companies among 19 supersectors in the year 2015, and includes companies from seven Eurozone countries.

The following table gives an overview of the 50 companies that make up the EURO STOXX index, their sector, country of origin and the percentage of women on their supervisory boards.

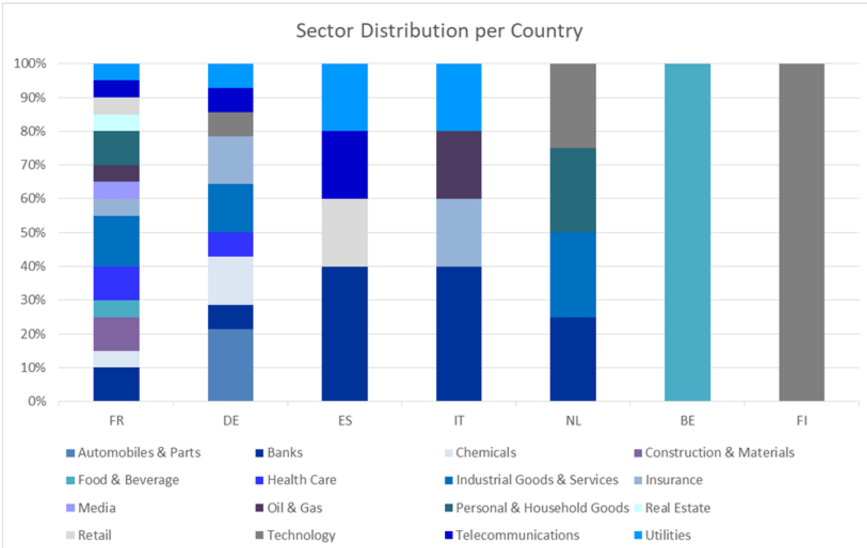
Table 2: Overview of the 50 EURO STOXX companies from 2015 (Information from STOXX).[222]

Nr.	Company's name	Sector	Country	No. of Women	Total supervisory board members	Percentage of Women on the Board	Earnings before Taxes (Mil €)	Employees total	EBT/Total no. Of Employees (in thousands)
1	Air Liquide	Chemicals	FR	5	12	41.7%	2,490.4	50,000	49.8
2	AIRBUS GROUP SE	Industrial Goods & Services	FR	2	12	16.7%	2,359.0	136,574	17.3
3	ALLIANZ	Insurance	DE	4	13	30.8%	9,763.0	142,459	68.5
4	ANHEUSER-BUSCH INBEV	Food & Beverage	BE	2	14	14.3%	11,482.3	150,000	76.5
5	ASML HLDG	Technology	NL	3	9	33.3%	1,856.1	14,681	126.4
6	ASSICURAZIONI GENERALI	Insurance	IT	4	10	40.0%	3,293.0	70,000	47.0
7	AXA	Insurance	FR	5	14	35.7%	7,521.0	98,279	76.5
8	BASF	Chemicals	DE	3	12	25.0%	5,297.0	112,435	47.1
9	BAYER	Chemicals	DE	4	20	20.0%	5,254.0	116,800	45.0
10	BCO BILBAO VIZCAYA ARGENTARIA	Banks	ES	3	12	25.0%	4,428.0	137,968	32.1
11	BCO SANTANDER	Banks	ES	4	11	36.4%	9,172.0	193,863	47.3
12	BMW	Automobiles & Parts	DE	6	20	30.0%	8,706.0	122,244	71.2
13	BNP PARIBAS	Banks	FR	7	14	50.0%	9,790.0	189,077	51.8
14	CARREFOUR	Retail	FR	4	16	25.0%	1,673.0	380,920	4.4
15	DAIMLER	Automobiles & Parts	DE	5	20	25.0%	12,280.0	284,015	43.2
16	DANONE	Food & Beverage	FR	5	13	38.5%	1,925.0	99,771	19.3
17	DEUTSCHE BANK	Banks	DE	7	22	31.8%	-6261.0	101,104	-61.9
18	DEUTSCHE POST	Industrial Goods & Services	DE	7	20	35.0%	2,055.0	497,745	4.1
19	DEUTSCHE TELEKOM	Telecommunications	DE	8	20	40.0%	4,754.0	225,243	21.1
20	E.ON	Utilities	DE	2	12	16.7%	-5841.0	56,490	-103.4
21	ENEL	Utilities	IT	2	6	33.3%	5,229.0	67,914	77.0
22	ENGIE	Utilities	FR	11	19	57.9%	-5262.0	154,950	-34.0
23	ENI	Oil & Gas	IT	1	5	20.0%	-3535.0	28,246	-125.2
24	ESSILOR INTERNATIONAL	Health Care	FR	3	16	18.8%	1,120.0	61,000	18.4
25	FRESENIUS	Health Care	DE	0	12	0.0%	3,262.0	222,305	14.7
26	GRP SOCIETE GENERALE	Banks	FR	7	14	50.0%	5,878.0	145,700	40.3
27	IBERDROLA	Utilities	ES	5	13	38.5%	2,931.3	30,938	94.7
28	Industria de Diseno Textil SA	Retail	ES	2	8	25.0%	3,212.7	152,854	21.0
29	ING GRP	Banks	NL	2	8	25.0%	5,680.0	54,873	103.5
30	INTESA SANPAOLO	Banks	IT	5	19	26.3%	4,056.0	90,807	44.7
31	L'OREAL	Personal & Household Goods	FR	6	15	40.0%	4,517.4	82,900	54.5
32	LVMH MOET HENNESSY	Personal & Household Goods	FR	4	17	23.5%	5,983.0	125,346	47.7
33	MUENCHENER RUECK	Insurance	DE	8	20	40.0%	3,223.0	43,554	74.0
34	NOKIA	Technology	FI	2	8	25.0%	1,511.0	56,690	26.7
35	ORANGE	Telecommunications	FR	6	15	40.0%	3,197.0	156,000	20.5
36	PHILIPS	Industrial Goods & Services	NL	3	9	33.3%	623.0	112,959	5.5
37	SAFRAN	Industrial Goods & Services	FR	4	17	23.5%	-1355.0	70,087	-19.3
38	SAINT GOBAIN	Construction & Materials	FR	6	15	40.0%	622.0	170,372	3.7
39	SANOFI	Health Care	FR	5	14	35.7%	5,243.0	115,631	45.3
40	SAP	Technology	DE	4	18	22.2%	3,991.0	76,986	51.8
41	SCHNEIDER ELECTRIC	Industrial Goods & Services	FR	5	13	38.5%	1,736.0	160,000	10.9
42	SIEMENS	Industrial Goods & Services	DE	6	20	30.0%	5,983.0	348,000	17.2
43	TELEFONICA	Telecommunications	ES	2	18	11.1%	316.0	129,890	2.4
44	TOTAL	Oil & Gas	FR	4	12	33.3%	3,677.5	96,019	38.3
45	UNIBAIL-RODAMCO	Real Estate	FR	4	11	36.4%	2,678.3	1,966	1,362.3
46	UNICREDIT	Banks	IT	1	5	20.0%	1,775.9	43,479	40.8
47	UNILEVER NV	Personal & Household Goods	NL	6	11	54.5%	7,133.0	168,921	42.2
48	VINCI	Construction & Materials	FR	6	15	40.0%	3,022.0	185,452	16.3
49	VIVENDI	Media	FR	6	14	42.9%	1,196.0	16,395	72.9
50	VOLKSWAGEN PREF	Automobiles & Parts	DE	3	20	15.0%	-5688.0	114,006	-49.9

222. *EURO STOXX 50*, *supra* note 183; *EURO STOXX 50 Werte*, FINANZEN.NET, https://www.finanzen.net/index/euro_stoxx_50/werte (last visited Mar. 3, 2017). Information also obtained from the annual reports of all 50 EURO STOXX companies: Air Liquide, Airbus Group SE, Allianz, Anheuser-Busch InBev, ASML Holding, Assicurazioni Generali, AXA, BASF, Bayer, BCO Bilbao Vizcaya Argentaria, BCO Santander, BMW, BNP Paribas, Carrefour, Daimler, Danone, Deutsche Bank, Deutsche Post, Deutsche Telekom, E.ON, Enel, Engie, Eni, Essilor International, Fresenius, GRP Société Générale, Iberdrola, Industria de Diseño Textil, ING Group, Intesa Sanpaolo, L'Oréal, LVMH Moet Hennessy, Münchener Rück, Nokia, Orange, Philips, Safran, Saint Gobain, Sanofi, SAP, Schneider Electric, Siemens, Telefónica, Total, Unibail-Rodamco, UniCredit, Unilever, VINCI, Vivendi, Volkswagen.

The allocation among different sectors can be seen for each country of the EURO STOXX 50 index in Figure 2.

Figure 2: The 50 EURO STOXX companies in Europe and their sectors (Source: Information obtained from STOXX).[223]



As shown in Figure 2, the percentage of women is not much higher in technologically more innovative sectors such as Media (42.86 percent) compared to traditional sectors such as Construction & Materials (40.0 percent) and Personal & Household Goods (39.36 percent).

Figure 3 shows the number of companies of each country in the EURO STOXX 50 index. Most EURO STOXX companies are located in France (20), followed by Germany (14), Spain (5), Italy (5), the Netherlands (4), Belgium (1), and Finland (1).

223. *EURO STOXX 50*, *supra* note 183. *See supra* note 222 for a list of the 50 companies.

Figure 3: Number of EURO STOXX 50 companies per country (Source: own representation based on the information from STOXX).[224]

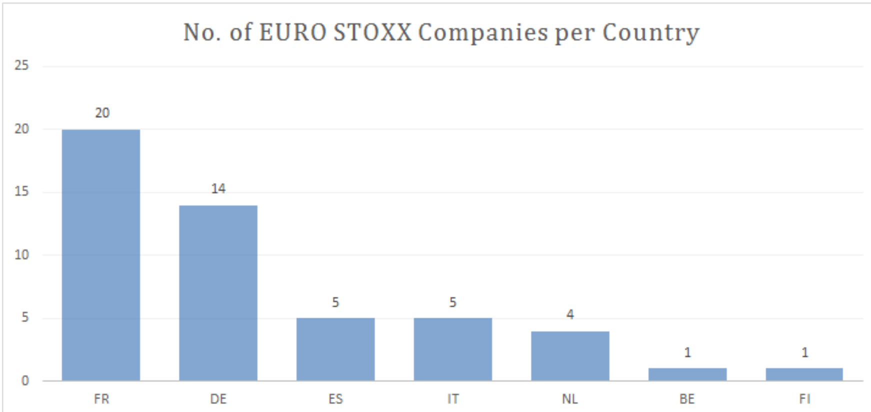
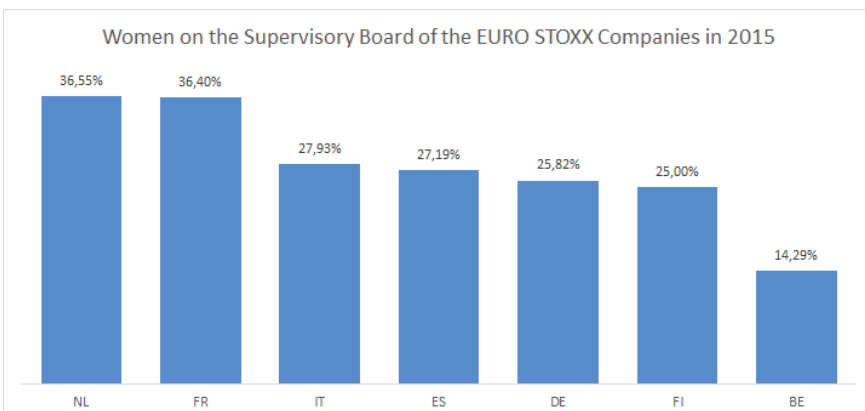


Figure 4 shows the percentage of women in supervisory boards in each of the seven countries, as given by the EURO STOXX companies.

Figure 4: Number of women on the supervisory board of EURO STOXX companies in 2015 in the Netherlands, France, Italy, Spain, Germany, Finland and Belgium. (Information with regard to the number of women on the supervisory board was extracted from the 2015 annual reports of the respective companies).[225]



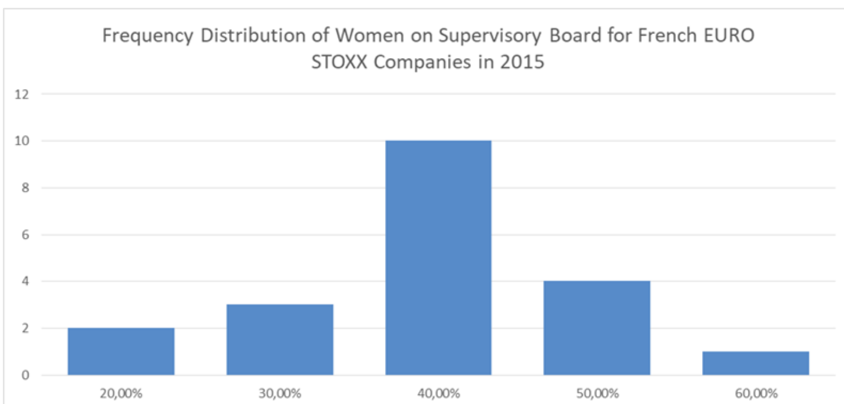
In six of the seven countries, the percentage of women on supervisory boards in 2015 averaged above 25 percent. In contrast, only two countries had at least 25 percent female management board

224. *Id.*
225. *See supra* note 222 for a list of the 50 companies.

members in 2014.[226] The countries with the highest percentages of women on supervisory boards are the Netherlands with 36.6 percent and France with 36.4 percent. Figure 4 shows that, as of 2015, the expected female quota of 30 percent to 40 percent had not yet been achieved by EURO STOXX companies.

Germany and France have the greatest number of companies in the EURO STOXX 50 index, thus we examined the data from these countries more closely. The frequency distribution in Figure 5 shows that most of France's EURO STOXX companies have attained 40 percent female representation. One French company has a percentage of women approaching 60 percent on its supervisory board (57 percent) and four French enterprises have supervisory boards comprised of nearly 50 percent women.

Figure 5: Frequency distribution of women on the supervisory board of French EURO STOXX companies in 2015 (Information with regard to the number of women on the supervisory board was extracted from the 2015 annual reports of the respective companies).[227]



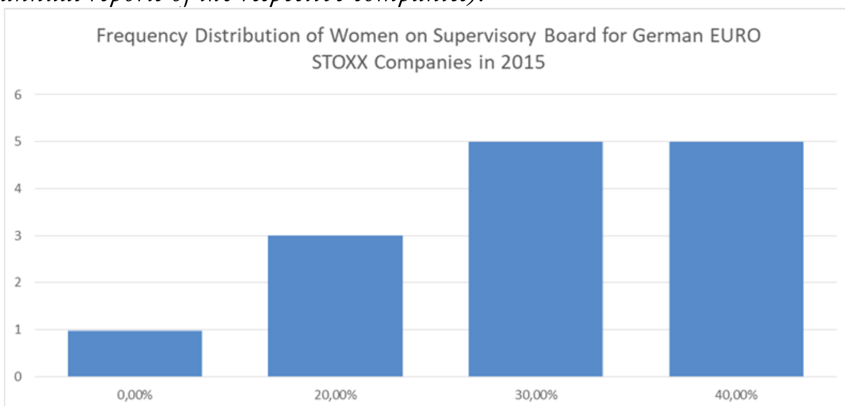
Women are less well-represented on Germany's supervisory boards. There are no German companies with 50 percent women on its supervisory board. Two companies reached the highest percentage of

226. Bettina Binder et al., *Is Enterprise Success a Women's Topic?*, 9 CONF. OF THE EUROMED ACAD. OF BUS. 267, 273 (2016).

227. Information obtained from the annual reports of all French EURO STOXX companies: Air Liquide, Airbus Group SE, AXA, BNP Paribas, Carrefour, Danone, Engie, Essilor International, GRP Société Générale, L'Oréal, LVMH Moet Hennessy, Orange, Safran, Saint Gobain, Sanofi, Schneider Electric, Total, Unibail-Rodamco, VINCI, Vivendi.

women on supervisory boards for German enterprises: 40 percent. One company reached 35 percent and another 32 percent. See Figure 6.

Figure 6: Frequency distribution of women on the supervisory boards of German EURO STOXX companies in 2015 (Information with regard to the number of women on the supervisory board was extracted from the 2015 annual reports of the respective companies).[228]



Though the above analysis offers a limited view of the percentage of women on boards at the European level, it can be seen that the French companies in the EURO STOXX index not only comply with the regulations, they exceed the requirements. It should also be noted that Germany's legal requirements were established later than those of other European countries. The German EURO STOXX company boards are made up of between 15 percent and 40 percent women, except one company, Fresenius, which had an all-male supervisory board in 2015. Some of the Italian and Spanish companies that are part of the EURO STOXX index still need to increase the number of women on their boards in order to be compliant with the regulations, while in the Netherlands, of the four EURO STOXX companies, only one did not fulfill the quota. Belgium and Finland had one company each in the 2015 EURO STOXX index, thus it is difficult to draw conclusions about the percentage of women on the supervisory boards of these at the country level. Gender parity in the boardroom as achieved by some French companies sends a positive signal showing that barriers to gender parity can be overcome.

228. Information obtained from the annual reports of all German EURO STOXX companies: Allianz, BASF, Bayer, BMW, Daimler, Deutsche Bank, Deutsche Post, Deutsche Telekom, E.ON, Fresenius, Münchener Rück, SAP, Siemens, Volkswagen.

The main takeaway from analyzing women's representation on the corporate boards of the largest European companies as of 2015 is the effectiveness of the board gender quotas. Though the progress is regarded as slow, gender quotas did trigger adoption of gender-balanced boards.

C. *Japan*

As early as the nineteenth century, female Japanese activists have been striving for female advancement in society, for equality in the workplace, and against gender discrimination.[229] Prior to the Meiji Restoration in 1868, women were subservient to the patriarchal system in which all power was held by the senior male member of the family.[230] After 1868, under the influence of Western cultural values, a few legislative changes improved women's lives, such as restricting trafficking in women, granting divorce rights, and compulsory elementary education for girls.[231] The women's liberation movement generally, and particularly the 1911 Bluestocking (Seito) movement, modeled after the one in Britain, militated against the patrilineal extended family system.[232]

The Western women's liberation movements of the 1960s and 1970s had a considerable impact in Japan, spurring a proliferation of groups and organizations that demanded equal employment opportunities and pay, sexual liberation, reproductive rights, and equal political representation.[233] These two decades witnessed unprecedented economic growth and coincided with the establishment of the traditional model of breadwinner-husband and housekeeper-wife.[234] However, in the 1980s, the novelty of the Japanese economic miracle started to wear off and the single income model was no longer sustainable for the average family. Married women began to seek employment, most of which was temporary or part-time.[235]

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229. *See* SANDRA BUCKLEY, BROKEN SILENCE: VOICES OF JAPANESE FEMINISM 11 (1997).
230. YUJI IWASAWA, INTERNATIONAL LAW, HUMAN RIGHTS AND JAPANESE LAW 205 (1998).
231. *Id.*
232. Yasuko Morihara Grosjean, *From Confucius to Feminism: The Japanese Woman's Quest for Meaning*, 11 ULTIMATE REALITY AND MEANING 166 (1988).
233. Elise K. Tipton, *Being Women in Japan, 1970-2000*, *in* WOMEN IN ASIA 208, 208 (Louise Edwards & Mina Roces, eds.) (2000).
234. Machiko Matsui, *Evolution of the Feminist Movement in Japan*, 436 NWSA J. 435, 441 (1990).
235. *Id.*

In response to international pressure to eliminate sexual discrimination, as well as a result of changes in labor market trends,[236] the government passed the Equal Employment Opportunity Law (EEOL) in 1986, guaranteeing equal employment opportunities for men and women, and enabling women's access to career-track jobs.[237] Over the following decade, also dubbed "the lost decade," which marked the beginning of Japan's economic downturn, a number of victories were achieved on the feminist front. These were the Childcare Leave Law (1992), the Nursing Care Insurance Law (1997), the Law to Promote Specified Nonprofit Activities (1998), the Law for Punishing Acts Related to Child Prostitution and Child Pornography and for Protecting Children (1999), the Anti-Stalking Law (2000), and the Law for the Prevention of Spousal Violence and the Protection of Victims (2001).[238] Although the scope and some of the effects of these laws have been positive in terms of promoting equality for women, some authors point out that they were in fact serving politicians' and businesses' hidden agendas and contributed to widening the gender divide.[239]

One feminist author, Ayako Kano, contends that the passing of these laws in the 1990s was a sign that the state was embracing the ideas of feminism.[240] However, scholar Emma Dalton has noted that gender equality policies envisioning a society "where women shine" can have an ambiguous effect: they create a polarization not only between men and women, who must compete for a decreasing number of regular jobs, but also between a minority of privileged women who can and will benefit from these measures to advance their careers and the vast majority of women who work in temporary, low paid jobs.[241]

As a signatory to the United Nation Convention on the Elimination of All Forms of Discrimination against Women, Japan has come under intense international pressure to tackle the issue of female un-

236. Lorraine Parkinson, *Japan's Equal Employment Opportunity Law: An Alternative Approach to Social Change*, 89 COLUM. L. REV. 604, 619 – 20 (1989).

237. Ministry of Health, Labour and Welfare (MHLW), Koyô no Bun'ya niokeru Danjo no Kintôna Kikai oyobi Taigû no Kakuhôtô ni kansuru Hôritsu [Act on Securing, Etc. of Equal Opportunity and Treatment Between Men and Women in Employment] Law No. 113 of 1972, *translated in* MINISTRY OF HEALTH, LABOUR AND WELFARE, https://www.mhlw.go.jp/file/06-Seisakujouhou-11900000-Koyoukintoujidoukateikyoku/0000133458.pdf (last visited Jul. 30, 2019).

238. Kano *Backlash*, *supra* note 111, at 43.

239. *See* Emma Dalton, *Womenomics,'Equality' and Abe's Neo-Liberal Strategy to Make Japanese Women Shine*, 20 SOC. SCI. JAPAN J. 95, 97 – 99 (2017).

240. Kano, *Backlash*, *supra* note 111, at 43.

241. Dalton, *supra* note 239, at 102.

derrepresentation in leadership positions over the past decade.[242] Apart from the EEOL, which was revised in 1997 and again in 2005-2006, a number of initiatives were adopted with the declared aim of promoting women in public positions of influence.[243] These were the Basic Act for a Gender Equal Society (1999), followed by four Basic Plans for a Gender Equal Society (adopted in 2000, 2005, 2010, and 2015), and the Law for the Promotion of Women's Participation and Advancement in the Workplace (in force since April 2016).[244]

The Equal Employment Opportunity Law claimed its purpose was to end any form of gender discrimination against women and to grant equal employment opportunities.[245] Nevertheless, the law was a "double-edged sword;"[246] although it allowed women greater access to career-track jobs, it required them to comply with traditionally male working practices, such as long hours, dangerous conditions, or being reassigned to other parts of the country.[247] The immediate effect of the law was a further rise in non-regular (part-time, dispatch, temporary) female workers, as working mothers did not find this "equal employment opportunity" solution feasible.[248] Unlike regular jobs, non-regular employment offers substantially lower wages, no advancement prospects, no job security, and little or no eligibility for some of the benefits of regular workers, such as child care leave.[249] The law was the result of a

242. IWASAWA, *supra* note 230, at 206.

243. Stephanie Assmann, *Gender Equality in Japan: The Equal Employment Opportunity Law Revisited*, ASIA-PACIFIC J.: JAPAN FOCUS (Nov. 2014) at 12, http://apjjf.org/2014/12/45/Stephanie-Assmann/4211.html (last visited Sep. 14, 2018).

244. Ayako Kano, *Japanese Feminist Debates: A Century of Contention on Sex, Love, and Labor*, HONOLULU: UNIVERSITY OF HAWAII PRESS (2016) https://doi.org/10.21313/hawaii/9780824855802.001.0001; Ayako Kano, *Womenomics and Acrobatics: Why Japanese Feminists Remain Skeptical About Feminist State Policy*, 2 FEMINIST ENCOUNTERS: A J. OF CRITICAL STUD. IN CULTURE & POL. 1 (2018).

245. Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, Act No. 113, Article 6 (1972) (Japan) ("With regard to the following matters, employers shall not discriminate against workers on the basis of sex. (i) Assignment (including allocation of duties and grant of authority), promotion, demotion, and training of workers; (ii) Loans for housing and other similar fringe benefits as provided by Ordinance of the Ministry of Health, Labor and Welfare; (iii) Change in job type and employment status of workers; and (iv) Encouragement of retirement, mandatory retirement age, dismissal, and renewal of the labor contract").

246. Stephanie Assmann, *Gender Equality in Japan: The Equal Employment Opportunity Law Revisited*, 12 ASIA-PAC. J.: JAPAN FOCUS, Nov. 3, 2014, at 16–17.

247. Dalton, *supra* note 239, at 99.

248. *See id.* at 99–100.

249. *See id.*

compromise among three interest groups: conservative politicians, who supported the traditional view of women as stay-at-home wives and mothers, business leaders, who were in dire need of a cheap labor force, and feminists, who sought to end sex discrimination.[250] It did little in the way of promoting women in leadership positions, and thirty years after the enactment of the law, the number of female leaders remains low.[251]

The Basic Law for a Gender Equal Society (the "Basic Law"), enacted in 1999, was a positive measure toward promoting female leaders in top positions.[252] It can be considered the de facto beginning of Japanese womenomics as it reflects, more than ever before, the government's positive attitude toward acknowledging women's role in society.[253] It was followed by four Basic Plans for a Gender Equal Society, adopted in 2000, 2005, 2010, and 2015.[254] The Basic Law encourages employers to establish targets of promoting women in decision-making positions.[255] It is worth noting, however, that the Japanese name of the Basic Law, *Danjo kyôdô sankaku* (男女共同参画), which translates literally to

250. Kano, *Backlash*, *supra* note 111, at 50 (citing Midori Hotta, *Danjo kyōdō sankaku teki akurobatto [Male-Female Co-Participatory Acrobatics]*, 131 IMPACTION 106 (2002)).

251. Helen Macnaughtan, *Womenomics for Japan: Is the Abe Policy for Gendered Employment Viable in an Era of Precarity?*, 13 ASIA-PAC. J.: JAPAN FOCUS, Mar. 30, 2015, at 14.

252. *See* Dalton, *supra* note 239, at 97.

253. *See id.*

254. GENDER EQUALITY BUREAU CABINET OFF., BASIC PLAN FOR GENDER EQUALITY (2010), http://www.gender.go.jp/english_contents/about_danjo/lbp/basic/index.htm; Gender Equality Bureau Cabinet Office, Women and Men in Japan 2018, http://www.gender.go.jp/english_contents/pr_act/pub/pamphlet/women-and-men18/index.html (accessed Sept. 16, 2019).

255. *See* Basic Act for a Gender-Equal Society, Act No. 78, Article 3 (1999) (Japan) ("The Formation of Gender Equal Society shall be carried out, aiming at respect for the dignity of men and women as individuals, not treating men and women in a way that discriminates against them based on gender, securing opportunities for men and women as individuals to exercise their abilities and respect for other human rights of men and women"); *see also* Basic Act for a Gender-Equal Society, Act No. 78, Article 5 (1999) (Japan) ("Formation of Gender Equal Society shall be undertaken with the aim to secure opportunities for men and women to jointly participate as equal members of society in planning and deciding policies of the State or local governments or ones of private organizations"); Basic Act for a Gender-Equal Society, Act No. 78, Article 8 (1999) (Japan) ("The State is responsible for the comprehensive formulation and implementation of policies on promotion of the Formation of Gender Equal Society (including positive action; the same shall apply hereinafter) pursuant to the basic principles on the Formation of Gender Equal Society prescribed in Articles 3 to the preceding Article"); Mari Ôsawa, *Government Approaches to Gender Equality in the Mid-1990s*, 3 SOC. SCI. JAPAN J. 4 (2000).

"Male-Female Joint Participation Plan," fails to include the term "equality," or *byôdô* in Japanese.[256] The omission of the term has been interpreted as symptomatic of conservative politicians' wariness of associating this initiative with the concept of gender equality in the Western sense, which would suppose affirmative action and gender quotas.[257]

In 2014, Prime Minister Shinzo Abe, cognizant of women's immense potential to help the Japanese economy recover from decades-long torpor, pledged to turn Japan into "a place where women shine" by increasing the proportion of leading positions occupied by women to 30 percent by 2020.[258] His womenomics agenda included:

1. increasing female workforce participation for ages 25 to 44 from 68 percent (2012) to 77 percent by 2020;
2. increasing the ratio of women who reenter employment after their first child from 38 percent (2010) to 55 percent by 2020;
3. increasing female leadership participation to 30 percent by 2020;
4. expanding child care and eliminating child care waiting lists by 2017; and
5. increasing the number of fathers who take up paternity leave from 2.6 percent in 2011 to 13 percent by 2020.[259]

In April 2014, the Japan Business Federation, the Keidanren, compiled and published an "Action Plan on Women's Active Participation in the Workforce."[260] It detailed the necessity and expected effects of attracting women to the labor force.[261] It also highlighted problems such as the lack of continuity and recent changes in female employment patterns, shortage of child care facilities, relocation issues, low female representation in managerial positions, gender stereotypes, male-centered corporate practices, and low numbers of women in the STEM fields.[262] It cited future initiatives such as disclosure policies, female-targeted career development efforts, changing the attitudes of managers and per-

256. Ôsawa *supra* note 255, at 6.

257. *Id.*

258. Shinzo Abe, Prime Minister of Japan, Address at the Sixty-Eighth Session of the General Assembly of the United Nations (Sept. 26, 2013) (transcript available at http://japan.kantei.go.jp/96_abe/statement/201309/26generaldebate_e.html).

259. Matsui et al., *supra* note 133, at 13.

260. Keidanren, *Action Plan on Women's Active Participation in the Workforce* (2014), https://www.keidanren.or.jp/en/policy/2014/029_proposal.pdf.

261. *Id.* at 2–4.

262. *Id.*

sonnel, decreases in working hours, reform of the tax and social security systems, elimination of child care waiting lists, and encouraging women's access to STEM fields.[263]

The Basic Law has yielded mixed results. Despite its success in attracting more women into the labor force (50 percent of the total number and 70 percent of women aged between 15 and 64 as of 2018),[264] statistics indicate that half these women are in non-regular employment.[265] The Basic Law did not, however, empower women as it had promised, as the initial targets of promoting women in leadership positions failed to be achieved. As one researcher points out, the Basic Law stemmed less from a real concern for gender parity and more from the need to pull women into the workforce to solve the demographic crisis and the shortfall of working-age people.[266] Some critics regard the Basic Law as an attempt to take women from their comfort zone (i.e. family, child care) and "place them in stressful positions of leadership."[267] It is seen as an attempt to utilize women for national goals, by requiring them to sacrifice their lives for the sake of the company, only to blame them for the dwindling birthrate in case of negative outcomes.[268]

Subsequently, an Act on Promotion of Women's Participation and Advancement in the Workplace was adopted and became effective in April 2016.[269] The Act obliges companies with more than 300 employees to set numerical targets and disclose the number and positions of their female employees as well as the measures they have taken to promote women's active participation in the company's decision-making process.[270] Feminist researcher Ayako Kano considers this to be a mild form of a "carrot and stick" approach, with companies assessed according to their efforts to promote women.[271] The Act, however, fails to realistically address the problem of gender inequalities with regard to unequal wages and child care burdens falling disproportionately on women.

263. *Id.*

264. Koji Okuda, *Japan's Female Employment Tops 50% for 1st Time in Half-Century*, NIKKEI ASIAN REV. (Feb. 2, 2019, 06:24 JST), https://asia.nikkei.com/Economy/Japan-s-female-employment-tops-50-for-1st-time-in-half-century.

265. Katharina Buchholz, *Half of Japanese Female Workers Are Not Employed Full-Time*, STATISTA (Mar 6, 2019), https://www.statista.com/chart/17262/number-of-japanese-women-working-part-time/.

266. Kano, *Womanomics*, *supra* note 244, at 5.

267. *Id.*

268. *See id.* at 6.

269. *Id.* at 2.

270. *Id.* at 2 n.5.

271. *Id.* at 2.

Thus, it appears that women are expected to carry single-handedly the triple burden of a full-time job, the household, and child and elderly care.

A much-publicized initiative is the target for promoting women in leadership positions. The initiative, also known as the "30 by 20," estimated that by the year 2020, 30 percent of the top management positions would be occupied by women. It was first proposed in 2003 during the Koizumi cabinet and was later "appropriated" as one of Abe's main womenomics measures.[272] Nevertheless, on September 30, 2014, the Labor Policy Council suggested that the target was overly ambitious and should be lowered due to a number of problems.[273] These include the large number of women employed in non-regular employment (53 percent), insufficient child care facilities, high employment dropout rates, and little progress in appointing female leaders to decision-making posts (7.5 percent).[274] As a consequence, in 2015, the 30 percent target was modified to seven percent for middle managerial positions for the central government and 15 percent for the private sector.[275]

The laws and acts discussed above had a rather limited effect in increasing the numbers of female leaders. The explanation may lie in their failure to convince both employers and employees of the benefits that would result from promoting more women to positions of responsibility. Corporate employers have been reluctant to take on more female leaders due to the reasons discussed above: cultural bias, sexist stereotypes, and the negative perception of females in positions of responsibility. It has been pointed out that, "since the late 1980s, the more Japanese policy seems to strive toward gender equality, the more employers' implementation of policy has served to differentiate the management of male and female employees, even widening the gap between the sexes."[276]

272. Mizuho Aoki, *Japan Drastically Lowers Its Goal for Female Managers in Government and Private Sector*, JAPAN TIMES (Dec. 25, 2015), http://www.japantimes.co.jp/news/2015/12/25/national/japan-drastically-lowers-its-goal-for-female-managers-in-government-and-private-sector/.

273. Josei no Katsuyaku Suishin ni muketa Aratana Hôteki Wakugumi no Kôchiku nitsuite (Hôkoku) [L. POL'Y COUNCIL, REPORT ON ESTABLISHING A NEW FRAMEWORK FOR PROMOTING FEMALE PARTICIPATION] (2014), https://www.mhlw.go.jp/file/04-Houdouhappyou-11902000-Koyoukintoujidoukateikyoku-Koyoukintouseisakuka/0000059755.pdf.

274. *Id.*

275. Sophia Yan & Junko Ogura, *Japan Slashes Target for Women in Senior Positions*, CNN MONEY (Dec. 7, 2015), https://money.cnn.com/2015/12/07/news/economy/japan-women-senior-positions/index.html.

276. Macnaughton, *supra* note 251, at 14.

In the absence of gender quotas and coercive measures that would ensure a more egalitarian distribution of women in leadership positions, corporations continue to use women as a cheap labor force. The present laws, regulations, and measures do not propose to solve the conundrum of work-life balance which confronts working women in Japan, but instead add to the burdens of household and child care that women tend to shoulder alone.

With respect to compliance with the laws and regulations, Table 3 indicates that the proportion of women in decision-making positions in the public and private sectors in 2016 and 2017 failed to meet even the lowered targets described above. In the national government and private sectors, progress has been slow, and it is unlikely that the targets will be reached by the projected deadline.

Table 3: Women in leadership positions - Targets and current figures (Source: Matsui, et al., Womenomics 4.0: Time to Walk the Talk).[277]

FIELD	POSITION	PROPORTION (2017) PERCENT	TARGET (2020) PERCENT
Politics (Government)	Diet Members (House of Representatives)	10.1	30
	Diet Members (House of Councilors)	20.7	30
	Prefectural governors	6.4	
	Prefectural civil service directors	10.4	15
Economic Field	Employees in positions equivalent to section chief in private corporations	10.9	15
	Employees in positions equivalent to department manager in private corporations	6.3	10
	Board directors in listed company	4.1	10
Media	Journalists (Japan Newspaper Publishers & Editors Association)	20.2	
Education/Research	President, vice-president and Professor at university	16.7	20
	Researchers	16.2	
Other Professions	Doctors	21.1	
	Certified public accountants	15	

277. Matsui et al., *supra* note 133, at 21.

Furthermore, a Teikoku Databank survey conducted in April 2018 among 1.2 million private, non-profit, and public companies to determine the ratio of women in top managerial positions, reveals that accessing leadership positions continues to be a serious challenge for women in major companies dominated by males.[278] Women were found to fare better in medium- to small-sized companies, especially in those in traditionally "female" sectors, such as child care, beauty care, and education.[279] The findings suggest that:

1. The ratio of female CEOs has been growing slowly over the past 30 years. Thus, at the end of April 2018, 7.8 percent of companies were led by a female CEO compared to 4.2 percent in 1998;
2. Unlike male CEOs, most of whom are appointed by promotion or transfer, many of the female presidents inherited their position;
3. The proportion of female CEOs was highest for small enterprises with sales of under JPY 50 million (USD 463,000) (10.8 percent), but smaller for mid- to large-size companies;
4. The child care business has the highest ratio of female CEOs (43.2 percent) followed by beauty care and education;
5. According to prefecture, the highest ratios of female CEOs were found in Aomori (10.6 percent), Okinawa (10.41 percent), Tokushima (10.39 percent), and Saga (10 percent).[280]

As these data indicate, over three decades since the promulgation of the Equal Employment Opportunity Law, and five years into Abenomics, Japanese women have not yet been able to shine in leadership positions as much as Japanese Prime Minister Abe promised in 2014.

Moreover, it should be noted that many private companies have managed to exploit the loopholes in the EEOL to their advantage without incurring penalties.[281] Dr. Emma Dalton criticizes the law as being a "toothless" compromise between employers and government, which contained no punitive measures against those who violated the law.[282]

278. Teikoku Data Bank, Josei Shachô Hiritsu Chôsa [Special Project: Female President Ratio Survey] (2018), https://www.tdb.co.jp/report/watching/press/pdf/p180504.pdf.
279. *Id.* at 4.
280. *Id.*
281. Assmann, *supra* note 246, at 7–8.
282. EMMA DALTON, WOMEN AND POLITICS IN CONTEMPORARY JAPAN 35 (2015).

Others call the law a "paper tiger," as it only stipulates mediation procedures to cope with disputes.[283]

The EEOL seems to function more as a set of guidelines rather than as an enforced policy. The EEOL effectively gave women a false sense of individual choice and equal competition, deterred many women from re-entering the workforce, and led to a polarization of working women into elite and non-elite career tracks.[284] One reason is that the law, in its 1985 form, was said to be "weak and ambiguous," urging employers to "endeavor to provide women opportunities equal to those given men in the areas of recruitment, hiring, job assignment and promotion."[285] As a result, many employers who opposed the 1985 law chose to "comply" by introducing a dual track system, comprised of a career or managerial track (sôgôshoku), which provided training opportunities, higher salary and promotion, and a clerical track (ippanshoku), which offered none of these benefits.[286] Women were generally employed in clerical jobs.[287] Professor Eunmi Mun considers this dual system, which further contributed to formalizing sex segregation, an example of "negative compliance,"[288] where companies "chang[e] their internal structure in such a way to make it impossible to violate the law."[289] Her research suggests that one of the reasons gender discrimination has endured even after several revisions of the EEOL is that Japanese companies have constantly sought to circumvent the law by externalizing female labor.[290]

283. Takashi Araki, *Recent Legislative Developments in Equal Employment and Harmonization of Work and Family Life in Japan*, 37 JAPAN LAB. BULL., at 11 (April 1998), https://www.jil.go.jp/english/archives/bulletin/documents/199804.pdf.

284. ANNE STEFANIE ARONSSON, CAREER WOMEN IN CONTEMPORARY JAPAN: PURSUING IDENTITIES, FASHIONING LIVES 9 (Routledge 2015) (discussing Chizuko Ueno, THE MODERN FAMILY IN JAPAN: ITS RISE AND FALL (2009)).

285. Eunmi Mun, *Why the Equal Employment Opportunity Law Failed in Japan*, AM. SOC. ASS'N: WORK IN PROGRESS (Aug 10, 2016), https://workinprogress.oowsection.org/2016/08/10/why-the-equal-employment-opportunity-law-failed-in-japan/.

286. *Id.*

287. *Id.*

288. Eunmi Mun, *Negative Compliance as an Organizational Response to Legal Pressures: The Case of Japanese Equal Employment Opportunity Law*, 94 SOC. FORCES 1409, 1409 (June 2016).

289. Mun, *Why*, *supra* note 285.

290. Mun, *Negative* Compliance, *supra* note 288, at 1430–31. Dr. Mun defines the concept of "externalization" as "changing the internal environment to eliminate sources of conflict," which in this case, refers to the introduction of the dual track management system that appeared to comply with the EEOL but allowed gender discrimination. *Id.* at 1414–15.

Feminist author Kaoru Yamamoto provides an interesting account of Japanese culture and its relationship with law, explaining that Japanese equate law with the idea of state-imposed constraint.[291] She argues that Japanese "obey or disobey a law on the basis of the extent to which it accords with the facts of human existence."[292] She predicted in 1986 that, like many other laws of foreign inspiration, the EEOL was not likely to become an immediately effective legal tool against sexual discrimination because it was "not in accordance with the realities of society."[293] She relayed the opinions of a group of major employers, whose stance was, at that time, "government cannot legislate away mores and customs that are ingrained in the culture."[294] Nonetheless, although painstakingly slow, some progress has been achieved. A 2019 Goldman Sachs report (Report) reveals that most of the non-leadership-related womenomics policy goals advanced by Prime Minister Abe have been attained.[295] Among these are: a record female participation in the workforce of 71 percent, which surpasses the U.S. (66.1 percent) and the Euro Zone (62.2 percent), generous parental leave benefits, better gender transparency, and labor reforms.[296] Although 56 percent of women are involved in part-time employment, the authors of the Report hypothesize that an increase of the ratio of full-time female employment would have a greater impact on the Japanese economy.[297] Nevertheless, the dearth of female leaders remains an area for improvement. The Report advocates for an increase of women in decision-making positions, pointing to the positive correlation between diverse leadership and corporate performance.[298] Yet, the ratio of female managers (kacho and above) at listed companies is around 14 percent and only 5 percent occupy positions on company boards.[299]

Japanese policymakers claim to be committed to closing the gender gap and ensuring equal participation of women in business, administrative, and professional fields. Starting with former Prime Minister Jun'ichirô Koizumi who, at the beginning of the 2000s, advocated for

291. Yamamoto Kaoru, *Japan's New Equal Employment Opportunity Law: Real Weapon or Heirloom Sword?*, 1986 BYU L. REV. 865, 866 (1986).
292. *Id.* at 867.
293. *Id.* at 868, 882.
294. *Id.* at 883 (quoting Susan Chira, *A Tough Ascent for Japanese Women*, N.Y. TIMES, Feb. 24, 1985, at F1).
295. *See* Matsui et al., *supra* note 133.
296. *Id.* at 1, 8.
297. *Id.* at 9.
298. *Id.* at 11.
299. *Id.* at 13–14.

the merits of women in the workforce,[300] and culminating with Prime Minister Shinzô Abe who made womenomics the centerpiece of his structural reform program known as Abenomics,[301] it would appear that, at long last, women are given the credit they deserve. Ayako Kano, however, notes that skeptics are failing to jump on the bandwagon of the hype surrounding Prime Minister Abe's womenomics.[302] Considering that Prime Minister Abe and the ruling party have a history of criticizing gender equality initiatives as "detrimental to 'traditional' cultural values"[303] and as disastrous for birth rates, feminists are skeptical and denounce them as serving the interests of the government and businesses by continuing to keep most women in low-wage, insecure jobs.[304] Feminist scholar Mari Ôsawa argues that the general interest and enthusiasm for gender equality is motivated by the argument that it "is good for business."[305] Women have yet to see substantial progress with regard to full time employment, the wage gap, work-life balance, and child care. Despite some progress, it appears that Japan has a long and bumpy road ahead.

III. Suggestions for Improving the Pathways for Women to Obtain Positions of Leadership in Business

Not surprisingly, there is no one-size-fits-all solution for eradicating the glass ceiling for women in business. Yet, each jurisdiction discussed herein may find some guidance from the other jurisdictions, staying attuned to the limitations inherent in its respective laws, regulations, and culture. This Section offers some suggestions for improving the representation of women in the upper echelons of leadership.

300. *See* Yuko Nakano, *Japan Chair Platform: Among Equals? Women in Japanese Politics*, CTR. FOR STRATEGIC & INT'L STUD.: NEWSL. (July 11, 2013), https://www.csis.org/analysis/japan-chair-platform-among-equals-women-japanese-politics.

301. William Pesek, *Japan's Womenomics Finally Gets a Face*, NIKKEI ASIAN REV., (Aug. 21, 2017, 12:00 PM), https://asia.nikkei.com/Politics/Japan-s-womenomics-finally-gets-a-face.

302. Kano, *Backlash, supra* note 111, at 53.

303. *Id.* at 52-53.

304. *See id.* at 50.

305. Mari Ôsawa, *Government Approaches to Gender Equality in the Mid-1990s*, 3 SOC. SCI. JAPAN J. 3, 4 (2000).

A. *The United States*

In the United States, serious reform may need to come from the private sector. Fortunately, there are some private initiatives underway, although they often focus on specific industries rather than the economy as a whole.[306] Organizations aiming to promote gender diversity in organizational leadership exist in law enforcement,[307] organized labor,[308] finance,[309] and medicine,[310] among others. Some general organizations also exist, such as the Women's Leadership Council, to provide resources for women seeking and holding positions in local government.[311] Some American universities have also promoted female corporate leadership. For example, Yale,[312] UCLA,[313] and Carnegie Mellon[314] offer educational programs designed specifically to help women advance and succeed in positions of corporate leadership. Others, such as Rutgers,[315] have set up more general research institutions to study the issue.[316] In many cases, these institutes and programs are fairly new, likely because the issue of gender in corporate leadership has only recently come to prominence.[317]

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306. *See, e.g., Gender Diversity Index, supra* note 1 (aiming to increase the percentage of women on U.S. company boards to 20 percent or greater by 2020).
307. *See*, *e.g.*, *Women's Leadership Institute*, INT'L ASS'N OF CHIEFS OF POLICE, http://www.theiacp.org/wli.
308. *See, e.g.,* Barbara Esuoso, *New Initiative Takes on Fight for Women's Leadership in the Labor Movement*, AM. PROSPECT MAG.: TAPPED: THE PROGRESS GRP. BLOG (July 6, 2017), http://prospect.org/blog/tapped/new-initiative-takes-fight-women%E2%80%99s-leadership-labor-movement.
309. *See*, *e.g.*, FIN. WOMEN'S ASS'N, https://fwa.org/.
310. *See, e.g.*, AMERICAN MED. WOMEN'S ASS'N, https://www.amwa-doc.org/.
311. *See, e.g.,* WOMEN'S LEADERSHIP COUNCIL, http://www.womensleadershipcouncil.org/.
312. *Women's Leadership Program*, YALE SCH. OF MGMT., https://som.yale.edu/programs/executive-education/for-individuals/leadership/womens-leadership-program.
313. *Women's Leadership Institute*, UCLA ANDERSON SCH. OF MGMT., http://www.anderson.ucla.edu/executive-education/individual-executives/womens-leadership-institute.
314. *Leadership for Women Executive Education Programs*, TEPPER SCH. OF BUS., CARNEGIE MELLON U., https://www.cmu.edu/tepper/executive-education/women/index.html.
315. *Institute for Women's Leadership*, RUTGERS U., https://iwl.rutgers.edu/.
316. The institute at Rutgers University, for example, states that it is "dedicated to the study of women and gender, to advocacy on behalf of gender equity, and to the promotion of women's leadership locally, nationally and globally." *Our Mission: Advancing Women's Leadership for a Just World*, RUTGERS U. INST. FOR WOMEN'S LEADERSHIP, https://iwl.rutgers.edu/.
317. *See* COMM. FOR ECON. DEV., FULFILLING THE PROMISE: HOW MORE WOMEN ON CORPORATE BOARDS WOULD MAKE AMERICA AND AMERICAN COMPANIES MORE

As corporate gender diversity has gained more attention in both the popular and academic press, philanthropic organizations have also moved to boost female representation in American corporate leadership. The Rockefeller Foundation announced its "100x25" commitment in 2016,[318] and the Wilson Center founded its Global Women's Leadership Initiative in 2011.[319] Meanwhile, the Bill and Melinda Gates Foundation has led the development of female leadership programs in various fields including education,[320] and specifically targets female-led startups for investment through its programs.[321] As with university initiatives, most of these programs have been established in the last several decades, and many only within the last ten years.[322]

Case studies of female leadership programs in specific organizations have garnered significant attention in the academic literature. One study, examining the Women in Medicine and Health Science (WIMHS) program at the California Davis School of Medicine found

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COMPETITIVE 5 (2012), https://www.fwa.org/pdf/CED_WomenAdvancementon CorporateBoards.pdf ("Successive crises touching the performance of American corporations have focused increased attention on the board of directors as a unique institution with power to effect change. Those scrutinizing corporate boards see an obvious feature: They are predominately composed of men. In 2011, women occupied just 16 percent of Fortune 500 board seats. That percentage is far below the percentage of women in the labor force, enrolled in higher education, and graduating with advanced degrees."); Kweilin Ellingrud, *How Women Leaders Change Company Dynamics*, FORBES (Jan. 30, 2019, 12:50 PM), https://www.forbes.com/ sites/kweilinellingrud/2019/01/30/how-women-leaders-change-company-dynamics/ #1291f0f34733 ("Would more women in corporate leadership roles – CEOs, presidents, SVPs, managers- make companies more successful and change the culture in the workplace? These are valid questions after new data outlines the depth of gender inequality throughout C-Suites and senior management positions in companies throughout North America.").

318. *The Rockefeller Foundation Launches "100x25" Campaign to Reach 100 Women CEOs of the Fortune 500 Companies by 2025*, THE ROCKEFELLER FOUND. (May 12, 2016), https://www.rockefellerfoundation.org/about-us/news-media/13274/.

319. *Global Women's Leadership Initiative: About*, WILSON CTR., https://www.wilsoncenter .org/about-gwli ("The Global Women's Leadership Initiative at the Wilson Center is a unique platform for promoting enduring balance in leadership roles – equipping women with the skills and tools they need to lead, helping to build lasting mentorships between current and emerging leaders, raising the profile of critical issues across all sectors and advancing inclusive policies and research.").

320. *AASA Women in School Leadership Initiative: About*, THE SCH. SUPERINTENDENTS ASS'N, http://www.aasa.org/WomenInSchoolLeadership.aspx.

321. Polina Marinova, *Why Melinda Gates Has Been Funding Female VCs Through Her Secretive Investment Firm*, FORTUNE (May 30, 2018), http://fortune.com/ 2018/05/30/melinda-gates-limited-partner-venture-capital/.

322. *E.g.* THE ROCKEFELLER FOUND., *supra* note 318 ("100x25" founded in 2016); WILSON CTR., *supra* note 319 (Global Women's Leadership Initiative founded in 2011,); Marinova, *supra* note 321 (launched in 2015).

that the program's initiatives led to a "steady increase in the number and percentage of women faculty and department chairs, as well as a relatively low departure rate for female faculty."[323] The program included a comprehensive set of initiatives, involving a variety of networking events, mentorship and leadership clinics, sessions on public speaking and salary negotiation, and supporting the work-life balance of participating individuals.[324] In the ten years following the establishment of the program, the percentage of female faculty members increased from below 20 percent to around 40 percent, with the proportion of female department heads also rising from fewer than 5 percent to nearly 25 percent,[325] although the authors state that they "cannot determine whether the increase in the number of female faculty over time is directly related to the WIMHS program."[326]

In 2009, a case study was conducted on a large engineering firm's Women's Leadership Initiative, which included mentoring and networking programs along with targeted recruiting and "a formal succession planning process that ensures slates are diverse and include at least one woman or person of color."[327] This study showed that between the Initiative's founding in 2003 and the time of the study, the proportion of female directors increased from 23 percent to 31 percent, executives from three percent to 18 percent, and project managers from 20 percent to 30 percent.[328] This led to the firm being the first in its industry to earn a Catalyst Award for supporting women in business.[329]

Broader gender equality movements have often pushed work-life balance initiatives to reduce the gender pay gap[330] and to promote women's advancement at work.[331] Work-life initiatives may also contribute to gender equality in leadership. One study posited a general relationship between aspiration to leadership and work-life balance initiatives and

323. Melissa D. Bauman, Lydia P. Howell & Amparo C. Villablanca, *The Women in Medicine and Health Science Program: An Innovative Initiative to Support Female Faculty at the University of California Davis School of Medicine*, 89 ACAD. MED. 1461, 1461 (2014).
324. *Id.* at 1463.
325. *Id.* at 1465.
326. *Id.* at 1464.
327. Meg Ibison & Bob Bailey, *Women's Advancement: One Engineering Firm's Pathway to Leadership*, 101 J. AM. WATER WORKS ASS'N., 44, 46 (2009).
328. *Id.*
329. *Id.* at 50.
330. *See, e.g.,* Claudia Goldin, *A Grand Gender Convergence: Its Last Chapter*, 104 AMER. ECON. REV. 1091 (2014).
331. *See, e.g.*, Rebecca Shambaugh, *Are Chore Wars at Home Holding You Back at Work?*, HARV. BUS. REV. (Jan. 19, 2017), https://hbr.org/2017/01/are-chore-wars-at-home-holding-you-back-at-work.

found that "because the work-life interface poses greater challenges for women," "women's leadership aspiration is more influenced by work-life initiatives,"[332] although both men and women ultimately benefited.[333] These studies illustrate that implementation of mentoring and networking programs as well as family-friendly policies should help more women rise to the upper levels in organizations and to become prepared to serve on boards.

In addition, a number of major institutional American investors have begun considering the issue; State Street, BlackRock, and Vanguard have all announced their support for a range of shareholder proposals on gender diversity.[334] The findings of the national campaign 2020 Women on Boards reveal that "the average number of corporate board seats held by women on the 2018 Russell 3000 Index has risen to 17.7 percent, up from 16.0 percent, in 2017, but that the "majority of new, mid-cap and small cap companies continue to go public with just one or no women on their boards."[335]

Finally, in previous work, Professors Dworkin and Schipani have advocated mentoring and networking as important pathways for women to rise to positions of corporate leadership.[336] Furthermore, although gender quotas are unlikely to be legal in the U.S. any time in the near

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332. Claudia Fritz & Daan van Knippenberg, *Gender and Leadership Aspiration: The Impact of Work-Life Initiatives*, 57 HUM. RES. MGMT. 855, 855 (2017).

333. *Id.*

334. Castro, *supra* note 18.

335. *Gender Diversity Index*, *supra* note 1, at 2.

336. Mentoring and networking are shown to be critical to the professional development that leads to career advancement. A mentor offers the vital guidance, support, and opportunity to a protégé that allows the protégé to enhance her skills, problem-solve, and access greater opportunities. *See generally* Terry Morehead Dworkin & Cindy A. Schipani, *The Role of Gender Diversity in Corporate Governance*, 21 PA. J. OF BUS. L. 105 (2018); Terry Morehead Dworkin, Cindy A. Schipani, Frances J. Milliken & Madeline K. Kneeland, *Assessing the Progress of Women in Corporate Governance: The More Things Change, the More They Stay the Same*, 55 AM. BUS. L. J. 721 (2018); Terry Morehead Dworkin, Aarti Ramaswami & Cindy A. Schipani, *A Half Century Post-Title VII: Still Seeking Pathways for Women to Organizational Leadership*, 23 UCLA WOMEN'S L. J. 29, 72-75 (2016); Terry Morehead Dworkin, Aarti Ramaswami & Cindy A. Schipani, *The Role of Networks, Mentors, and the Law in Overcoming Barriers to Organizational Leadership for Women with Children*, 20 MICH. J. OF GENDER & LAW 83, 118-19 (2013); Cindy A. Schipani, Terry Morehead Dworkin, Angel Kwolek-Folland & Virginia Maurer, *Pathways for Women to Obtain Positions of Organizational Leadership: The Significance of Mentoring and Networking*, DUKE J. OF GENDER L. & POLICY 89, 135-36 (2009); Cindy A. Schipani, Terry Morehead Dworkin, Angel Kwolek-Folland, Virginia Maurer & Marina V. N. Whitman, *Women and the New Corporate Governance and Pathways for Women to Obtain Positions of Organizational Leadership*, 56 MD. L. REV. 504, 536 (2006).

future, private firms should make sincere efforts to mentor and promote qualified women, paying close attention to implicit and unconscious biases that may be in play in their training and selection processes.

B. *The European Union*

We concur with the European Commission in that "not taking advantage of the skills of highly qualified women constitutes a waste of talent and a loss of economic growth potential."[337] Though the European Commission encouraged credible self-regulation by companies to improve gender balance on corporate boards, the proportion of women, as shown in our analysis of the EURO STOXX companies, remains low. We consider the introduction of a gender quota a necessary instrument to implement change. Moreover, "the figures show that it is the legislative measures that result in substantial progress, especially if they are accompanied by sanctions."[338] In addition, it is important to raise awareness that "empowering women means a more efficient use of a nation's human capital endowment and that reducing gender inequality enhances productivity and economic growth."[339]

The E.U. promotes gender mainstreaming in order to increase gender equality and to combat discrimination. At the same time it is worth looking at the causes of female underrepresentation in different areas of activity. The European Commission's Special Eurobarometer 465 Gender Equality 2017 report offers an interesting picture on the opinions and perceptions of E.U. citizens on gender. For instance, 44 percent of respondents believe the most important role of a women is to take care of her home and family and 43 percent think the most important role of a man is to earn money.[340] At the same time 87 percent believe gender equality to be important for companies and for the economy.[341] Therefore policy makers should ask how these attitudes can be united in meaningful gender equality measures. It is also worth questioning how much can be changed in a top-down manner, versus in a down-top manner. A gender quota could be a solution, but without a

337. VĚRA JOUROVÁ, EUR. COMM'N, GENDER BALANCE ON CORPORATE BOARDS: EUROPE IS BREAKING THE GLASS CEILING 1 (2016).

338. EUR. COMM'N, WOMEN IN ECONOMIC DECISION-MAKING IN THE EU: PROGRESS REPORT 13 (2012).

339. WORLD ECON. F., THE GLOBAL GENDER GAP REPORT 2015 36 (2015), http://www3.weforum.org/docs/GGGR2015/cover.pdf.

340. EUR. COMM'N, SPECIAL EUROBAROMETER 465 GENDER EQUALITY 2017, 4 (2017).

341. *Id.*

thorough change of the opinions (gender stereotypes included) and values of the E.U. citizens, any progress will be slow and may be superficial.

C. *Japan*

Judging by the lack of substantial progress, one can infer that public initiatives have failed to persuade companies of the benefits of promoting women in leadership positions in Japan. The so-called "Eruboshi" certification system,[342] based on the Act of Promotion of Women's Participation and Advancement in the Workplace, is a measure that appears to have failed in its initial purpose and was instead used as a public relations instrument. Thus, according to a survey conducted by the Ministry of Health, Labor and Welfare in 2018, the Eruboshi certification is perceived more as a means to upgrade a company's image and attract more prospective employees and less as a recognition of female leaders' contribution to the prosperity of the company.[343]

On the other hand, among the private initiatives that aim at nurturing and promoting female leadership participation, two notable endeavors should be mentioned. First, the Japanese Women's Leadership Initiative, founded in 2006 in Boston, provides hands-on experience and training in nonprofit management and leadership development.[344] The second initiative, TOMODACHI MetLife Women's Leadership Program, is a Japanese-American public-private partnership started in Tokyo and Kansai in 2013 and expanded to other major cities (Sapporo, Fukuoka, Naha) in 2014. It seeks to nurture future generations of female leaders through leadership development training and mentoring with mid-career professional women.[345] The declared goal of these initiatives is to inculcate young Japanese women with leadership qualities and

342. Eruboshi (in English "L-star") certification is a three-tiered accreditation system which acknowledges the efforts of private corporations to actively promote women in leadership and managerial positions.

343. MINISTRY OF HEALTH, LABOUR AND WELFARE (MHLW), DÊTABÊSU RIYÔ KIGYÔ OYOBI "ERUBOSHI" NINTEI SHUTOKU KIGYÔ NI TAISURU ANKÊTO CHÔSA KEKKA NO GAIYÔ [SURVEY OF ERUBOSHI-CERTIFIED COMPANIES AND WOMEN'S PROMOTION DATABASE USERS] 1 (2018).

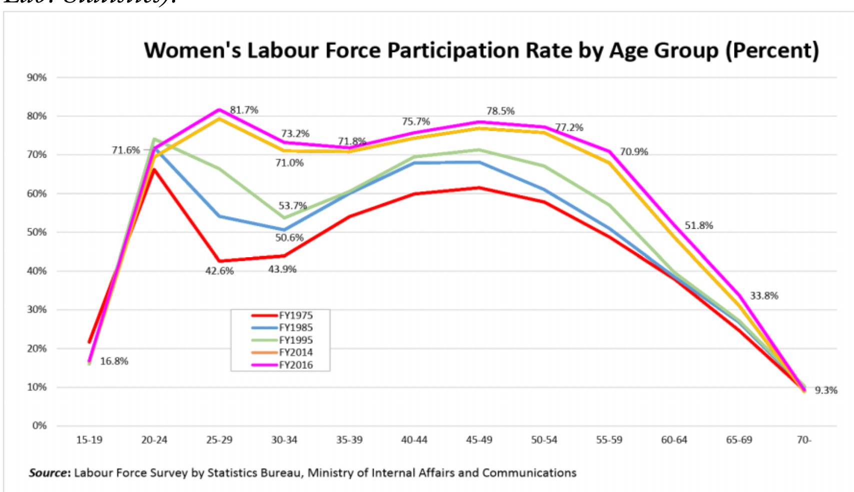
344. JAPANESE WOMEN'S LEADERSHIP INITIATIVE, http://jwli.org/about/#mission (last visted Jul. 22, 2019).

345. TOMODACHI METLIFE WOMEN'S LEADERSHIP PROGRAM, http://usjapantomodachi.org/programs-activities/entrepreneurship-leadership/tomodachi-womens-leadership-program/ (last visited Jul. 22, 2019).

educate them on the benefits of increased female agency on Japanese society.

In the past, women would work full-time from high school or college graduation up until age 25, when they dropped out of employment to have children, and re-entered the workforce around the age of 40, when their children were grown. As Figure 7 shows, in recent years, more women are continuing to work well into their thirties or forties, trying to balance work and family, or even shunning marriage or childbearing. The tendency is particularly notable through 2014-2016, which coincides with the debut of Prime Minister Abe's womenomics and the concerted efforts toward increasing the female workforce.

Figure 7: Women's labor force participation by age group (Source: Bureau of Lab. Statistics).[346]



The increase in the number of women who continue to work well into their thirties is not just a sign of emancipation, but is interpreted by some as a sign of increasing precarity. Professor Kumiko Nemoto sees in Japanese women's apparent rejection of marriage and childbirth a sign of increased gender inequality.[347] And Professor Chelsea Szendi Scheider points to the recent tendency of replacing full-time workers with contract or temporary workers as a form of "feminization of poverty," given that women who work in temporary, contract, or irregular jobs (as of

346. *Women's Labour Force Participation by Age Group*, BUREAU OF LAB. STAT. img.51 (2017), https://www.gov-online.go.jp/eng/publicity/book/hlj/html/201712/img/img_01_51.png.

347. Kumiko Nemoto, *Postponed Marriage: Exploring Women's View of Matrimony and Work in Japan*, 22 GENDER & SOC'Y 219, 234 – 35 (2008).

2018, 56 percent of women aged 20 to 65)[348] are most at risk of becoming unemployed.[349] She notes that, while Abe's "womenomics" is likely to benefit a select group of women and companies, it does little to improve the situation of working women at the lower end of the employment scale, who "never get far enough up to glimpse the glass ceiling."[350] Ayako Kano shares this view and suggests that neoliberal measures produce winners and losers and that, given the pervasiveness of misogyny and sexism at all levels, signs that a group of elite women will manage to break through the glass ceiling are scarce.[351]

Scholar Helen Macnaughtan sees a solution in changing political, corporate, and social mentalities toward acknowledging the needs and aspirations of both women and men.[352] A shift from the model of the man as the sole breadwinner to one that supports dual-income families, making parental leave mandatory for working fathers, and providing sufficient child care facilities would ease women's much-needed return to the workforce. In addition, encouraging highly educated women into career-track jobs, employment legislation regarding recruitment and child care, as well as rigorous gender-balanced targets for recruitment are just a few of the policies that can be implemented to help tap into the latent potential of women.[353] However, as the current situation shows, these policies cannot succeed in the absence of fundamental reforms at the level of organizational culture.

Kathy Matsui and colleagues recommend that not only the government but also corporations and society at large become more involved in making changes "without delay" regarding the current status of women in the workforce.[354] They advise that the government offer more flexible labor contracts instead of the existing regular and non-regular ones, which offer little incentive for women to return to regular employment after childbirth.[355] Moreover, they recommend gender pay gap disclosures, rectification of breadwinner tax disincentives, introduction of parliamentary gender quotas, and more robust measures of promoting female entrepreneurship, such as offering preferential treatment to female-owned businesses for government procurement, easing wom-

348. Matsui et al., *Womenomics 5.0*, *supra* note 134.
349. *See* Chelsea Szendi Shieder, *Womenomics vs. Women: Neoliberal Cooptation of Feminism in Japan*, 3 MEIJI J. OF POL. SCI. & ECON. 53, 58 (2014).
350. *Id.* at 58.
351. Kano, *Womenomics*, *supra* note 244, at 9.
352. *See* Macnaughtan, *supra* note 251, at 15.
353. *Id.* at 14.
354. Matsui et al., *Womenomics 5.0, supra* note 134, at 32.
355. *Id.*

en's access to credit and low-interest loans, as well as mentorship and networking programs.[356] In addition, they stress the necessity of tightening gender diversity disclosure requirements, which at present is not standardized and is difficult to compare across industries or companies.[357] Companies should prioritize gender diversity in recruiting, retention and promotion, promote more flexible working environments, shift the promotion system from the current seniority-based system to a performance-based system, set gender diversity targets, and engage male leaders in initiatives to promote gender diversity.[358]

Furthermore, a departure from rigid hierarchy toward encouraging a more flexible model of work-life balance and prioritizing efficiency over long working hours would be beneficial not only for women, but also for men, who—if given the chance—may wish to work differently.[359] Effective changes call for men's cooperation in equally sharing household chores and child care.[360] Although only three percent of Japanese men took paternity leave in 2017, a positive change has been seen among younger men.[361] Japanese millennials' attitudes have started to turn, as more men are encouraged to spend time with their families.[362] The Work-Style Reform Bill, enacted in June 2018, seeks to address the issues of overtime work and quality of life by introducing legal caps on overtime hours.[363] The Premium Friday initiative, adopted in February 2017, encourages companies to allow their workers to leave work at 3:00 pm on the last Friday of the month.[364] For true change to take effect, however, Japanese companies should abandon the practice of protecting their core of life-long employed male workers and of slotting women into temporary, dead-end jobs. Abolition of sexual, maternity, or power-related harassment is another necessary condition for a more open and transparent atmosphere in the workplace, and one more con-

356. *Id.* at 33–34.
357. *Id.* at 35.
358. *Id.*, at 35–38.
359. *See*, *e.g.*, Macnaughtan, *supra* note 251, at 13.
360. *See id.*
361. Kimie Iwata, *Empowering the Women of Japan*, EAST ASIA FORUM (Nov. 19, 2017), http://www.eastasiaforum.org/2017/11/19/empowering-the-women-of-japan/.
362. *Japan Encourages Fathers to Take More Active Role in Child Care*, SOUTH CHINA MORNING POST (Apr. 23, 2014), https://www.scmp.com/news/asia/article/1495347/japan-encourages-fathers-take-more-active-role-child-care.
363. Yukako Wagatsuma & Yusuke Kobayashi, *Work Style Reform Legislation in Japan*, PWC JAPAN LEGAL NEWS (PwC, Tokyo, Japan), July 2018, https://www.pwc.com/jp/en/legal/news/assets/legal-20180713-en.pdf.
364. Justin McCurry, *Premium Fridays: Japan Gives Its Workers a Break - To Go Shopping*, GUARDIAN (Feb. 24, 2017), https://www.theguardian.com/world/2017/feb/24/premium-fridays-japan-gives-workers-break-go-shopping.

ducive to mutual respect and cooperation. As Macnaughtan concludes, "Womenomics will not make any real impact if it cannot challenge or inspire women and men to give up the status quo or indeed challenge the increasingly precarious modes of livelihood for both women and men."[365]

Compared to the U.S. and the E.U., Japan still has a long way to go in raising awareness of the benefits of having more women on corporate boards, and in nurturing leadership capabilities in young women with the aim of building a network of women in executive and management roles. It is necessary that universities, public and private organizations, as well as media outlets be proactive in changing the societal perceptions about gender roles and housework sharing.[366]

Conclusion

This examination of three of the most developed economies illustrates that development does not equate to equal opportunity and advancement for women in business. Although Japan, the European Union, and the United States have all seen progress regarding advancement of women in employment, that progress has been slow and often difficult. At present, women in the E.U. seem to be faring best.

Women working in the E.U. appear to be in a better position both in terms of the number of women in leadership positions and the diversity of industry and types of companies where they work. This can be attributed to the legally mandated or recommended quotas for women in supervisory boards and management. Quotas, however, are not legally feasible in the United States.

Progress for United States women in leadership positions and as corporate board members has mainly occurred through social pressure and the rising economic and political power of women. Unfortunately, there is a tendency toward segregation. Women in management and on boards tend to be concentrated in "female-specialized" areas.

Japan has seen the least progress toward equality. Whether women venture out of the similar occupational ghettos or stay within them, corporations have created insidious dual track career opportunities—managerial versus clerical—which even further contribute to formalizing gender segregation. Japan has no legislated quota system and even meeting the state-recommended percentage of women on corporate boards

365. Macnaughtan, *supra* note 251, at 13.
366. Matsui et al., *supra* note 134, at 41–42.

lags far behind the goals. Additionally, there is an insufficient pool of working women to meet them and a low number of women aspiring to leadership due to the traditional gender role distribution.

Top-down measures and targets cannot resolve these issues without more understanding and acceptance of career women in all walks of life. Pressure to change will likely come from the necessity to utilize women's latent potential to further economic development. The more interaction between women on boards and in management with men in similar positions, the more women will be seen for their capabilities and contributions. It is also important to create an environment to bolster women's career ambitions and aspirations. A powerful way to create this environment is to provide a mentoring system and significant role models. Another is adopting family-friendly policies such as those in the European Union. These are more likely to happen as more organizations and leaders recognize the economic benefits that result from women on boards and in leadership positions. This, in turn, will contribute to equality and fairness.