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Companies, Sustainability and Gender

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Summary

Companies are playing an increasingly central role in joining with NGOs and Governments to work towards 'sustainable development'. One theme of sustainability in which corporate action has been particularly vigorous is 'gender equality'. Whether as directors, workers, entrepreneurs or consumers, women are central to the 2030 Agenda for Sustainable Development and post-crisis initiatives for corporate reform. While on one view these efforts might be welcome in highlighting women's typical subordination and exclusion from economic life, the focus by companies and other financial actors on economic growth as both the best route out of poverty and the clearest path to gender equality is problematic. It results in a weak, business-centred definition of sustainability in which women become an investment, a form of gender capital that can bring something extra to business. In their current guise, corporate-led gender and sustainability initiatives risk embedding a focus on wealth maximisation while potentially creating further inequalities due to complex interactions of gender, race and class across both the global north and south. This approach has been informed by a commitment to the postulate of 'shareholder value', which is doctrinally and theoretically flawed. Gender can become a driver towards a strong corporate model of sustainability but this requires a significant departure from the instrumental treatment of women as a means of enhancing corporate profitability and legitimacy. Focussing instead on the possibilities that a feminist analysis of companies and sustainability offers would involve recognising corporate dependencies on unpaid labour, valuing care work in all its forms, acknowledging the new and gendered dependencies being created by the process of globalisation, and reformulating the corporate purpose to one which acts to ensure gender equality, social inclusion and strong sustainability.

1. Introduction

The economic, social and environmental fragility of our world has been met with focussed attempts by policy-makers and global governance actors to forge a more sustainable manner of living.[1] In recognition of the role that economic development and globalisation has played in contributing to unsustainable practices, companies have taken a lead in working with NGOs and other actors towards 'sustainable development'. This corporate involvement in sustainability can partly be explained by the view of global governance actors that economic growth is a central aspect of sustainable development. Indeed the World Bank has described 'economic growth' as one of the three pillars of sustainable development, together with 'environmental stewardship' and 'social inclusion'[2] and Goal 8 of the UN's Sustainable Development Goals is to 'Promote inclusive and sustainable economic

[1] Amongst the extensive initiatives are the United Nations Sustainable Development Goals and the World Bank Group Goals to End Extreme Poverty and Promote Shared Prosperity.

[2] The World Bank, *Sustainable Development*. Available at: http://www.worldbank.org/en/topic/sustainabledevelopment

growth, employment and decent work for all'. A model that places much emphasis on economic growth however risks making economic and financial developments the primary concern, with redistribution of the results of such growth being secondary.[3] For Irving and Helin the 'ambiguous and contestable nature' of sustainable development 'has allowed corporate discourses to shape its meaning'.[4] Economic growth is then presented 'as part of the solution rather than as part of the problem'.[5] The transformational potential of a strong sustainability model that counters the prevailing economic paradigm is therefore diluted 'with ecological and social welfare becoming subservient components of economic development'.[6] This scepticism towards corporate engagement in sustainable development is shared by John Ruggie, Former Special Representative of the UN Secretary-General on Business and Human Rights and author of the UN Guiding Principles on Business and Human Rights. In his open letter to the heads of the Business and Sustainable Development Commission in February 2016, Ruggie cautioned that

> Too many companies today put resources into social development initiatives that are worthy on their face, while ignoring serious negative impacts on people in their own operations and value chains. So they end up giving with one hand while taking away - or enabling others to do so - with the other. This is not a pathway to sustainable development.[7]

One area in which the tension between economic goals and broader issues of social inclusion is most acute is the treatment of women as actors in the corporate sustainability agenda. Women, whether as directors, entrepreneurs, consumers or workers, are increasingly central to post-crisis initiatives for corporate reform and the 2030 Agenda for Sustainable Development.[8] Gender equality is a key aspect of the UN's sustainability agenda with Goal 5 of the Sustainable Development Goals being to 'Achieve gender equality and empower all women and girls'. This clear focus on the need for gender equality if we are to achieve a socially sustainable world is welcome particularly when so much of the unpaid – and often ignored - labour of caring that sustains production is carried out by women.[9] Where a tension arises, however, is the problematic focus by companies and other financial actors on economic growth as both the best route out of poverty and the clearest path to gender equality. As Esquivel argues, that approach 'fails to respond to, or challenge, the macro-economic and structural drivers of current patterns of growth – including the structural role of unpaid care and domestic work in supporting economic growth'.[10] For Esquivel, insufficient attention has been paid to the fact that amongst those who are formulating and shaping the development agenda are powerful corporate and

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[3] A. Stewart, *Gender, Law and Justice in a Global Market* (Cambridge University Press, Cambridge, 2011) at 53.
[4] S. Irving and J. Helin, 'A World for Sale? An Ecofeminist Reading of Sustainable Development Discourse' (2017), *Gender, Work & Organization* (online) at 1.
[5] *Ibid.* at 6.
[6] *Ibid.* at 1.
[7] JG Ruggie, 'The Sustainable Development Goals and the Guiding Principles', 16 February 2016. Available at: https://www.shiftproject.org/resources/viewpoints/sustainable-development-goals-guiding-principles/
[8] See, for example, E. Prügl, "If Lehman Brothers Had Been Lehman Sisters…": Gender and Myth in the Aftermath of the Financial Crisis' (2012) 6 *International Political Sociology* 21; A. Roberts, 'The Political Economy of "Transnational Business Feminism" (2015) 17 (2) *International Feminist Journal of Politics* 209; A. Roberts, 'Gender, Financial Deepening and the Production of Embodied Finance: Towards a Critical Feminist Analysis' (2015) 29 (1) *Global Society* 107; and E. Prügl, 'Neoliberalising Feminism' (2015) 20 (4) *New Political Economy* 614.
[9] R. Pearson, 'Beyond Women Workers: Gendering CSR' (2007) 28 (4) *Third World Quarterly* 731.
[10] V. Esquivel, 'Power and the Sustainable Development Goals: a feminist analysis' (2016) 24 (1) *Gender & Development* 9 at 11.

governmental actors who are 'causing the problems that the [sustainable development goals] are trying to solve in the first place'.[11] Moreover, corporate-led gender empowerment projects that enhance a company's reputation and profit potential while promising gender equality are central features of the 'smart economics' movement. This has been criticised as being

> a far cry from the nuanced and subject-sensitive ideas of what the empowerment of women and the attainment of gender equality actually entails...A gender and development approach recognises gender inequality as a relational issue, and as a matter of structural inequality which needs addressing directly and not only by women, but by development institutions, governments and wider society'.[12]

The corporate linking of gender equality to economic growth in this narrow way results in a weak, business-centred definition of sustainability in which women become an investment, a form of gender capital that can bring something extra to business particularly with regards to companies securing 'a reputation as good corporate citizens in a globalised economy'.[13] The corporate-led gender empowerment agenda towards sustainability prioritises 'the relationship between gender relations and economic efficiency (the business case)'.[14] Esquivel accuses it of having 'bought into' rather than challenging 'embedded liberalism',[15] with, as Stewart notes, 'poor women' of the Global South[16] being 'encouraged to attach themselves to markets.'[17]

This paper considers the role that gender might play in being a positive agent for change towards a corporate environment that takes seriously the goal of social sustainability. The central argument advanced is that, in their current guise, corporate-led gender and sustainability initiatives risk embedding a focus on wealth maximisation while potentially creating further inequalities due to complex interactions of gender, race and class across both the global north and south. I argue that the narrow corporate vision of gender equality as being achieved when women can engage as much as men with current corporate structures and practices has been informed by a commitment to the postulate of 'shareholder value', which is doctrinally and theoretically flawed. This has resulted in companies tempering sustainability initiatives to fit within an over-riding objective of returning maximum profits to shareholders. Women are then encouraged to engage with this model without sufficient attention being paid to the fact that the 'global economy...is becoming increasingly interdependent and increasingly unequal'[18] and its distributive effects skewed against the contributions that women make in both paid and unpaid labour.

The paper proceeds as follows. Section 2 identifies a range of initiatives adopted by companies and global governance actors in the pursuit of gender equality and sustainability. It demonstrates how these strategies are informed by a prevailing view that the correct corporate objective is to promote

[11] *Ibid.* at 13.
[12] S. Chant and C. Sweetman, 'Fixing women or fixing the world? 'Smart economics', efficiency approaches, and gender equality in development' (2012) 20 (3) *Gender & Development* 517 at 517.
[13] Prügl (2015) at 626.
[14] Stewart (2011) at 54.
[15] Esquivel (2016) at 17.
[16] The term 'global south' is used here for shorthand but is problematic particularly when considering the diversity of experiences of women throughout countries considered to fall within the global south.
[17] Stewart (2011) at 54.
[18] N. Kabeer, 'Globalisation, Labor Standards, and Women's Rights: Dilemma of Collective (In)Action in an Interdependent World' (2004) 10(1) *Feminist Economics* 3 at 30.

shareholder value, and that participation in economic life is the optimal route towards gender equality. Section 3 reveals the flaws in these assumptions and argues that current corporate-led gender and sustainability initiatives risk deepening existing, and creating fresh, inequalities. They do so by failing to pay adequate heed to the structural barriers to gender equality caused by corporate behaviour and by ignoring the deeply gendered distribution of market outcomes. Rather, they perpetuate the

> belief that women's business success is enough to overcome all other barriers to equality. This version of 'women's empowerment' is more appealing to international donors and banks than traditional feminist concerns with the more nebulous inequality and oppression.[19]

In Section 4 I argue that gender can become a driver towards a strong corporate model of sustainability. This requires that we move on from 'gender' being treated instrumentally as a means of enhancing corporate profitability and legitimacy and focussing instead on the possibilities that a feminist analysis of companies and sustainability offers. As Fraser puts it, feminists 'might resolve to break off our dangerous liaison with marketization and forge a principled new alliance with social protection'.[20] This would involve recognising corporate dependencies on (often women's) unpaid labour, valuing care work in all its forms, acknowledging the new and gendered dependencies being created by the process of globalisation, and reformulating the corporate purpose to one which acts to ensure gender equality, social inclusion and strong sustainability.

2. Review of gender equality and sustainability initiatives

The corporate sector has long had a complex relationship with female labour. While the history of companies and women's labour begins long before the 1970s,[21] this decade marks a period of sustained feminist activism and radical legislative change in an attempt to ensure equality of treatment and pay.[22] In 1977, Rosabeth Moss Kanter's seminal work *Men and Women of the Corporation* illustrated the structural barriers to women's progression within companies.[23] Her conclusion was that corporate structures and systems informed a person's behaviour and created gender divisions, not biological gender differences. It followed that women were as capable as men of performing in the masculine corporate world. This conclusion may seem trite when viewed from a twenty-first century perspective yet structural barriers to women's inclusion, progression and pay continue. In the intervening decades a vast range of policy and legislative initiatives have been promulgated, each designed to address a different facet of women's exclusion and subordination within the paid labour market. Women's distinctive biological capacity to bear children has, for example, been recognised by national and supranational measures to help protect workers from pregnancy discrimination.[24] Attempts have been made in the UK to address the difficulties in combining paid work and unpaid care through a statutory process in which employees may request

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[19] A. Cornwall and AM Rivas, 'From 'gender equality' and 'women's empowerment' to global justice: reclaiming a transformative agenda for gender and development' (2015) 36 (2) *Third World Quarterly* 396 at 406.

[20] N. Fraser, 'Between Marketization and Social Protection: Resolving the Feminist Ambivalence' in N. Fraser, *Fortunes of Feminism: From State-Managed Capitalism to Neoliberal Crisis* (Verson; London, 2013) at 241.

[21] In the case of working class women, this history can be traced at least to the industrial changes of the 19th Century. See S. Fredman, *Women and the Law* (Clarendon; Oxford, 1997) at 9-10.

[22] In the UK for example, see the Equal Pay Act 1970 and the Sex Discrimination Act 1975.

[23] RM Kanter, *Men and Women of the Corporation* (Basic Books: New York, 1977).

[24] Directive 92/85/EC Pregnant Workers Directive; Maternity and Parental Leave etc. Regulations 1999 (SI 1999/3312); Section 18 Equality Act 2010.

flexible working[25] and shared parental leave for new parents.[26] Moreover, the harmful effects of highly sexualised workplace cultures, so vividly captured in McDowell's work on *Capital Culture*,[27] have been addressed in part through the courts willingness to view sexual harassment as an act of sex discrimination[28] and, more recently, by making harassment of a sexual nature an offence under the UK's Equality Act 2010.[29] Despite these initiatives and more, gender equality within the corporate workplace continues to elude. Strict occupational segregation persists with women making up 75.6% of full-time employees in the caring, leisure and service sector, which is typically low-paid.[30] Within corporations women are clustered in lower organisational ranks with only 9.8% of FTSE100 executive directorships held by women.[31] Furthermore, a 'sexualised culture' remains a concern in many financial institutions prompting McDowell in 2010 to observe that

> Whether we term the specific culture of investment banks and the nature of the system within which they operate gendered, casino or testosterone capitalism...once again the poor are losing out. The implications of this redistribution must surely loom large on the research agenda of social scientists in the new decade'.[32]

It is against this troubled and complex context that the current corporate interest in gender equality (or more specifically 'women') must be situated. It is also important to view more recent corporate-led gender equality initiatives from their perspective as a response to the global financial crisis of 2008. As Elias notes, 'the corporate sector has come to play an ever more significant role in the governance of gender...issues'[33] and this, in part, has been driven by companies and other financial market actors reflecting on the factors that were implicated in the crisis. While it would be misleading to characterise today's corporate interest in women as purely a post-crisis phenomenon – the UK has been exploring boardroom diversity concerns since at least 2004[34] - there is little doubt that the pace and range of initiatives has gathered momentum in recent years as women have been portrayed as possible 'saviours' of a high-risk, short-termist, testosterone-driven corporate world.[35]

The range of recent gender equality and sustainability initiatives adopted by companies, NGOs, states and other global governance actors is vast. In the UK, the Davies report *Women on boards* ignited an

[25] The Flexible Working Regulations 2014 (SI 2014/1398).
[26] The Children and Families Act 2014. For a critique of these measures see G. Mitchell, 'Encouraging Fathers to Care: The Children and Families Act 2014 and Shared Parental Leave' (2015) 44 (1) *Industrial Law Journal* 123.
[27] L. McDowell, *Capital Culture: Gender at Work in the City* (Blackwell; London, 1997); L. McDowell, 'Capital Culture Revisited: Sex, Testosterone and the City' (2010) 34 (3) *International Journal of Urban and Regional Research* 652.
[28] *Porcelli v Strathclyde Regional Council* [1986] IRLR 134.
[29] Section 26(2) Equality Act 2010.
[30] 'Understanding the gender pay gap in the UK' (ONS; London, 17 January 2018) at 6-7.
[31] S. Vinnicombe, R. Sealy and AL Humbert, 'The Female FTSE Board Report 2017: Women on Boards: Back on Track?' (Cranfield University, November 2017) at 1.
[32] McDowell (2010) *supra* n 27 at 657. On the sexualised culture of the City of London's institutions see also K. Banyard and R. Lewis, *Sexism and the City: Corporate Sexism: The Sex Industry's Infiltration of the Modern Workplace* (Fawcett Society; London, September 2009).
[33] J. Elias, 'Davos Woman to the Rescue of Global Capitalism: Postfeminist Politics and Competitiveness Promotion at the World Economic Forum' (2013) 7 *International Political Sociology* 152.
[34] Department of Trade and Industry, *Building Better Boards* (DTI; London, 2004).
[35] Prügl (2012) *supra* n8; Elias (2013) *supra*; A. Roberts, 'Financial Crisis, Financial Firms...and Financial Feminism? The Rise of "Transnational Business Feminism" and the Necessity of Marxist-Feminist IPE' (2012) 8 (2) *Socialist Studies* 85.

intense interest in the composition of corporate boardrooms amidst concerns of complacent directors and a 'reluctance to speak "truth to power"'.[36] An International Monetary Fund report into the financial crisis highlighted the perniciousness of 'groupthink' and concluded that 'a deliberate attempt to reach out to "contrarians" would have helped'.[37] To enhance boardroom diversity, the UK Corporate Governance Code which applies to all listed companies, was amended to include a principle that

> The search for board candidates should be conducted, and appointments made, on merit, against objective criteria and with due regard for the benefits of diversity on the board, including gender.[38]

A range of measures to increase boardroom diversity has been taken by states including the imposition of quotas to achieve targeted levels of female representation.[39] Board composition is, of course, only one aspect of the current corporate interest in women. FTSE100 companies have publicly stated their commitment to improving diversity by 'nurturing talent' at all levels (particularly when working in traditionally male-dominated industries such as mining and engineering),[40] while in popular culture women workers across the spectrum are being encouraged to 'lean in' to work and overcome their inhibitions if they wish to succeed.[41]

It is, however, at the global level that transnational companies are joining prominently with governance actors such as the United Nations and international funding institutions such as the World Bank to reach outside their own corporate boundaries in order to influence gender equality in the wider world and particularly in the global South. As Scheyvens et al have noted, 'one of the most significant shifts with development of the SDGs [sustainable development goals] has been the foregrounding of the role of the private sector.'[42] This business involvement has been particularly marked at the global level through initiatives such as the Global Compact, the Global Reporting Initiative and the World Business Council for Sustainable Development[43] and the 'pro-poor' activities engaged in directly by multi-nationals.[44] These activities often take the form of partnership working with women with the dual goal of gender empowerment for participants and access to new distribution chains for the companies concerned.[45] One example is the work of Avon, the cosmetics

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[36] K. Ahmed, 'Could women have halted the financial crisis? Banker bashing and women in the boardroom are linked – and we should not be afraid to say so', *Sunday Telegraph*, 12 February 2011; Lord Davies of Abersoch, *Women on boards* (UK Government, February 2011).
[37] D. Peretz, *IMF Performance in the Run-up to the Financial and Economic Crisis: Bilateral Surveillance of the United Kingdom: Independent Evaluation Office of the International Monetary Fund Background Paper BP/10/05* (IMF, Washington, DC; December 2010).
[38] Principle B2, *The UK Corporate Governance Code* (Financial Reporting Council; London, April 2016).
[39] S. Terjesen and R. Sealy, 'Board Gender Quotas: Exploring Ethical Tensions from a Multi-Theoretical Perspective' (2016) 26 (1) *Business Ethics Quarterly* 23.
[40] R. Russell, 'How do FTSE100 Companies Frame Gender Equality?' (2017) 12 (2) *International and Comparative Law Journal* 80 at 92.
[41] S. Sandberg, *Lean In: Women, Work and the Will to Lead* (WH Allen; New York, 2013).
[42] R. Scheyvens, G. Banks and E. Hughes, 'The Private Sector and the SDGs: The Need to Move Beyond 'Business as Usual' (2016) 24 *Sustainable Development* 371 at 372.
[43] A. Kolk, 'The social responsibility of international business: From ethics and the environment to CSR and sustainable development' (2016) 51 (1) *Journal of World Business* 23 at 25.
[44] *Ibid.* at 31.
[45] ME Porter and MR Kramer, 'Creating Shared Value: How to reinvent capitalism – and unleash a wave of innovation and growth' (2011) *Harvard Business Review* 62 at 70.

company, in South Africa. A study by Dolan and Scott of South African Avon distributors found that the women did not only regard their work as a way of increasing household income but 'an instrument for personal and social transformation'.[46] While the authors were cautious not to suggest that 'similar market initiatives can tackle the deep-seated structural inequalities that often oppress women or can remedy poverty in developing countries',[47] the women concerned did report some positive outcomes of the partnership. Another well-known example is Unilever's Shakti project. This involves Unilever in India providing training and micro-credit to women in rural villages so that they can form small businesses and sell Unilever's products.[48] This 'bottom of the pyramid' entrepreneurship model is, argues Dolan, 'a compelling proposition'.[49] It allows companies to extend their reach into new markets while 'draw[ing] the citizenry of under-developed regions into the ambit of global markets'.[50] It does so by

> promising a new form of inclusive capitalism that simultaneously cleanses development of its paternalist and interventionist heritage and repositions capital accumulation as moral.[51]

The double-edged nature of these gender empowerment projects, which appear to promise enhanced social sustainability, has led to them being viewed with unease. Prieto-Carron highlights that paid work 'offers opportunities for women to renegotiate power within the household'[52] but Schuler et al observed that shifting power balances within the home can have troubling consequences. In their study of the expansion of micro-credit programmes to rural Bangladesh, they found that while there was evidence that increased household resources and greater 'solidarity' with other women micro-entrepreneurs resulted in less reporting of domestic violence, in other cases husbands exhibited greater violence 'because they see their authority over their wives being undermined'.[53] Prügl has highlighted a number of serious concerns with the Shakti project as a paradigm example of the vogue for corporate-led gender empowerment initiatives

> it puts feminism in the service of corporate market expansion and masquerades its private gains as an investment in public goods. It does so with neoliberal technologies: creating entrepreneurs and consumers desiring global products; freeloading on networks generated through public development efforts; destroying social solidarities while setting women up against each other in competition over a limited market; and redefining the health needs of women and families to fit corporate agendas.[54]

While women may be experiencing increased household income, and this is not to be belittled, Unilever's Shakti project has also allowed it to dominate the market for household toiletries in rural

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[46] C. Dolan and L. Scott, 'Lipstick evangelism: Avon trading circles and gender empowerment in South Africa' (2009) 17 (2) *Gender & Development* 203 at 215.
[47] *Ibid*.
[48] Porter and Kramer (2011) *supra*; Prügl (2015) *supra* n8.
[49] C. Dolan, 'The new face of development: The 'bottom of the pyramid' entrepreneurs (2012) 28 (4) *Anthropology Today* 3.
[50] *Ibid.*
[51] *Ibid.*
[52] M. Prieto-Carron, 'Women Workers, Industrialization, Global Supply Chains and Corporate Codes of Conduct' (2008) 83 *Journal of Business Ethics* 5 at 7.
[53] SR Schuler, SM Hashemi and S. Huda Badal, 'Men's violence against women in rural Bangladesh: Undermined or exacerbated by microcredit programmes?' (1998) 8 (2) *Development in Practice* 148 at 155.
[54] Prügl (2015) at 623-4.

India (in contrast to its rival Proctor and Gamble), created competition both between women and between women and existing shop-keepers, and Unilever's claim that it has thus improved public health is 'tenuous' at best. Indeed as Prügl observes, selling products such as soap and skin whitening agents as public health improvers (in contrast to the provision of safe drinking water for example) has led to 'racialised solutions [to public health] driven by corporate interests'.[55] The increasing role of business as a 'development agent' offering market-led solutions might appear to promise a route out of poverty, gender empowerment, and a more socially sustainable world but essentially grafts new markets of the 'poor women' of the global south on to a an old model of profit and short-term value creation. The markets and actors may be new – women in rural Indian villages – but the model has not changed. As Lim questions in a discussion of the employment of women factory workers by multinationals in 'developing countries', is this 'primarily an experience of liberation, as development economics maintain, or one of exploitation, as feminists assert, for the women concerned?'[56] As 'business tends to recognise only those problems for which a solution within the competence of the enterprise or marketplace can be produced',[57] a business-oriented model of gender equality as an aspect of social sustainability cannot acknowledge or remedy the real causes of inequality. These include unequal power relations, structural barriers, and in some cases a denial of women's agency.

3. Problems with the current approach

For Roberts, what links this 'increasingly large coalition of feminist organizations, capitalist states, regional and international funding institutions, non-governmental organizations (NGOs) and transnational corporations' in their interest in gender equality (what she terms 'transnational business feminism')[58] is 'the business case for gender equality''.[59] It is entirely logical that if companies are to influence and even dominate the discourse on equality, they will do so in the language that appeals to investors. The empirical and normative merits of making 'the business case' for corporate gender equality have been addressed comprehensively and it is not the purpose of this paper to rehearse these except to say that the empirical case has not been proven and the normative case often rests on a demeaning and instrumental treatment of women.[60] What is arguably more fruitful to explore is (1) *why* companies and financial actors have insisted on framing gender equality as dependent on participation in financial markets in lieu of arguments highlighting long-term social sustainability, dignity, and human flourishing; and (2) the consequences of this approach.

3.1 What explains the insistence on making 'the business case'?

Justifying gender equality initiatives by reference to 'the business case' is prompted by the postulate of 'shareholder primacy': the general, yet mistaken, consensus that the corporate board should

[55] *Ibid.* at 623.
[56] LYC Lim, 'Women's Work in Export Factories: the Politics of a Cause' in I. Tinker (ed). *Persistent Inequalities* (OUP; Oxford, 1990) at 216.
[57] M. Blowfield and CS Dolan, 'Business as a development agent: evidence of possibility and improbability' (2014) 35 (1) *Third World Quarterly* 22 at 30.
[58] Roberts (2012) *supra* at 87.
[59] *Ibid.*
[60] For a brief summary of the business case arguments see R. Russell and C. Villiers, 'Gender Justice in Financial Markets' in L. Herzog (ed) *Just Financial Markets? Finance in a Just Society* (OUP; Oxford, 2017) 271 at 277-279. See also M. McCann and S. Wheeler, 'Gender Diversity in the FTSE100: The Business Case Claim Explored' (2011) 38 (4) *Journal of Law and Society* 542.

prioritise the best financial (and usually short-term) interests of its shareholders.[61] This is, as Sjåfjell maintains, a 'legal myth'.[62] For Stout

> The widespread perception that corporate directors and executives have a legal duty to maximize shareholder wealth plays a large role in explaining how shareholder value thinking has become so endemic in the business world today.[63]

Yet, as she points out, there is a 'fatal flaw' with this perception: 'The notion that corporate law requires directors, executives, and employees to maximize shareholder wealth simply isn't true'.[64] What corporate law requires is that a director of a company acts in the *company's* interests. This is clear from section 170(1) of the UK Companies Act 2006 ("CA 2006"), which provides that duties are 'owed by a director of a company to the company'. The statutory duties in the CA 2006 codify, to an extent, the previous common law rules and equitable principles but 'shall be interpreted and applied in the same way as common law rules or equitable principles, and regard shall be had to the corresponding common law rules and equitable principles in interpreting and applying the general duties'.[65] The most relevant of these general duties for our purposes is the duty contained in section 172 CA 2006 to promote the success of the company. The duty requires that a director must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole.[66] The duty is a subjective one, requiring the director to focus on the company's interests not on those of the shareholders

> The question is not whether, viewed objectively by the court, the particular act or omission which is challenged was in fact in the interests of the company; still less is the question whether the court, had it been in the position of the director at the relevant time, might have acted differently, Rather, the question is *whether the director honestly believed* that his act or omission was in the *interests of the company*.[67]

The centrality of the company, and not shareholders, to this duty can be seen even more clearly when considering the equitable fiduciary duty upon which it is based as captured by Lord Greene MR: directors must act 'bona fide in what they consider – not what a court may consider – is in the interests of the company, and not for any collateral purpose'.[68] While the law is beyond doubt that directors owe a duty to the company, the uncertainty in determining what is in the best interests of this artificial legal person coupled with the attraction of legal and political actors 'to the gospel of shareholder value'[69] has led to corporate and shareholder interests being viewed interchangeably. Such a narrow interpretation of section 172 however would be incorrect despite the section's ambiguous wording.

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[61] H. Hansmann and R. Kraakman, 'The End of History for Corporate Law' (2001) 89 *Georgetown Law Journal* 439.
[62] B. Sjåfjell, 'Dismantling the Legal Myth of Shareholder Primacy: The Corporation as a Sustainable Market Actor' (6 February 2017) University of Oslo Faculty of Law Research Paper No. 2017-03; Nordic & European Company Law Working Paper No. 16-20.
[63] L. Stout, *The Shareholder Value Myth: How Putting Shareholders First Harms Investors, Corporations and the Public* (Berrett-Koehler; San Francisco, 2012) at 24.
[64] *Ibid*. at 25.
[65] Section 170(4) Companies Act 2006.
[66] Section 172(1) Companies Act 2006.
[67] *Regentcrest plc v Cohen* [2001] 2 BCLC 80 per Jonathan Parker J at 105. Emphasis added.
[68] *Re Smith and Fawcett Limited* [1942] Ch 304 at 306.
[69] Stout (2012) at 20.

Section 309(1) of the Companies Act 1985, the predecessor to the Companies Act 2006, provided that the 'matters to which the directors…are to have regard in the performance of their functions include the interests of the company's employees in general, as well as the interests of its members'. In other words, in reaching a decision as to what is in the *company's* interests, directors could consider the perspectives of, and impact on, shareholders and employees.[70] Wedderburn has argued that section 172 is a weaker version of the duty to act in a company's interests. It is not the product of a careful and correct analysis of the common law and equitable principles but the result of deferring to the 'requirements of transnational capital and the hegemony of the 'promotion of shareholder value''.[71]

The first problem, then, with corporate models of gender equality for social sustainability is that they are based on an entirely flawed premise that the 'business case' must be made as companies exist to serve financial investors. This valorises and normalises the shareholder primacy norm, extending market ideology into areas such as poverty reduction and gender equality that were previously the preserve of states.

3.2 What are the consequences of this approach for gender equality?

The second problem with corporate-led gender equality initiatives is that they are arguably regressive and risk embedding, if not deepening, existing inequalities. Moore has observed that

> Since the 17th century, our economic models and social and political institutions have promoted a version of human flourishing and prosperity synonymous or concurrent with the growth of material wealth.[72]

The danger, however, is that such models assume that material wealth will be distributed in a socially-just manner yet the UN has noted that inequalities have increased 'mainly because the wealthiest individuals have become wealthier'.[73] The UN has issued a stark warning on the state of global inequalities and the repercussions of these going unchecked

> Inequalities also pose a serious barrier to social development by slowing the pace of poverty reduction. Inequality limits opportunities for social mobility, including intergenerational mobility. Income inequality leads to uneven access to health and education and, therefore, to the intergenerational transmission of unequal economic and social opportunities, creating poverty traps, wasting human potential, and resulting in less dynamic, less creative societies. Inequality also increases the vulnerability of societies (and, especially, of particular groups within societies) to economic crises and prolongs the time it takes to recover from such crises. These varied impacts can combine to generate potent sources of social tension, fertile ground for political and civil unrest, instability and heightened human insecurity.[74]

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[70] For a critique of the limitations of this provision from the perspective of labour see C. Villiers, 'Section 309 of the Companies Act: Is it Time for a Reappraisal'? in H. Collins, P. Davies and R. Rideout (eds) *Legal Regulation of the Employment Relation* (Kluwer; Netherlands, 2000).

[71] Lord Wedderburn of Charlton, 'Employees, Partnership and Company Law' (2002) 31 (2) *Industrial Law Journal* 103.

[72] HL Moore, 'Global Prosperity and Sustainable Development Goals' (2015) 27 *Journal of International Development* 801.

[73] United Nations Economic and Social Affairs, *Inequality Matters: Report on the World Social Situation 2013* at 31.

[74] *Ibid.* at 22.

Pursuing a model of equality premised on profit generation and shareholder wealth maximisation puts labour, and particularly women's labour, to the service of financial capital. In so doing, it shores up the claim of financial investors for companies to be governed in their interests with labour being disciplined to create as much surplus value as possible.[75] Women's labour fares particularly harshly under this model in two key ways. First, for those women who work in companies, the 'ideal worker' who is best-placed to create surplus value with minimal transaction costs is a masculinist ideal that many find difficult to emulate.[76] This is due to a complex range of reasons including caring responsibilities, career breaks, and gender bias. Within the context of the global south, Elias has also observed that multi-nationals are presented as progressive and capable of tackling gender inequalities yet are active in constructing and reinforcing particular images of feminine and masculine work. For example, the

> feminization of global assembly-line employment is not simply an effect of the low wages that employers are usually able to pay female workers, but also reflect the perpetuation of socially constructed ideas relating to the ideal "nimble fingered" factory worker.[77]

Second, as much of women's labour is unpaid caring labour involved in social reproduction, this labour goes unrecognised in a gender equality model premised on women's engagement with the paid labour market. Caring responsibilities continue while

> women and girls in many societies are faced with a grassroots reality of compensating for economic austerity measures and decline...Relying only on female populations even to guarantee business as usual, let alone transform the world, demands super-human sacrifices in terms of time, labour, energy and other resources.[78]

More insidiously, the nature of many of the current corporate gender initiatives in the global south, which focus on embracing profit generation as a way out of poverty, puts the onus on an individual woman to empower herself out of economic marginalisation. This detracts attention from the structural barriers that have created the inequality in the first place. Moreover, the often reductive portrayal of women in the global south as 'poor' and in need of empowering in contrast to the already 'empowered' women of the global north is deeply problematic.[79]

4. Gender as an agent for change

Gender equality is viewed as a key aspect of a more socially-just world.[80] The argument advanced in this paper so far has neither suggested that there is no place for discussions of gender within the corporate context, nor has it decried the well-intended efforts made by those who are genuinely

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[75] On the labour-oriented models of companies see L. Talbot, *Great Debates in Company Law* (Palgrave; London, 2014) at 14-18.
[76] M. O'Connor, 'Women Executives in Gladiator Corporate Cultures: The Behavioral Dynamics of Gender, Ego, and Power' (2006) 65 (2) *Maryland Law Review* 466.
[77] J. Elias, 'Hegemonic Masculinities, the Multinational Corporation, and the Developmental State: Constructing Gender in "Progressive" Firms (2008) 10 (4) *Men and Masculinities* 405 at 406.
[78] S. Chant and C. Sweetman, 'Fixing women or fixing the world? 'Smart economics', efficiency approaches, and gender equality in development' (2012) 20(3) *Gender & Development* 517 at 521.
[79] On the challenge of different identities in the global context see Stewart (2011) Ch.2. See also N. Fraser, 'From Redistribution to Recognition? Dilemmas of Justice in a "Post-Socialist" Age' (1995) 1 *New Left Review* 68.
[80] K. Raworth, *A Safe and Just Space for Humanity: Can We Live Within the Doughnut?* (Oxfam Discussion Paper, 2012).

seeking to improve the lot of women. The central claim made, however, is that the current treatment of women as a resource to be mined in the myopic pursuit of 'shareholder value' is regressive and unlikely to achieve much in the way of social sustainability. This is because it is ultimately fixed on a 'business as usual' model of the corporation to which women are invited to join on its terms. How, then, can gender be invoked as an agent of change towards a more socially sustainable world?

4.1 Recognise corporate dependencies on unpaid labour, especially care

Companies benefit from unpaid labour through the socially reproductive work carried on in the home in order to allow employees to devote their paid working time fully to the company, and through the additional, unpaid efforts by employees in the course of their working lives. Both forms of unpaid labour are gendered. The devotion of time to work is driven by pressures, often implicit, to perform as a corporate 'ideal worker' who is able to devote himself without interruption to generating the greatest profit.[81] As those who continue to bear most responsibility for the unpaid labour of care, women are less able to fit this ideal but men are similarly disadvantaged by this adherence to the image of a corporate ideal rooted in ideas of hegemonic masculinity.[82] As Williams has observed, 'men are caught between an old-fashioned breadwinner ideal and an economic era that no longer delivers the family wage'.[83]

The second form of unpaid labour, care that is carried out in the home, is often not characterised as 'labour' at all. 'Work' is viewed legalistically as an activity involving an employer and employee and at its heart is the 'wage-work' bargain.[84] By recognising the socially necessary unpaid labour that goes on at home, the strict divisions between work and family life that have often operated to confine men to one domain and women to another might be unsettled. Women have, of course, participated in the paid labour market for decades. Yet the 'public/private' dichotomy that persists between the paid labour market and unpaid labour at home is unhelpful when it ignores the empirical reality that women, more than men, engage in a 'double shift' of paid and unpaid work.[85] One way through this conundrum would be to take seriously Fraser's idea of reforming the world of work and welfare to a 'universal caregiver' model. This has three strands

> all jobs would be designed for workers who are caregivers, too; all would have a shorter work week than full-time jobs have now; and all would have the support of employment-enabling services.[86]

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[81] R. Russell, 'The Uneasy Relationship between Corporations and Gender Equality: A Critique of the 'Transnational Business Feminism' Project' in B. Sjåfjell and I. Lynch Fannon (eds) *Creating Corporate Sustainability: Gender as an Agent for Change* (CUP; Cambridge, 2018) (*forthcoming*)

[82] JC Williams, 'Reconstructive Feminism: Changing the Way We Talk About Gender and Work Thirty Years after the PDA' (2009-10) 21 *Yale Journal of Law and Feminism* 79.

[83] JC Williams, *Reshaping the Work-Family Debate: Why Men and Class Matter* (Harvard University Press; Cambridge, Mass., 2010) at 81.

[84] On the mutuality of obligation test to establish a contract of employment see *Carmichael v National Power plc* [1999] 1 WLR 2042.

[85] D. Wheatley, 'Good to be home? Time-use and satisfaction levels among home-based teleworkers' (2012) 27 (3) *New Technology, Work and Employment* 224.

[86] N. Fraser, 'After the Family Wage: A Postindustrial Thought Experiment in N. Fraser, *Fortunes of Feminism: From State-Managed Capitalism to Neoliberal Crisis* (Verso; London, 2013) at 134.

4.2 Acknowledge the complex dependencies created by globalisation

In her work on *Gender, Law and Justice in a Global Market* Stewart paints a careful and nuanced picture of the intricate relationships between women in the global north and south brought about by the interaction of the institutions of market, state and family. She argues that

> The lack of recognition of the value of social reproduction within any society contributes to global gender inequalities because it tends to distribute the benefits of globalisation to the Global North at the expense of women and their families and communities in the Global South.[87]

The process of globalisation – the 'increased integration of national economies in world markets'[88] – has, in the case of many countries in the global south, 'primarily led to liberalisation of trade and finance, and privatisation with the view to enhance competitiveness'.[89] The conventional wisdom that participation in the market economy leads to increased economic growth which benefits women can be seen in this quote from Goldman Sachs on its '10,000 women' project

> In 2008, based on a growing body of research to support the economic opportunity of investing in women, Goldman Sachs launched *10,000 Women* to provide women entrepreneurs around the world with business management education, mentoring and networking, and access to capital. To date, the initiative has reached over 10,000 women from across 56 countries and *resulted in immediate and sustained business growth* for graduates of the program.[90]

Such uncritical linking of growth with equality is dangerous however for it obscures the more troubling reality that processes of globalisation may not advance equality and indeed may deepen existing inequalities or create new ones. For example, environmentally unsustainable demands for out of season produce by consumers in the global north are exposing female agricultural workers in the global south to significant health hazards of chemical pesticides and eroding traditional links with small-scale farming.[91] Standing has also observed that labour has become more 'feminised' by the process of globalisation resulting in low-paid, precarious work traditionally undertaken by women becoming the norm across the labour market. He points to the 'trend towards greater insecurity and inequality' as 'social insurance predicated on regular, stable full-time wage labor with "temporary interruptions in earning power"' now failing to provide adequate protection for men and women.[92] Baliamoune-Lutz has studied the effects of 'an openness to trade' on gender equality in education in sub-Saharan Africa and found that there may be an adverse impact on literacy due to rising demands for unskilled rather than skilled labour.[93] Moreover, as female participation in the labour market has

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[87] Stewart (2011) at 6.
[88] M. Baliamoune-Lutz, 'Globalisation and Gender Inequality: Is Africa Different?' (2007) 16 (2) *Journal of African Economies* 301.
[89] *Ibid.*
[90] Emphasis added. For more information about the programme, see http://www.goldmansachs.com/citizenship/10000women/#about-the-program
[91] V. Tauli-Corpuz, 'Globalization and its Impacts on Indigenous Women: The Philippine Experience' (1997) *Gender Series No 1, Third World Network Malaysia.*
[92] G. Standing, 'Global Feminization through Flexible Labor: A Theme Revisited' (1999) 27 (3) *World Development* 583 at 600.
[93] Baliamoune-Lutz (2007) *supra*.

become the norm in the global north, the care 'gap' this then leaves is increasingly met by the transnational movement of affective labour from the global south.[94]

Globalisation is not a gender-neutral phenomenon. The story of globalisation and economic growth appeals instinctively to the conventional wisdom that hard work combined with equality of opportunity can lead to equality of outcomes between men and women. It also conveniently aligns with the orthodox view that companies exist to generate profit for investors. The truth is rather more uncomfortable.

4.3 Reform the corporate purpose in pursuit of a socially sustainable world

The final, and perhaps most fundamental, way forward calls for the abandonment of the 'shareholder value' myth. As a very minimum the ambiguity introduced by section 172 CA 2006 regarding the duty of directors could be corrected to emphasise that it is the company and not shareholders to whom directors owe a duty. This is, admittedly, a rather conservative proposal but one which would be doctrinally correct. Moreover, it would put an end to the 'fundamental and pressing social and political problem' which Bruner identifies as 'the growing popular misconception that financial firms exist merely to maximize stock prices for the short-term benefit of their shareholders'.[95]

A more radical proposal lies in altering the legal duty from one which focuses on the company as essentially a collection of disparate forms of capital to one which places concerns for sincere social sustainability at the core of directorial decision-making. There have already been significant and sustained efforts made on the part of corporate law scholars to re-imagine the corporate purpose in the pursuit of something other than shareholder wealth maximisation.[96] Much of this literature is rightly *de*constructive in its approach; that is, it seeks to highlight precisely why shareholder primacy is flawed.[97] In an attempt to take a *re*constructive approach and suggest a viable alternative to the status quo, one way forward could be to introduce the principle of proportionality (well-known in anti-discrimination law) to the law on directors' duties. Although Williams makes clear that 'the agenda of reconstructive feminism is much broader than that defined by the principle of proportionality',[98] Samuels has pointed to the value of proportionality and its 'commonality' with feminist legal method.[99] This is not to say that the principle of proportionality, which inevitably involves balancing rights, does not have its critics from feminist and other perspectives.[100] However, 'proportionality' as

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[94] Stewart (2011) *supra*.

[95] CM Bruner, 'Conceptions of Corporate Purpose in Post-Crisis Financial Firms' (2013) 36 *Seattle University Law Review* 527 at 529.

[96] For the historical debate on corporate purpose see AA Berle, 'Corporate powers as powers in trust' (1931) 44 *Harvard Law Review* 1049; EM Dodd, 'For whom are corporate managers trustees' (1932) 45 *Harvard Law Review* 1145; AA Berle, 'For whom corporate managers are trustees: a note' (1932) 45 *Harvard Law Review* 1365; and AA Berle, *The 20th Century Capitalist Revolution* (New York; Harcourt, Brace and Company; 1954). For a summary of the debate and one example of a new normative focus see D. Attenborough, 'Giving purpose to the corporate purpose debate: an Equitable Maximisation and Viability principle' (2012) 32(1) *Legal Studies* 4.

[97] A seminal example of this is P. Ireland, 'Company Law and the Myth of Shareholder Ownership' (1999) 62 (1) *The Modern Law Review* 32.

[98] J. Williams, 'Exploring the Economic Meanings of Gender' (2000) 49(4) *American University Law Review* 987-1020 at 999.

[99] H. Samuels, 'Feminizing Human Rights Adjudication: Feminist Method and the Proportionality Principle' (2013) 21 *Feminist Legal Studies* 39 at 40.

[100] See generally C. Smart, *Feminism and the Power of Law* (Taylor and Francis; London, 1989); G. Webber, 'Proportionality, balancing and the cult of constitutional rights scholarship' (2010) 23 *Canadian Journal of Law and Jurisprudence* 179.

an approach to board decision-making has advantages over the current shareholder-centric approach because it requires a degree of scrutiny over competing rights. As Rivers puts it, there are two essential conceptions of proportionality. The British conception is 'state-limiting' and 'sees proportionality as a set of tests warranting judicial interference to protect rights'.[101] The other is a European 'optimising' conception, which 'sees proportionality as a structured approach to balancing fundamental rights with other rights and interests in the best possible way.'[102] In the UK, section 19 of the Equality Act 2010 provides a defence to indirect discrimination (where a provision or practice appears neutral but disadvantages those with a shared protected characteristic such as race) if the employer can show that the practice was a 'a proportionate means of achieving a legitimate aim.' In the paradigm example of the practice of full-time work, ensuring a full staffing complement during normal business hours might well be a perfectly legitimate aim. Insisting that every employee works full-time every day may not be a proportionate method of achieving that goal given the likely impact of such a practice on those with caring commitments. One way of reconstructing the corporate purpose is to extend the principle of proportionality into corporate decision-making so that directors are required to justify any disadvantage of their intended practices on particular groups. The drawback of such an approach is that might be attacked as being too timid in light of the significant challenges facing the world. As Talbot has argued powerfully, 'creating value for shareholders is not compatible with creating an economy that delivers for people' and that truly radical reform of our economy is required.[103] Others have commented that ''smash capitalism' is a great slogan but not a convincing policy option',[104] suggesting that incremental, piecemeal changes may be more achievable. Incorporating the principle of proportionality into boardroom discussions will not have the whole-scale, systemic reform that is needed if we are to move entirely away from the pursuit of profit but it does oblige directors to justify the legitimacy of any profit-seeking goal and, more importantly, would allow the pursuit of those goals to be challenged if they disproportionately disadvantaged certain groups such as women or labour more generally.

5. Conclusion

Women have become increasingly central to policy and economic initiatives aimed at achieving 'sustainable development' and changing corporate practice. In the global south, these programmes have been particularly active in inviting women to join in the expansion of corporations into new markets under the guise of empowering women as entrepreneurs and business leaders. In the global north, the initiatives have focussed more closely on increasing the number of female business leaders and showcasing the efforts made by other women who have succeeded in 'leaning in'. The unease with which these campaigns have been met stems from the fact that they fail to address the real reason why so many women are excluded from and subordinated within companies, which is due to deep-seated structural barriers and biases. More worryingly, there are troubling 'side-effects' of many of these movements as they valorise the market as a way of achieving equality and poverty reduction.

[101] J. Rivers, 'Proportionality and Variable Intensity of Review' (2006) 65(1) *Cambridge Law Journal* 174 at 176.
[102] *Ibid.*
[103] L. Talbot, 'Trying to save the world with company law? Some problems' (2016) 36 (3) *Legal Studies* 513 at 534.
[104] The Corporate Reform Collective comprises Tom Hadden, Paddy Ireland, Glenn Morgan, Martin Parker, Gordon Pearson, Sol Picciotto, Prem Sikka and Hugh Willmott; Corporate Reform Collective, *Fighting Corporate Abuse: Beyond Predatory Capitalism* (Pluto Press; London, 2014) at 3.

Gender equality will continue to elude unless companies acknowledge and remedy the inequalities that they are currently perpetuating by their shareholder-centric business models.