

Bellarmino Law Society Review

Volume XII | Issue I

Article 1

Gender Quotas and Equity in Corporate Boardrooms: A Legal, Economic, and Social Analysis

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GENDER QUOTAS AND EQUITY IN CORPORATE BOARDROOMS: A LEGAL, ECONOMIC, AND SOCIAL ANALYSIS

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Abstract: Adopted by countries like France, Norway, and Germany, gender quotas have been enacted as a measure to ensure equal opportunity for women in the corporate environment. Today, an increasing number of states in America have turned to gender quotas to remediate the inequity present in corporate boardrooms. In 2018, for example, Senate Bill 826 was passed in California to resolve inequitable female boardroom representation amongst public companies, specifically those headquartered in California. On the surface, gender quotas seem to promote equality in the workplace, but a closer analysis reveals that they may be doing more harm for women than good. This paper analyzes the impact of boardroom gender quotas through a legal, economic, and social lens, and addresses the efficacy of these quotas for the future.

Introduction

We learn at a young age that humans are “creatures of habit,” that is, we gravitate towards what we know and seek comfort in redundancy. Although understandable, this notion can (and unfortunately has) been the Achilles’ heel of humankind, especially with reference to implementing social reforms. Over the past decade, the world has experienced this dynamic relationship between the necessity of change and the difficulty of implementation. In particulate, a variety of social movements, most of which bear economic and gendered undercurrents, have forced us to face disturb systems of injustice in order to facilitate progress.

One of the most prominent examples of injustice that has come to light in the last decade is gender inequality. For centuries, women have struggled to find equal footing with their male counterparts due to the reproduction of “systemic dimensions of discrimination.”² Fortunately, however, twenty-first-century movements have provoked a newfound sense of

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² Coleen Sheppard, “Systemic Discrimination and Gender Inequality: A Life Cycle Approach to Girls’ and Women’s Rights,” in *Confronting Discrimination and Inequality in China: Chinese and Canadian Perspectives*, eds. Erroi P. Mendes and Sakunthala Srighanthan (Ottawa: University of Ottawa Press, 2009), 232-344.

urgency, making it clear that it is necessary to move away from traditionally patriarchal approaches to social and business governance. As such, conversations about gender equality have become more frequent and more impactful, raising awareness and allowing women to achieve positions in society once considered impossible, or at least highly unlikely. With this relatively newfound ability to exercise their power, women are realizing how valuable their impact is on local, regional, national, and international communities.

The strides that have been made towards gender equality in the United States recently have been substantial. Nevertheless, it would be ignorant to suggest that complete equality has been achieved, or perhaps ever will be. In the corporate sector, the twenty-first century's valuation of a woman's voice and point of view is at an all-time high, but that is not to say the corporate space is void of wrongdoing. In 2019, only 27% of Fortune 500 board members were women, and, in 2016, the U.S. was ranked in the bottom half of countries with the most female boardroom representation.³ To increase female boardroom representation, gender quotas have been implemented, though they have been met with great contempt. In spite of this objections, corporations have begun to understand the advantage of having a diverse leadership team; in fact, attaining some level of gender diversity has become "the new frontier in corporate governance."⁴

Since their emergence, boardroom gender quotas have been met with mixed emotions. Even many women have asked whether these quotas have been introduced for the sake of gender equity or corporate public-relations value. While it is certainly disheartening that many women have expressed distrust with government regulations requiring boardroom equity, this distrust is equally justified. Indeed, it is difficult for many women to believe that the system once working against them is now magically working for them. Collectively, women have learned the hard way that they must proceed with caution.

To many, the implementation of gender quotas seems like a rejection of how far women advanced in society. For a culture where women are now able to be successful entrepreneurs, CEOs, professional athletes, or even astronauts, why must we pass new

³ Statista, "Share of Female Board Members in Fortune 500 Companies, 1995 to 2019," April 27, 2021, <https://www.statista.com/statistics/691204/share-of-women-board-members-fortune-500/>; Felix Richter, "Infographic: The Countries with the Most Women in the Boardroom," *Statista Infographics*, May 23, 2016, <https://www.statista.com/chart/4871/the-countries-with-the-most-women-in-the-boardroom/>.

⁴ Sandeep Gopalan and Katherine Watson, "An Agency Theoretical Approach To Corporate Board Diversity," *San Diego Law Review* 52 (March 2015): 1.

statues that promote gender equity? The answer can be traced back in American history, one that demonstrates how long women have been fighting for equal representation in public spaces. Consequently, after reviewing the relevant history, we will employ legal, economic, and social frameworks to assess the short- and long-term implications of gender-based quotas, remaining mindful of the nuances of gender inequality that have and still affect women today.

History: 1920-1950

Following the women's suffrage movement, twentieth-century lawmakers had a stronger inclination than ever to confront and remediate the injustices experienced by women. Ratified in 1920, the Nineteenth Amendment to the Constitution was a major step towards recognizing the voice and value of women in the United States. Legalizing a woman's right to vote, the Nineteenth Amendment was one of the first national initiatives that explicitly promoted gender-based equality. Despite the benefits of this change, however, the aftermath of the Nineteenth Amendment's ratification is also important to analyze, especially because the ability to exercise the right to vote was an unknown territory of power for women. Indeed, during the November 1920 election, women's turnout was lower than men's, and politicians began to realize that the "incorporation of women as full equals in the electoral process would take decades."⁵ This response to the Amendment reveals how stratified a woman's fight was: *de jure* equality was not synonymous with newfound freedom to *de facto* vote. All things considered though, the Amendment did set a strong precedent, one that proved to women that persistence works, and they would be heard. This mindset alone fueled the continuous re-engineering of the prescribed female role over the remainder of the twentieth century.

History: 1960-1990

By the end of the twentieth century, the Nineteenth Amendment was no longer the only piece of legislation from which women could reap benefits. Embracing the power of femininity, the women's rights movement invigorated the country. Protests, marches, and campaigns influenced the passage of many new pieces of legislation, including the 1963

⁵ Corder, J. Kevin and Christina Wolbrecht. "Did Women Vote Once They Had the Opportunity?" *Americanbar.org*, October 21, 2021, https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-20/issue-1/did-women-vote-once-they-had-the-opportunity-/.

Equal Pay Act, which catalyzed a panoramic embargo on the oppression of women. The Act, requiring “that men and women in the same workplace be given equal pay for equal work,” attempted to sanitize the work of monetary hierarchy that had been practiced by most to all companies.⁶

Only a year later, the enactment of Title VII of the Civil Rights Act facilitated a monumental shift in gender equity. Seeking to reform a woman’s experience in the corporate realm, Title VII formally prohibited “employment discrimination based on sex, giving women the ability to challenge the actions of employer or potential employers.”⁷ This piece of legislation was refreshing and rewarding for women in the workplace and supporters of women’s rights more broadly. Three years later, due to an executive order signed by President Lyndon B. Johnson, the obligations enforced by Title VII extended to government contractors and women in the federal workforce. On paper, these back-to-back federal actions made the workplace seem like a place of universal equity, value, and respect. Unfortunately, the mere passing of legislation does not always provide an sufficient impetus to change social outlooks.

Of course, male attitudes behind closed doors did not immediately align with the female-forward legislation of the 1960’s. Indeed, widening the circle of responsibility in the office endangered male-centric power-complexes. This was abundantly clear in the workplace, greatly affecting women and creating another facet of animosity that impeded the progress which had been made. From a distance, however, companies seemed to be leaning into progressivity. In 1985, Fortune 500 companies across the country, on average, elected their first female directors; but, a vast number of these women were grandfathered into the role, appointed after the death of their husbands or fathers.⁸ Women started to question whether or not companies were using subterfuge in order to attain clout with the market, or if they were appointing women to high-caliber positions because of merit. This poignant question extended into the twenty-first century and is still grappled with today.

History: 2000-2021

⁶ *United States Equal Opportunity Employment Commission*, “Equal Pay/Compensation Discrimination,” <https://www.eeoc.gov/equal-paycompensation-discrimination>.

⁷ Donna Batten, “Women's Rights,” 442.

⁸ David F. Larcker and Brian Tayan, “Pioneering Women on Boards: Pathways of the First Female Directors,” *Stanford Closer Look Series*, September 3, 2013, <https://www.gsb.stanford.edu/sites/default/files/publication-pdf/cgri-closer-look-25-boards-social-media.pdf>.

Among other systemic problems, twenty-first century activists have taken a keen interest in women's rights, especially by evaluating the efficacy of past legislation and making decisions about the necessity of future legislation based on such analysis. On a national scale, this contemporary celebration of femininity has led to an increasingly confident population of women that preaches the importance of understanding the burdens of the past. While the adoption of colloquialisms like “Girlboss” is one measure of how far women have come, the participation in movements like Me Too, first started in 2006, is equally as compelling. Harnessing strength to guide female survivors of sexual abuse and harassment towards achieving an empowered, independent headspace, the movement is not alone in its feat to spread general awareness and attack symptoms of imbedded gender-based injustice.

Efforts are also being directed towards improving the status of women in corporate environments, exemplified by the creation of campaigns like ‘50/50 Women on Boards.’ Seeking to challenge and hold the workplace accountable, this is an advocacy movement that helps facilitate the equal representation of women on corporate boards. The campaign itself addresses the void of female leadership in the business world. Aiming to have the male-to-female ratio equalized, 50/50 WOB makes it very clear that its mission is not to overcompensate for the lack of female representation, but to appoint women to boardrooms based on the same standards used to evaluate men.

In early 2018, Governor Jerry Brown of California introduced the Senate Bill 826, the first piece of legislation to be passed in the United States mandating that women be on the boards of publicly traded companies. Aimed at expediting the long-overdue process of women being appointed to boardroom positions, the bill offers unparalleled insight for understanding the corollaries of gender quotas in the United States. Recognizing that “all-male boards of directors in America’s top corporations are becoming a thing of the past,” the S.B. 826 was signed into law to increase female leadership and ensure equitable boardroom representation.⁹ Mandating that boardrooms of California-headquartered public companies become 50% women by 2021, S.B. 826 was signed into law by Governor Brown with the hopes of improving social and economic facets of the corporate environment of

⁹ Patricia Brown Holmes, “Regulating Gender Composition in Corporate America,” *GP Solo* 37, no. 2 (March-April 2020): 1.

these well-known companies.¹⁰ Considering California’s politically progressive nature, a lack of surprise to this legislation’s passage is not unusual, just as arguments that S.B. 826 is a “virtue signaling” piece of legislation are not unusual.¹¹ An academic dissection of this bill and the implications of gender quotas provides an accurate estimation of the hindrances women are facing in 2021.

Historically, discourse around race, class, and gender have been exceptionally polarizing. While the dichotomous stances on these topics still exist, they have most certainly evolved in their own ways. The introduction of gender quotas, both nationally and internationally, has revealed two contemporary thought processes, both of which acknowledge legal, economic, and social facets of this systemic issue. By examining the various repercussions of these quotas, we can analyze their duality and offer a respectful and sustainable path forward.

Analysis: Pro-Quota

In 2016, American women only accounted for 12% of corporate boardroom positions.¹² While this metric has gradually started to improve, rising to 26.5% in 2020, getting a seat at many well-regarded corporate boards has been a continuously difficult feat for most women.¹³ Countries like Norway, Finland, and France were among the first countries to impose quotas to increase the equitability of the boardroom, and, in turn, their percentage of female boardroom representation has risen at a substantially faster rate. Though some argue that the upward maturation of these countries’ statistics is not organic, the active commitment to diversify corporate leadership boards through government-mandated quotas has been a successful “diversity management” tactic.¹⁴

Quotas have proven to change the gender dynamic of the boardroom more so than “voluntary models” that allow nature to ‘run its course’ and assume female representation will rise on its own. They have also been repeatedly praised for their “life-jacket” nature: on one hand, they ease companies into creating a more equitable leadership team by mandating

¹⁰ Holmes, “Regulating Gender Composition,” 1.

¹¹ Holmes, “Regulating Gender Composition,” 1.

¹² Felix Richter, “Infographic: The Countries with the Most Women in the Boardroom,” *Statista Infographics*, May 23, 2016, <https://www.statista.com/chart/4871/the-countries-with-the-most-women-in-the-boardroom/>.

¹³ *Catalyst*, “Women on Corporate Boards (Quick Take),” November 5, 2021, <https://www.catalyst.org/research/women-on-corporate-boards/>.

¹⁴ Erika Collins, “Global Diversity Initiatives,” 987.

change in the present so that over time, the appointment of women to directing boards will become a more unconscious decision. On the other hand, quotas increase female exposure in the boardroom, allowing women to “build up work experience and network mechanisms” that they can pass along to women in lower-level positions that are interested in obtaining a seat on the company’s board in the future.¹⁵ Ultimately, the quotas gently ensure company growth and adaptability, two traits that are correlated with a corporation's current and future success.

Following in the footsteps of countries like Norway, Finland, and France, states like California, Washington, Colorado, Pennsylvania, Massachusetts, New Jersey, Michigan, Ohio, Illinois, and Hawaii have started to draft legislation that prioritize female boardroom presence. Despite arguments that condemn the tardiness of these policies, “corporations are [finally] paying attention” and realizing how muscular the female perspective truly is; these quotas are “good for the bottom line” of large corporations and uplift women in business, celebrating their plethora of talents and distinct leadership capabilities.¹⁶

After the passing of California’s S.B. 826, the “[s]hare of female board members in Fortune 500 companies” jumped from 22.5% in 2018 to 27% in 2019, a significant 4.5% increase that reflects more progress than ever before.¹⁷ Questions around whether this jump can be partially attributed to the passing of Governor Brown’s policy can be answered using recent statistics revealing the number of Fortune 500 companies per state. Out of the thirty-eight states that house the headquarters of Fortune 500 companies, California tied with New York for the most headquarters (53). Considering the mandates of S.B. 826, the increase in Fortune 500 female boardroom representation between 2018 and 2019 is partially due to the progressive measure taken by the large and economically powerful state of California. These statistics speak to the efficacy of gender quotas in the United States thus far and provide incentive for other states to pass similar pieces of legislation.

Based on research conducted in 2018 regarding the female role in corporate leadership, quotas are praised because they ensure gender equality is not being achieved by “adding new

¹⁵ Marcus Noland and Tyler Moran, “Study: Firms with More Women in the C-Suite Are More Profitable,” *Harvard Business Review*, February 8, 2016, <https://hbr.org/2016/02/study-firms-with-more-women-in-the-c-suite-are-more-profitable>.

¹⁶ Gopalan and Watson, “An Agency Theoretical Approach To Corporate Board Diversity,” 2.

¹⁷ Statista Research Department, “Share of Female Board Members in Fortune 500 Companies, 1995 to 2019,” April 27, 2021, <https://www.statista.com/statistics/691204/share-of-women-board-members-fortune-500/>.

board seats” for women, but rather through a process where “existing members are being replaced.”¹⁸ While replacing these seats can cause inter-gender contempt, it allows companies to put greater thought into the female candidate they are promoting and challenges the idea that quota-based appointments make women appear as “tokens” to the company as opposed to qualified professionals.¹⁹

Other analyses have recognized the economic benefits of gender quotas. Downstream implications of these quotas improve a company's financial performance and the nation's overall economic well-being. Indeed, an economic motivation seems to underlie the passing of California's S.B. 826, as well as other similar pieces of legislation in other states. Increasing the female boardroom demographic is also a “business case to increase shareholder value” as there seems to be an understood “relationship between boardroom heterogeneity and firm performance” and, therefore, the overall success of the company.²⁰ Additionally, studies have shown that companies with relatively more female board members “outperform companies with all-male boards with respect to earnings per share, return on equity, and stock performance.”²¹ Understanding that gender parity cannot be met in the short-term is also important in realizing the economic benefits of gender statues. Additionally, social implications cannot be neglected when studying economic trends.

The same year that California's new law was passed, the state reported \$2.721 trillion GDP, a metric that made the state alone “the fifth largest economy in the world.”²² Through a policy-making lens, California's ability to produce this outstanding of a metric while simultaneously adapting to an impactful legislative statute is revelatory of S.B. 826's positive ramifications. In a study conducted by the world-renowned consulting firm McKinsey & Company, gender diversity is used as a basis on which to analyze the likelihood of a company outperforming its competitor. Data from 2019 concludes that a company with a more diverse boardroom and executive team has a 25% chance of outperforming a

¹⁸ Mich J. Gender, “The Plight of Women in Positions of Corporate Leadership in the United States, the European Union, and Japan: Differing Laws and Cultures, Similar Issues,” 284.

¹⁹ Gender, “The Plight of Women,” 284.

²⁰ Carly J. Trainor, “The Business Case for Boardroom Heterogeneity,” 451.

²¹ Christopher J. Riley, et al., “An Equal Protection Defense of S.B. 826.” *California Law Review* 12 (July 2020): 1.

²² Reily, et al., “An Equal Protection Defense,” 1.

company that does not prioritize these diversification efforts; in other words, the study emphasizes that “diversity wins.”²³

Despite the economic benefits of gender diversity on corporate boards, questions remain about whether these well-intentioned mandates pass the test of constitutional validity in the United States. The principal legal concerns in this area regard Equal Protection Clause violations, or more specifically, the equal protection claims of the states seeking to implement boardroom diversity legislation.²⁴ In a majority of cases, decisions about the legality of these statutes are made on precedent. When questioning statutes used to increase boardroom gender diversity, like S.B. 826, many legal precedents have been referenced, though one of the most poignant from *Califano v. Webster*, a case regarding a provision in the Social Security Act. In *Califano*, the Supreme Court ruled that if a “provision’s purpose was to redress society’s longstanding disparate treatment of women,” then the favorable treatment can be considered justified.²⁵ This ruling set a powerful legal precedent and has acted as an articulate defense for legislation aimed to achieve gender heterogeneity.

Analysis: Anti-Quota

Contemporary discourse around topics of injustice have made it clear that one of the most condemnable offenses is to participate in “performative activism,” or, “activism done to increase one social [or economic] capital rather than one’s devotion to the cause.”²⁶ Issues that are systemic in nature require advocacy that is fueled by one’s sincere interests; an absence of this devotion minimizes the strength of one’s contribution to a respective cause and ultimately creates more harm than good. On a global scale, gender quotas have been advertised as pro-women legislation. Leveraging on the idea that the quotas finally offer women a sense of equal representation in the boardroom, many cases have framed S.B. 826-esque pieces of legislation as measures aimed at eliminating symptoms of systemic gender inequality in the workplace. Understanding the importance of an equitable boardroom, many

²³ Sundiatu Dixon-Fyle, et al., “Diversity Wins: How Inclusion Matters.” *McKinsey & Company*, November 12, 2021, <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters>.

²⁴ Riley, Christopher J., et al. “An Equal Protection Defense of SB 826.” *California Law Review*, 12 July 2020, <https://www.californialawreview.org/equal-protection-defense-sb826/>.

²⁵ Lauren Kim, “Mandating Women: Defending S.B. 826 and Female Quotas in the Corporate Workplace,” *Loyola of Los Angeles Law Review* 53, no. 3 (May 2020): 688.

²⁶ “Active Citizen Blog - Performative Activism,” *Wisconsin Union*, November 1, 2020, <https://union.wisc.edu/get-involved/wud/alternative-breaks/active-citizen-blog/performative-activism/>.

women have questioned the social, legal, and economic rationale used to justify the passing of gender quotas, believing that there is a more cavalier undertone to the quotas that make them performative actions.

In corporate America, there seems to be a universally-held respect for those that are able to rise the ranks and earn a top tier position. This makes sense, as it is indicative of hard work, grit, and always trying to be the best version of yourself—staples of the long-lived American Dream.²⁷ In a *Los Angeles Times* article, author Anastasia Boden underscores this notion that gender quotas will and have compromised the respect awarded to women that have climbed to the top of the ladder on their own. Indeed, she writes, the quotas “add a handful of women to corporate boards,” which challenges the “broader goal of equality—which requires not equal numbers, but equal dignity for women.”²⁸ In short, quotas are far less innocuous than legislators think, and they impose residual effects that drive women to raise valid questions about the true intentions of these statutes. A common concern is that gender quotas are rooted in motivations to improve the reputation of the company rather than dismantle systemic issues of gender inequality. This uncertainty strips women of all corporate worthiness and transforms them into mere means by which public corporations can better their image. This imposes adverse effects of discrimination, including that even if a policy is “neutral on its face applying equally to all individuals,” it can still have “disproportionately harmful effects upon some groups in society.”²⁹ Essentially, quotas act as a hindrance to women in the working world. They help companies check diversity boxes on their yearly reports and foster a further sense of distrust between women and their respective workplace.

Although quotas are not the best way to realize gender equality within corporate environments, there is still a looming disparity between men and women that must be addressed. According to data gathered in 2020, 53.72 million women held full-time working positions in the United States; of this population of women, only 26.5% of women held

²⁷ *Gender and the Economy*, “The Debate about Quotas,” July 29, 2019, <https://www.gendereconomy.org/the-debate-about-quotas/>.

²⁸ Anastasia Boden, “Op-Ed: Setting Quotas on Women in the Boardroom Is Probably Unconstitutional. It Also Doesn't Work,” *Los Angeles Times*, July 8, 2019, <https://www.latimes.com/opinion/op-ed/la-oe-boden-quotas-women-corporate-boards-unconstitutional-20190708-story.html>.

²⁹ Sheppard, “Systemic Discrimination and Gender,” 234.

boardroom positions.³⁰ While quotas could potentially cure this gap, they would be doing so while simultaneously working against these companies in the long run. In an attempt to satisfy quota regulations, large corporations are replacing male-occupied seats with “qualified female members, while others did not.”³¹ Those that did not will face the consequences of hiring “unqualified or under qualified executive board members,” which will ultimately lead to a decline in the company’s performance, a caveat that most proponents of gender quotas fail to acknowledge.³²

Economically speaking, quotas have posed alternate burdens. The announcement of California’s S.B. 826 prompted the market to go down 1.2%, which highlights costly consequences of the bill. In response to its passing, companies have realized that there is a substantially higher expense associated with scouting qualified female boardroom candidates since the supply is extremely limited.³³ In a different vein, the consequence of justifying gender quotas with economic principles promotes a very one-dimensional, unconcerned discourse. For example, several studies have revealed that firms are only compliant with mandates like S.B. 826 because they believe that appointing more women to their boards will provide “economic benefits to the firm.”³⁴ A faculty member at the Kellogg School of Management, Northwestern’s business school, even deemed efforts to diversify board gender a “business imperative,” a very sterile characterization to say the least.³⁵ Upon dissecting these economic motivations, women are left feeling like tools to inflate corporate numbers rather than the valuable boardroom members that they are.³⁶

While the social and economic reverberations of gender quotas are compelling, the legal disdain for them that has been expressed in the courtroom is just as poignant. In fact, many corporations have started to question the constitutionality of the quotas. In a recent

³⁰ “Full-Time Employed Women - Number in the U.S. 1990-2020,” *Statista*, January 25, 2021, <https://www.statista.com/statistics/192354/number-of-full-time-employed-women-in-the-us-since-1990/>; *Catalyst*, “Women on Corporate Boards.”

³¹ Julia Glen, “Affirmative Action: The Constitutional Approach to Ending Sex Disparities on Corporate Boards,” *Minnesota Law Review* 101 (May 2017): 2089.

³² Glenn, “Affirmative Action,” 2089.

³³ Daniel Greene, et al., “Do Board Gender Quotas Affect Firm Value? Evidence from California Senate Bill No. 826,” *Journal of Corporate Finance* 60 (February 2020): 11.

³⁴ Gender, “The Plight of Women,” 284.

³⁵ Victoria Medvec Adeline, “What Will It Take to Get More Women on Boards?” *Kellogg Insight*, May 10, 2019, <https://insight.kellogg.northwestern.edu/article/what-will-it-take-to-get-more-women-on-boards>.

³⁶ “California’s Gender Board Quota Legislation Is Likely Unconstitutional,” *Columbia Business Law Review*, August 13, 2019, <https://journals.library.columbia.edu/index.php/CBLR/announcement/view/191>.

case, *Meland v. Padilla*, the plaintiff filed suit against California’s secretary of state, Alex Padilla, arguing that the state’s gender quota legislation violated the Fourteenth Amendment’s Equal Protection Clause by “prohibiting actions by states that deprive individuals of civil rights.”³⁷ Creighton Meland, shareholder of OSI Systems, Inc., in California, claimed that the statute, requiring public companies to “add a female member by the end of 2019 and two more female board members by the end of 2021,” was discriminatory on the basis of sex.³⁸ The court found Meland lacking in standing to successfully pursue his claim, stating that in the instance the plaintiff cast a vote to appoint a “male board member nominee, there is nothing in S.B. 826 preventing him from casting a vote in favor of that nominee.”³⁹ While the court ruled that Meland’s civil and voting rights were not harmed, the foundation of his suit reveals valid frustrations regarding the arbitrary nature of workplace gender quotas.

Looking Ahead: Women and Boardroom Diversity

Looking forward, the relative infancy of American gender quotas should provide more solace than panic. Gleaning insights from statutes that are currently in place, the most mature of them being California’s S.B. 826, it is imperative that we capitalize on the malleability of our future and continue to direct our energy towards attaining equality in corporate boardrooms. Whether it means implementing more quotas or less formal guidelines on a state level, it is increasingly clear that there is not a singular conspicuous solution that can be created to rid corporate boardrooms of gender inequality. That said, experience has proven itself to be the best teacher, even in the most trivial of cases. It is necessary that we continue to analyze the social, economic, and legal aftermaths of active quotas in order to proceed in an informed way and discern whether or not quotas are truly the best medication for curing the gender disproportionality of boardrooms.

Assuming that quotas are the best course of action, we must recognize that for any type of solution to be curated, a detailed exploration of the problem at hand must occur. Gender quotas in twenty-first-century America are far too blunt, and their lack of tailoring

³⁷ Michael Hatcher and Weldon Latham, “States Are Leading the Charge to Corporate Boards: Diversify!” *The Harvard Law School Forum on Corporate Governance*, May 12, 2020, <https://corpgov.law.harvard.edu/2020/05/12/states-are-leading-the-charge-to-corporate-boards-diversify>.

³⁸ *Meland v. Padilla*, US Dist. Ct. E.D. California (2020), 2:19-cv-02288-JAM-AC.

³⁹ *Meland v. Padilla*.

makes them as a blanket solution to a multi-tiered problem. Instead of combating gender inequality in the corporate space, they have “inadvertently reinforced antiquated stereotypes” that have historically haunted women. Therefore, gender quotas cannot fully rectify the problem of boardroom inequity because they are not sufficiently able to respond to the systemic nature of this problem.⁴⁰

The best way to improve current and future gender quotas would be to refine them based on industry. Detailed analyses of various industries’ histories and demographics would allow legislators to accurately gauge whether or not quotas would have a positive or negative impact. California’s S.B. 826, along with more recent legislation in Illinois (H.B. 3395), are far too all-encompassing as they target every publicly traded corporation in their respective states. Unfortunately, one size does not fit all when it comes to quotas. And, in order to produce the best results, legislators must pinpoint which industries have been inherently more biased towards women.

In 2019, the top five male-dominated industries in the United States were civil engineering, computer programming, construction, driver/sales workers, and mechanical engineering. Considering the lack of female representation in these fields, implementation of a quota system does not seem sustainable for the functionality of these businesses, as counterintuitive as that may seem. These industries lack female representation as it is, and, therefore, it is unrealistic to assume that creating an equal boardroom in a matter of years would be possible (let alone beneficial to the company’s performance). Instead, states could turn to investing in public-awareness programs for these particular industries, illuminating to the public that female representation in male-dominated industries would challenge gender inequality. Refining quotas by sector would pave a longer road to achieving an equitable boardroom; however, it is a far more considerate approach than enforcing a crude gender quota, the only specification being that the company be publicly listed.

Consideration of a company’s size and status would also help legislators ascertain whether or not quotas would be successful. As previously mentioned, American quotas are targeting a very large range of companies, the only requirement being that the company must be publicly traded. What many fail to recognize when analyzing this requirement is that not

⁴⁰ Anastasia. “Op-Ed: Setting Quotas on Women in the Boardroom Is Probably Unconstitutional.”

all publicly traded companies are the same size or hold the same status. In California alone, the state's gender quota affects both Apple, arguably the most powerful company in the world earning \$274.52 billion in 2021, and Molina Healthcare, which is a fraction of Apple's size and has significantly less notoriety.⁴¹

Despite the tremendous chasm between these two companies, they are both obligated to follow the same set of regulations laid out in S.B. 826. Even though these companies are both objectively successful, they should not be held to the same standards when it comes to maintaining and achieving an equitable boardroom. In a sense, imposing quotas upon companies like Apple, Facebook, or Walt Disney is meaningless, as unfortunate as that may sound. Companies of this caliber have realized their success far before they were obligated to abide by a gender-forward legislation, making prioritization of gender equity in their boardrooms more of a task than a need. Although it is important for companies with this level of fame to promote the importance of gender equality, their prior success is enough to conclude that their prioritization of an equitable boardroom is more performative than anything.

Instead, legislative energy should be funneled into smaller profile, publicly traded businesses, and the startup ecosystem. Though inherently more progressive in nature than their tenured counterparts, legally mandating that younger companies appoint an equal number of male and female board members will condition them to weigh the social repercussions of their actions early-on and enable them to realize the supremacy of an equitable boardroom.⁴² Quotas targeting a smaller and/or more youthful demographic of companies will ingrain an important set of social values that will increase these companies' "freedom of choice" later on.⁴³ With this increased respect for gender equality, these companies will set themselves apart in the relevant social and economic metrics.

While it is difficult to predict the future, it is possible that the tensions around gender quotas will dwindle as time progresses. A plethora of qualified, well-educated young women will continue to saturate the corporate space from various institutions, including Boston

⁴¹ "California's Leading Companies, by Revenue 2021," *Statista*, July 9, 2021, <https://www.statista.com/statistics/312707/california-s-top-companies-by-revenue/>.

⁴² Richard H. Thaler and Cass R. Sunstein, "Nudge versus Boost: How Coherent Are Policy and Theory?" *University of California San Diego*, <https://pages.ucsd.edu/~mckenzie/Grune-Yanoff&Hertwig2016Minds&Machines.pdf>.

⁴³ Thaler and Sunstein, "Nudge versus Boost."

College. This should increase inter-gender competition and challenge the idea that woman can be merely a means for reaching a gendered equilibrium in the boardroom. Instead, a focus on a woman's respective skill set and educational credentials will finally allow her to distinguish herself amongst peers and competitors of both genders.