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Economic Imperative of Women's
Political and Corporate Leadership

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**Globalizing Gender Equality: The Economic Imperative of
Women's Political and Corporate Leadership**

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As economies across the globe have become more interconnected than ever,¹ women's increased participation in the labor force outside the home has permitted families and countries to adapt and compete in the world economy. Women are essential to economic development in every sense. Yet, despite the fact that women constitute approximately half the population, women constitute a much smaller percentage of political representation in democracies across the world. In response, many countries have adopted laws to guarantee a certain level of representation in their legislatures, either by reserving seats in the legislatures for women, or by requiring parties to present a certain percentage of women candidates. Indeed, even the new Iraqi Constitution maintains a minimum level of representation for women of 25% of the seats in the legislature. These laws (hereinafter referred to as "parity") have been adopted in both developed and developing countries. Notable among them, France has taken the leading role in the developed world generally and in Europe in particular in adopting a parity law with significant enforcement provisions. Other prominent countries with such laws include Brazil and India, whose parity laws function differently, but demonstrate the role parity plays in two of the world's leading developing economies. Norway has gone a step further, requiring 40% of corporate board positions be held by women.

Although women play a crucial role in the globalization of the world economy, they have only a limited role in political systems. This paper will argue that, over the long run, the most efficient maximizer for the value of women's work is sharply increased participation by women in public policy determination. This paper will argue that effective economic development in a rapidly globalizing world requires greater and more efficient participation by women in the economy. This participation depends on women playing a greater role in policy making. Countries without greater representation for women will fail to achieve the rapid and efficient development necessary for advancement in the world economy. Simply put, increased participation in policy-making by women would improve the condition of women in both the developed and the developing

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¹ See generally, Thomas Friedman, *THE LEXUS AND THE OLIVE TREE* (Farra, Strauss and Giroux, 2000).

world and this improvement would permit economies to compete in the changing world economy.

This paper will proceed in four parts. First, I will introduce the role of women in globalization, describing objections to women's treatment in the globalized economy and analyzing the challenge of valuing women's work. Based on these arguing that women benefit from globalization, and that globalization reduces wasted women's work, which serves as one cause for their subordination. Crucial here is the reduction of women's subsidy of work in the home which distorts economies at every level.² Women's contribution to the workforce is largely mismanaged, and that this mismanagement results from the lack of participation by women in decision-making regarding public policy. Second, the paper will examine a relatively recent, but effective, way to increase participation in decision-making – parity laws. Parity laws require that a certain percentage of candidates or legislative seats be reserved for women. These laws have been instituted in many countries, but here I will describe three different models: France, Brazil, and India. Third, the paper will examine Esther Duflo's analysis of the effects of India's parity law, in particular regarding the effect of women's representation on policy decisions, with a focus on the impact of this representation in the Middle East region. Fourth, the paper will argue that the United States may use Title IX as a model for the adoption of remedies for women's political representation both in government and in the private sector. Finally, the paper will conclude with a discussion of policy issues the effective resolution of which requires women's input.

I. Women, Globalization, and Measuring Women's Work

This section will summarize crucial debates in the examination of the role of women in globalization. Women's rapidly increasing participation in the labor force has provided the basis for a substantial part of economic growth, particularly in advanced economies which had already reached full employment for men.

A. The Effects of Globalization on Women

Across the political spectrum, it is commonly assumed that globalization victimizes women. Extensive anecdotal evidence purportedly shows that women suffer from increased international trade: trafficking in women, increased

² Jagdish Bhagwati, *In Defense of Globalization* (Oxford University Press, 2004)

prostitution³ and sex tourism,⁴ mail-order brides, and sweatshop labor. Each of these phenomena has become more prevalent over the past few years, along with the globalization of the world economy. On the right, Francis Fukuyama has argued that women's increased participation in the labor force gives men the message that they can leave their families, since women now can find work, causing increased numbers of women-headed households. On the left, a wide range of women's activists oppose globalization, asserting that its primary effect is to worsen the aforementioned problems. The cost to women who engage in transnational childcare work, for example, has been described one legal scholar, Linda Bosniak, as providing a form of "citizenship" to the women who employ childcare workers by depriving the workers of their "citizenship."

However, wide and deep the anecdotal evidence against globalization may be, and however numerous its opponents, a careful analysis of the effects on individual women demonstrate that the consequence of the globalization of the world economy is to provide women with options that they did not previously possess. Where these options seem like obligations rather than choices, they still assign a monetary value to women's labor where none previously existed. This alone qualifies as a significant improvement in women's position, as will become evident in the following section.⁵

³ Prostitution has increased because of increased travel and disparities in currency values that permit tourists to obtain sexual services for far less than possible in their home countries. Beneria 80-81.

⁴ See, e.g., "Prostitution in Cambodia: The Children in Gucci Shoes", Nov. 20 2003 The Economist ("Krong Koh Kong, it has to be said, is at the lower end of the sex trade. But when a number of brothels in Phnom Penh, the capital, were raided after complaints about human trafficking, the sex bosses moved some of their business out into the provinces. Krong Koh Kong, whose respectable business is fishing, seems to be unpoliced, and the porous Thai and Vietnamese borders makes things even worse. The town attracts custom from a wide area because sex there is cheaper than in Phnom Penh, and very much cheaper than in neighbouring Thailand. The girls, some of them children aged only 14 but looking older in their heavy make-up and fake Gucci sandals, charge the equivalent of \$2 or \$3, half of which goes to their boss. A girl can make about \$25 a week, a relatively big sum in an area of widespread poverty and unemployment. Traffickers seem to have no trouble finding staff, often offered as debt repayment.")

⁵ The effect of globalization is a feminist issue for the following reasons. First, 'women often bear a disproportionate burden of the costs of globalization'. Second, feminists seek to 'resist the practices of exploitation and division of people against each other that are inherent in notions of competition, comparative advantage, free trade, and the international division of labor'. Third, with respect to economics, feminist scholars have argued, it is a 'means of imagining the world that is premised upon denigrating that which is understood as 'feminine'. [Ewelukwa referring to Orford, in: Centuries of Globalization; Centuries of Exclusion: African Women, Human Rights and the 'New' International Trade Regime", 20 Berkeley J. Gender L. & Just. 75, 2005] Ewelukwa states, in contrast with pro-globalization authors stating that globalization is one of the

B. The (Pre-Globalization) Ignoring of the Value of Women's Work

Women's social position directly related to the value placed on their work. However, societies have not structured such work as having a monetary value. For this reason, women's work requires estimation.

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1. Types of Women's Work

Much of women's work fits into these four categories: 1) subsistence work, 2) (unpaid) household work, 3) informal work, and/or 4) volunteer work.⁶ Subsistence work is production related directly to a family's needs. This kind of work consistently evades both reporting and estimation, leading poor countries to appear poorer as a substantial part of labor and output are excluded.⁷ Informal work includes anything unreported from sewing at home to selling street food. This area may even include the production of goods in officially-sanctioned

most beneficial phenomena of recent times, that vulnerability of the agricultural sector in the global economy, shrinking market share for goods originating in developing countries, crisis in the commodity markets and the market dominance of transnational corporations are some of the factors that currently account for the gap between theory and practice, basically meaning that globalization does not at all have such unambiguously beneficial impacts.

This opinion is shared by Andrews stating that globalization 'has merely cemented women's unequal economic status' through the "structural adjustment" imperatives imposed by the financial regulatory agents of globalization, the World Bank and the International Monetary Fund, merely reinforcing women's subordinate status. [Penelope A. Andrews, Globalization, Human Rights and Critical Race Feminism: Voices from the Margins, 3 J. Gender Race & Just. 373, Journal of Gender, Race and Justice, Spring 2000]

Sassen argues for a historically evident tendency operating in modern times too, i.e. that women are often forced to take up low-paid positions and occupations [Saskia Sassen, Towards a Feminist Analytics of the Global Economy, 4 Ind. J. Global Legal Stud., (1996)], yet, Dau-Schmidt adds that employers in global export industries decidedly prefer female employees, and provided that such jobs provide opportunities and skills previously unavailable to women, this definitely is an undoubted benefit of globalization to women, because it improves their bargaining position with respect to their traditional economic and social relationships. Yet, a negative impact of globalization may be destruction of some traditional cultural norms protecting women and meeting their needs. [Kenneth G. Dau-Schmidt, Dividing the Surplus: Will Globalization Give Women a Larger or Smaller Share of the Benefits of the Cooperative production?, 4 Ind. J. Global Legal Stud. 51, Indiana Journal of Global Legal Studies, Fall, 1996]

⁶ Lourdes Beneria, Gender, Development and Globalization: Economics as if All People Mattered, Routledge, 2003, 136-138. Mehta referring to Stewart distinguishes between women's roles as household managers and consumers and women as producers. He combines Beneria's subsistence and household work, as well as regular labor, when using the expression 'women as producers', which is therefore different relating to estimation of the value of work as well.

⁷ Boserup 1970:163, cited in Beneria 135.

enterprises.⁸ Domestic work includes maintaining family functioning, from washing and cleaning to preparing food and childcare.⁹ Finally, volunteer work presents different issues because the beneficiary is not the family of the worker.¹⁰ Substantial gender asymmetries exist in this area as women engage in far more volunteer work than men according to most studies.¹¹ Reviewing these four areas demonstrates the extent to which much of what women do simply does not count in GDP and often does not count in terms of a family's own finances.¹²

2. Women's Work: An Example of the Costs

Many consequences arise from the failure to include without regard to its ultimate value or the product it may produce.¹³ On a microeconomic level, as

⁸ Beneria 136.

⁹ Id. at 137-38.

¹⁰ One issue here is whether collective food kitchens, such as are common in some Sikh communities constitute volunteer work or housework. Id.

¹¹ Id. at 138-140.

¹² It is also important to note that proportions of these categories may change considerably if characteristics of investment, trade sectors change, especially in countries that depend on foreign investment to a greater extent. This may result in further change of women's role because depending on what trade sectors will become emphasized, the employment structure may also change, also affecting women's opportunities and exact roles. In a wider perspective, such changes may have an impact on human development, transformation of traditional family models, birth and death rates as well...[Mehta]

¹³ As to why women participate in labor in a different way, several aspects can be listed. One obvious reason is that women's traditional role in the family is to run the household, care for the children etc., complementing men's work to earn money for the family as sole breadwinners. This traditional distribution of roles, persisting in changed circumstances of our times, causes conflict between cultural backgrounds and economic aims and development. Furthermore, in countries with 'traditional discrimination against women, such as the MENA countries, the traditional 'code of modesty' imposes restrictions on women, basically limiting their participation not only in labor but also in public issues such as representation, governance etc. Traditional negative discrimination of women may also have adverse consequences on women's participation in labor, either frustrating or limiting that, or even forcing them not to step their own boundaries even though they had the potential to do so (for example, when due to traditional cultural prejudice women are not allowed to work for higher wages than their husbands etc.).

It is interesting to note that such cultural traditions, being disadvantageous on woman labor, exists not only developing countries. An example of this is Japan where women traditionally manage the household only while men are sole breadwinners to even an extreme extent. If women work at all, they are mostly employed subject to strict and frequently unreasonable discriminative rules, mainly in positions subordinate to men or auxiliary, assistance positions. However, the same changes, such as more intensive involvement of women in university education, adopting the global pattern of more self-consciousness of women in labor, and within that mostly in the public sector, may result in the same beneficial events as those mentioned concerning the MENA region. In a culture such as the Japanese, the effect of globalization providing more involvement for

with any good whose supply has no price, the supply actually functions as a distorting subsidy. Women's work, which, like men's work, has value based on time and productivity, loses its meaning. Without measure for its efficiency, it has become divorced from questions of efficiency, consuming greater time and effort than necessary for the same output. Because women's work in subsistence, domestic, informal and volunteer work goes unpaid, the cost of such labor evades accounting.

However, in societies where women's only work is one of the four categories above described, then the cost-benefit analysis above becomes nearly impossible. The choice confronting the family is at best simply uninformed, at worst, counterproductive. Without any quantification of the value of the woman's work, neither her family nor she can analyze which outcome is best, leading to intuitive rather than rational decision-making that may harm the interests of the woman and her family.¹⁴

C. The Advantages of Globalization for Women

"How much more respectable is the woman who earns her own bread by fulfilling any duty that the most accomplished beauty!"¹⁵

Mary Wolstencraft, 1792.

If the principal harm to women under the waning economic system is that their work cannot be valued, then the institution of a valuation of their work

woman in labor and more intense participation in areas which were previously dominated by men could not only release the extreme cultural burden on men but also to equalize gender roles. [Kiyoko Kamio Knapp, Still Office Flowers: Japanese Women Betrayed by the Equal Employment Opportunity Law, 18 Harv. Women's L.J. 83, Harvard Women's Law Journal, Spring 1995]

¹⁴ With reference to Mehta's categories presented above, women as producers 'contribute to national product' and 'generate income for the household'. Mehta also states that women's role is especially large in the informal sectors, however, informal sector earnings are usually far less than formal sector earnings. Mehta also mentions a specific issue, in the formal manufacturing sector, there are examples where women can take the material home and work on it at home, thereby combining this unpaid household work and childcare. This issue may probably result that the value of work of such women may increase because they can have a more flexible time schedule, yet, Mehta states, referring to UNIDO data, that the advantage of this is also present at the manufacturer in the form of lower overheads, less organized labor intervention and lower wages. So ultimately, women's work does not represent a higher value or produce more income in this case either. [Aasha Kapur Mehta: Globalization and Women, In: Globalization, Culture and Women's Development, Raj Mohini Sethi ed., Rawat Publications, 1999.]

¹⁵ Mary Wolstencraft, quoted in "For better, for worse," June 16, 1998 Economist.

would be a positive result of globalization. When the market assigns a value to women's work, it may be said to reduce the subsidy that women provide to childcare and housework. Bhagwati's discussion of women's role in the world economy does contain anecdotal evidence with little verifiable impact. However, more notably, he argues effectively that the growing global "care chain" may play a role in ameliorating women's position by setting a monetary value on women's work. As Bhagwati states,

[T]here is another important consequence to ponder as women have entered the workforce in great numbers. This has meant that the subsidy they were implicitly providing to child care at home is no longer available. So, from a social viewpoint, one can argue that this traditional subsidy now must be replaced by an explicit subsidy to child care if children, who need nurture and care, are to turn into good adults and citizens. This also means that child care's importance, its social value, is now visible, not hidden by the submerged and subsidized provision of it by women confined to the home.¹⁶

This argument provides convincing evidence of a key advantage of globalization: that the work women regularly perform for no compensation and with little to no respect acquires value because women can perform other work that does have a monetary value. The fact that they increasingly choose to do so exposes the value of childcare and home management, and requires families to assess what they feel these goods are worth.¹⁷

Several critiques of this argument surface. This argument may appear counterintuitive to feminists because of the nature of this work. Many feminists and women's activists have criticized care work as carrying a heavy cost to women. Furthermore, feminist economists claim that economic models should reflect human cooperation, empathy and collective well-being. Feminist critics of

¹⁶ Bhagwati, In Defense of Globalization 78.

¹⁷ It is interesting to note that before capitalist economies began to reduce this subsidy for home management and childcare, socialist economies put women to work and collectivized childcare. Although one may disagree with the method by which this valuation of women's work was achieved, it would be interesting to study whether the collectivization of childcare in socialist countries led to an increase in women's position after the reversion of socialist countries to capitalism.

globalization point to the economic, cultural and emotional consequences of a rapidly changing world on women.

These points cannot undermine Bhagwati's point. What does substantively challenge this idea is the feminist economists' challenge the neoclassical assumption that humans behave rationally. In reality, feminist economists argue, humans respond to "a complex set of often contradictory tendencies."¹⁸ One result then of women working more could be that women take on both market-based responsibilities and still keep responsibilities at home, effectively doubling their workload. Under this economic structure, women work more for far less than equal pay, and their work at home remains uncompensated.¹⁹

¹⁸ Marwell and Ames 1981, Frank et al. 1993, Rose-Ackerman 1996.

¹⁹ This issue is closely connected to the recently common scenario where globalization actually has a negative impact on women. In the last few decades, corporations from developed countries have been establishing factories in developing countries, mostly for the purposes of using cheap labor (generally, children and women). In that case, women enter the labor market, work much longer hours than women in developed countries where statutory regulations apply to working hours (and conditions), thereby not having much time left for household and childcare activities. However, typically, the salary they receive is far less than what would be reasonable and just for the amount of time they spend working in the respective circumstances. Thus, focusing on the work done for salary, the salary received is not only much less than what is usually paid to women in developed or more developed countries for the same work but it is also disproportionate with the time spent working (e.g. no overtime extras, no wellbeing allowances etc.)

It is true generally, relating not only to women in developing countries but also those in developed countries, that multiple duties place multiple burden on women, basically devaluating the actual, overall value of their work for a salary and work at home. However, due to the fact that the works done by these two groups of women at home and out of their homes may differ to a greater extent, evaluation of women's work may also differ. Kaur referring to Shah states that due to highly capital intensive technologies brought in by MNCs, there is enlargement of output without a commensurate increase in jobs, therefore, foreign investment promotes growth without jobs, or even growth of the unemployment rate. The problem lies in the fact that the production process is based on smaller units without subcontracting arrangements or flexible labor deployed over a variety of production tasks, therefore, labor is used only when required, i.e. workers do not have a permanent status, are paid low and are deprived of their statutory rights. This has even more serious impacts on women most of whom are employed in the informal sector and they actually take up these jobs in spite of all the latter disadvantages. [Malkit Kaur: Globalization and Women, In: Sethi] Beneria referring to an Asian study also emphasizes this point, underlining difficult working conditions, lower wages and the tendency that married women tend to work mostly in the informal sector due to their limited mobility and narrower range of options. [Beneria 116-117] Thus, women, due to their multiple responsibilities tend to be tied to informal work, which actually creates a 'vicious circle' because this further limits their choices, opportunities and has an adverse impact on performing household and childcare work in addition to their paid, informal work, thereby possibly creating a tension between traditional cultural background and changed social and economic circumstance.

At this place, it is important to distinguish between formal and informal work one by women. While women's involvement in formal work is mostly characteristic to developed countries, informal work is a twofold phenomenon occurring at a more general level in developing countries but also present in developed countries, typically among less-educated women. In addition, women who, due to their education and skills, have the opportunity to choose, obviously opt for formal work, that is, formal work generally tends to balance inequalities relating to employment conditions and wages. Yet, although formal work usually implies work-related benefits, concerning social aspects like the household or child care for example, women involved in formal employment tend to have the same difficulties in finding a balance between multiple burdens. Of course, this does not mean that there is no difference between formal and informal work in this sense because formal work entails undisputed advantages such as stable, contracted employment, considerably higher and reasonable wages, social benefits and the feeling of financial security for the individual and/or the family. As opposed to that, women doing informal work not only are left without a choice to transfer to formal work in most cases but due to highly insecure and defenseless nature of informal work, women are much more forced to a situation where, in spite of their efforts, working outside of the household and earning money does not actually help their families, moreover, 'neglecting' their 'unpaid' work in their homes does not really pay off. This may cause not only financial difficulties and emotional distress but may lead to significant crisis in culture and traditions as well.

As Dau-Schmidt and Brun explain, globalization is one of the key factors in the disruption of the family. Globalization of the economy tends to encourage individualism and mobility, as opposed to the collectivity and stability necessary for successful family relationships; the extensive period of training that is necessary to compete in the global economy at a livable wage interferes with the establishment of marital relations and childbearing; and global economy has resulted in an increased demand for flexible labor, requiring many lower- and middle-class families to increase time spent in the paid workforce, often with few or no additional benefits. Dau-Schmidt and Brun argue that such 'necessary sacrifices' may be compensated by governmental measures, such as childcare and family benefits, in developed countries, however, the solution to this important question remains open relating to developing countries. [Kenneth G. Dau-Schmidt & Carmen Brun: Protecting Families in a Global Economy, 13 *Ind. J. Global Legal Stud.* 165, *Indiana Journal of Global Legal Studies*, Winter, 2006]

A further impact on women's work may be privatization and restructuring the economy. Although this may bring benefit to the country on the long-run, traditional communities and people/women whose life is largely integrated with natural resources subject to these 'newly' concluded concession contracts will have a hard time. As an important advantage of globalization, in many South East Asian countries, for example, women's wages have increased, yet, others say that low female wages are practically incentives for investment, making MNCs interested in keeping women's wages low [Beneria referring to Sequino, 126]. It is a very interesting argument that adoption of codes of conduct and implementing minimum working standards may actually distract investment from developing countries, however, it can also be argued that in lack of such minimum standards or rules, general working conditions and that of women, as well as economy of developing countries will not improve or at least not at the necessary pace. The issue here, which is still unresolved in spite of numerous efforts, how developing countries where outsourced or subcontracted work is done, could participate in some of the benefits gained by MNCs, including economic growth and gender-specific development, if that is possible at all. [Beneria referring to Lim, 126; Andrews supra 5 in Chapter III C]

Although non-rational motivations may affect individuals choices, as feminist economists point out, overall it would appear that both at the family level and at the national level, working women would, over the course of time, cause a shift in their social position, gradually reducing their imposed subsidy for housework and childcare. Despite some of the more anecdotal evidence to this effect, it would appear that increased transnational trade benefits women in several ways: 1) cross-cultural contact permits both men and women to adopt practices and social structures that foster greater equity; 2) increasingly varied economies may provide better opportunities for women to advance both economically and socially; 3) concentration on economic advancement encourages greater participation of women in the workforce, leading to women's obtaining a "place at the table." Much of the abuse women face may be tied to the presumption that they do not contribute significantly to a country's economy. To the extent that women's engaging in compensated labor does accord them some agency, women's position would improve. Women in certain countries may leverage their membership in a broader family structure to sell their labor to provide necessary income for her family, leading to increased household wealth.²⁰

²⁰ Another important aspect of globalization may be the emotional and social impact on women. This relates to difficulties with women's multiple burdens and the problems with formal work but it is also present in a more specific issue. Nowadays, MNCs keep changing their production locations, e.g. they 'wander' from country to country looking for the most appropriate taxation, financial and labor conditions, resulting in the fact that they may build an assembly factory in one country, then close it down just a few years later and move their production unit into another country offering more favorable conditions. In such cases, women working in such factories (mostly skilled workers without any previous education, that are really in need of this kind of work) may become extremely defenseless by losing their job. In Central-Eastern Europe, for example, this constitutes a significant problem at the moment, having numerous effects on these women. First, they may lose their confidence due to the constant threat of losing their (similar) job again, also changing their attitude towards their families and relating to their household work etc. Therefore, their general productivity, i.e. at home and at work, may also reduce.

However, the latter phenomenon affects mostly less-educated women. In this respect, it is useful to examine the role of education of women. It can be seen that in MENA countries for example, in spite of 63% of the university students were women in 2000, they represented only 28% of the workforce, practically meaning two things. First, the MENA region is not capturing a large part of the return in investment, and second that women's presence in political and public policy areas is still very low. However, in spite of the latter, women's participation in labor has increased by 50% since the 1960s which is a clear advantage. [MENA Development Report, Gender and Development in the Middle East and North Africa The World Bank, 2003] This seems to be a general notion relating not only to MENA countries but to any other country as well. Utilizing benefits of work by well-educated women has an unambiguously positive impact to the economy in general and also relating to resolving social crises and counterbalancing eventual negative cultural and social effects of globalization as well. Dau-Schmidt, in his general argument relating to the topic suggests that government programs promoting female education in all fields, guaranteeing equal rights for women and prohibitions on gender discrimination are all required in

D. Specific labor-related issues relating to women belonging to ethnic minority groups

It is very interesting to examine the situation of women belonging to a minority group within a certain country, having very different cultural background and ideas on women's roles and work (such as Hispanics in the US, African immigrants in Europe, the Roma (gypsies) in Central-Eastern Europe).

The role of women in those communities may be very special and controversial, having a great impact on labor/family income/evaluation of women's role issues.

As a result of globalization, the flow of capital and information, unprecedented acceleration of mobility necessarily intensified immigration. In the United States, this primarily affected immigration of Latin American and Asian people.²¹ Amy Chua²² points out an interesting feature of globalization, i.e. the relationship between ethnic minorities and economic power. The case is different in developing countries and the Western world: while in developing countries, some ethnic minorities own disproportionately large economic powers, in the West, ethnic minorities have severely disadvantaged economic positions. The following examples point out this controversy.

A very decisive, recent phenomenon is employment of Latina domestic workers in US households. As Romero²³ writes, Latina women basically replaced African American women in such positions due to dramatic changes in race, class,

order to make use of valuable labor resources of women benefiting the entire economy. [Kenneth G. Dau-Schmidt, *Dividing the Surplus: Will Globalization Give Women a Larger or Smaller Share of the Benefits of the Cooperative production?*, 4 *Ind. J. Global Legal Stud.* 51, *Indiana Journal of Global Legal Studies*, Fall, 1996]

²¹ Marc Belanger, *Immigration, Race and Economic Globalization on the U.S.-Mexico Border: Tangled Histories and Contemporary Realities*, 10 *J. Gender Race & Just.*, Fall 2006

²² Amy Chua, *World on Fire, How Exporting Free market Democracy Breeds Ethnic Hatred and Global Instability*, Random House, 2003, p. 15, 20.

²³ Mary Romero, *Immigration, the Servant Problem, and the Legacy of the Domestic Labor Debate: "Where Can You Find Good Help These Days?"*, 53 *U. Miami L. Rev.* 1045, 1999. On further issues relating to the significance of Latino workers in the US, see Christopher David Ruiz Cameron, *The Labyrinth of Solidarity: Why the Future of the American Labor Movement Depends on Latino Workers*, 53 *U. Miami L. Rev.* 1089, 1999. For a general overview, see also: Elvia Arriola, *Substantive Self-Determination: Democracy, Communicative Power and Inter/National Labor Rights* *Labor Law and LatCrit Identify Politics, Introduction: The Value of Work*, 53 *U. Miami L. Rev.* 1037, 1999.

gender, immigration, and citizenship status issues²⁴. Romero calls this the 'servant problem', i.e. social scientists, politicians, and members of the general public have argued that the poor working conditions of the occupation can be attributed to the workers themselves. 'The intersection of statuses make Latina immigrant women ideal candidates for fulfilling the needs of American families; not only are they less expensive than employees hired by agencies, but they are more easily exploited for additional work, and need not be provided any benefits.' In addition, their mobility in search for a better life is also blamed for such exploitation.

Another example of the status of women in ethnic minorities is the Roma community. It is a very special, traditional community where women have a privileged role. Significantly, a primary criterion for leadership among Gypsies is that a man has a wife who is strong and capable of aggressively asserting her authority within the family and toward outsiders, a factor that speaks against a subordinate position of Gypsy women.²⁵ Traditionally, women have a leading role within the family, being a wife and mother and working outside of the household is basically forbidden or at least restricted to similarly traditional events such as helping out men when necessary. All this is closely connected to deep moral roots concerning purity of women and family ties. In such circumstances, given that surrounding cultural and economic conditions have significantly changed, it is not at all easy for Roma women to adapt to consequences of the global economy. Their traditional roles, i.e. not working if not absolutely necessary²⁶, have been changing for some time, yet the interplay between such traditions and the prevailing characteristics of globalized economy, not forgetting the fact that traditional occupations of Roma men are also falling or have already become extinct, subsistence of entire families is at stake nowadays.

²⁴ This is pointed out by Amy Chua as well, emphasizing the example of South Africa where the position of black majorities has considerably developed, yet, the decisive economic power is still in the hands of the white elite minority, that is a 'market-dominant' ethnic minority as Chua puts it. (Chua, *supra* 22, p. 99)

²⁵ Walter O. Weyrauch, *Oral Legal Traditions of Gypsies and Some American Equivalents*, 45 *Am. J. Comp. L.* 407, *American Journal of Comparative Law*, Spring 1997; Anne Sutherland, *Gypsies: The Hidden Americans* 258 (Reissue 1986) (1975); Hancock, "Gypsies," in *Harv. Encyc. of Am. Ethnic Groups* 440, 443 (1980).

²⁶ This has changed in recent decades and Roma who have moved away from strict traditions actually do work but given, among others, their ancient traditions (such as not being the custom to go to school, for example) still operate in the background and prejudice and racism ruling in many host communities, they are forced to do humiliating jobs, forcing these women into a downward spiral of economic and moral crisis.

E. The Consequences of Macroeconomic Estimates of Women's Work

1. Erroneous Estimates of Economic Activity

Women's equality requires that their contribution to economies around the world be valued as such. One key complexity is the definition of work as it relates to women: many countries simply define the labor women exert as outside of reported economic activity. As discussed above, much of women's work requires estimation because it is unpaid, informal, and/or volunteer.²⁷ Thus, labor participation rates for women appear far lower than a real examination of hours worked would demonstrate. For this reason, economists concerned with maximizing the value of women's work have spent decades trying to ascertain the most effective method to properly assign a value to "women's work."

2. Methods for Estimating the Value of Women's Work

Economists and feminist scholars have debated the complexities of quantifying the economic contribution made by women, employing various methods, each with its drawbacks. I will outline the two primary methods and elements within each method for estimating the economic contribution made by women. Then I will describe how the paradigm of each of these methods may be impacted by globalization.²⁸

a. Input-based Methods

Input methods attempt to measure the value of the labor spent by women on the work that they do. The focus is the effort expended by women to produce whatever they produce, based on the time spent.²⁹

Within the input model, there are three methods related to calculating the value of women's input:

1) The Global Substitute method. This method uses the cost of a hired domestic worker assumed to be paid to carry out all types of household tasks. It

²⁷ Beneria, 136-138.

²⁸ Whatever valuation method is used, the value of unpaid housework is substantial in relation to GDP. Non-market household production is an important component of household income, consumption and welfare. [Ann Chadeau, What Is Household's Non-Market Production Worth?, OECD Economic Studies No. 18, Spring 1992]

²⁹ Beneria 143-144. Based on an OECD research elaborating the categories detailed below. See also A. Sylvester Young, Income from Households non-SNA production: A Review [<http://www.ilo.org/public/english/bureau/stat/download/articles/2000-22.pdf>]

is considered that this method underestimates the value of the work since the wages assigned to domestic help are so low.³⁰

2) The Specialized Substitute method³¹. This method uses the average wage of a specialist with skills for each household task. This method generally is considered to account for a more accurate level of activity, although it may overestimate the value of such work.³²

3) The Opportunity Cost method, which is based on the wage that the person performing domestic work could receive in the market. This method yields the broadest range of estimates, because educated people engaged in menial labor will have their time accounted based on the value of the labor produced by employment that utilizes that education.³³

Generally, input-based methods account for women's time and effort, but do not necessarily provide an accurate portrait of welfare. Childcare and housework, heavily subsidized by women, may involve significant inefficiencies that do not reflect the full welfare that could be attained through more productive allocations of women's labor.

b. Output Methods

Output based estimates require imputing value to domestic production and then deducing the value of the inputs required to produce the product.³⁴ The

³⁰ Chadeau criticizes this method because it is improbable that all housework tasks could be performed by an unqualified housekeeper.

³¹ Also called the replacement cost method. Chadeau finds this to be a more plausible and at the same time feasible approach differentiating between the various types of household tasks and relates wage levels to the type of work performed.

³² In addition, Chadeau states that it is unlikely that households would in fact hire such a wide range of specialist personnel.

³³ This method is criticized by Chadeau because of the fact that valuing time spent on housework by market wage rates implies that productivity in the household is the same as on the market and actually there is no evidence to support (or reject) this assumption. Another weakness of the opportunity cost method is the assumption that individuals are able to work on the labor market for as many hours as they wish in jobs suiting their professional qualifications, however, the potential wage rates are often zero as many of such people are in fact unemployed, or, at best, minimum wage rates. This implies that the value of an hour of housework is lowest for those who perform most of it. In addition, wage rates assumed in the cost opportunity method are far from accurate due to the fact that this method assumes that work resulting in the production of one good or service in the home is estimated at the value of work producing a quite different good or service on the market.

³⁴ As suggested by the UN International Research and Training Institute for the Advancement of Women (INSTRAW). INSTRAW deplores, that in the past there have been very few attempts to estimate the value of household output, while it is technically possible and less time-consuming than the surveys based on time-use measurement (INSTRAW 1995). United Nations International

problem here is that it is nearly impossible to estimate the appropriate value of the work because the products may have different value based on different quality or utility. More significantly, a feminist critique would posit that certain kinds of work may have a value beyond assess apart from a market-determined price. What is the value of childcare for one hour? Is one-on-one childcare to be valued at the same price as group childcare? Is it relevant whether the caregiver is a mother? Is it relevant the degree to which she is educated? These are substantive limitations to output-based work estimates.³⁵

The complexities of answering these questions, along with the broader project of input or output-based estimates, reveal the challenge of valuing women's work.³⁶

Research and Training Institute for the Advancement of Women (INSTRAW). (1995). [Measurement and valuation of unpaid contribution: Accounting through time and output. Santo Domingo, Dominican Republic: Institute for Research and Training for the Advancement of Women.]

³⁵ In general level, output-based methods include value added and gross output method. Value added output excludes intermediate inputs (materials, energy and services used up in the process of production) while gross output measure includes the latter factors. In the former measure, a value-added output measure is related to capital and labor as inputs. In the latter, gross output is related to capital, labor and intermediate inputs. The difference between the two concepts of productivity growth is less pronounced at the aggregate (or national) level than it is at the sectoral or industry level. At the aggregate level, gross output-based and value-added based measures are close, only differing to the extent that intermediate inputs are sourced from imports. In proportional terms, this tends to be low. [Trevor Cobbold, A Comparison of Gross Output and Value-Added Methods of Productivity Estimation, Research Memorandum GA 511, November 2003, <http://www.pc.gov.au/research/rm/cgovam/cgovam.pdf>]

As opposed to input-based methods, Ann Chadeau opines that conceptually, the output approach is more satisfactory in that it values goods and services produced in the household at the price at which they are available on the market; this is how output is generally valued in the national accounts.

³⁶ Women's movements and feminist economists have criticized the methods so far being used in assessing the value of household work. The opportunity cost method, i.e. calculating the monetary value of the household work by comparison to the wages which women could earn at the labor market (where the women's wages are lower than men's in all countries), either the global substitute method or the specialized substitute method where monetary value of household work is compared to the prices of the same type of work performed by a general or a professional household worker (which most likely will also be a low paid woman), would both perpetuate the pattern of all labor market, where women are low paid in general.

The output-based evaluation method suggested by INSTRAW avoids this problem, although it obviously gives different values in different countries related to the level of prices and salaries at the market in respective countries.

[<http://www.listproc.bucknell.edu/archives/femecon-l/199906/msg00015.html>]

For a related, country-by-country analysis see Luisella Goldschmidt-Clermont & Elisabetta Pagnossin-Aligisakis, Measures for Unrecorded Economic Activities in Fourteen Countries [http://hdr.undp.org/docs/publications/ocational_papers/oc20a.htm].

F. The Limits of Estimates and the Power of the Market

Many objections surface with regard to the project of estimating the value of women's work. Although many voice the concern that, without regard to the accuracy of the results, a determination of the value of women's work would not improve the lives of women performing the work. This cynical presumption cannot derail the project, because transnational and domestic policies depend on the results and their reliability. Another objection is that this work simply sits in a realm beyond price. These objections take the challenge of accurate assessments of relatively intangible outputs to the extreme. They reflect, to some extent, the concern of feminist economists that economic analysis should reflect the values of empathy and well-being. Although these values may be worth considering, the reality is that all output has a value because if it were offered for sale it would either be purchased or not, all for a price depending on the market. This is the fundamental presumption of Smith's invisible hand theory. Finally, there are methodological questions regarding the efficacy of the effort to assess the value of women's work.

These criticisms raise important questions, but ultimately those who doubt the value of placing a value on women's work ignore the inexorable movement toward greater participation by women in the labor force³⁷. The result is that women who engage in the labor force both create value for themselves and for those women who cannot or choose not to enter the "official" labor force. Increased labor participation by women fosters wealth among women who get paid for non-care work, increases power for women who perform care work in their home context, where their work will be seen increasingly as an investment of work and not simply passing time.

In sum, although globalization faces criticism from feminist economists, and although assessing the value of women's work poses serious challenges to

³⁷ In 1980 the United Nations estimated that although women did two-thirds of the world's work, they earned only one-tenth of the world's income and owned only one-hundredth of the world's property. Today, more recent official UN data shows that women make up 31 per cent of the official labor force in developing countries and 46.7 per cent worldwide, while the majority of women earn on average about three-fourths of the pay of males for the same work, outside of the agricultural sector; in both developed and developing countries and in most countries, women work approximately twice the unpaid time men do; and the value of women's unpaid housework and community work is estimated at between 10-35 per cent of GDP worldwide.

[Women at a Glance, <http://www.un.org/ecosocdev/geninfo/women/women96.htm#labour>]

The basic pattern of more work done and less remuneration received by women seems stable across the planet [<http://unstats.un.org/UNSD/demographic/products/indwm/ww2005/tab5g.htm>]

economists of all schools, increased international trade ultimately can only benefit women in their quest for greater decision-making power over their own lives³⁸.

II. Legislative Women's Leadership in the Public and Private Sector

Women's representation falls far short of reflecting their population. Indeed, in most countries, representation hovers around 15%. In response to this, over the past decade, many countries have enacted provisions to guarantee a level of political representation for women, either in terms of seats in legislatures or in terms of candidacies. Some countries have focused on "parity" means "perfect equality,"³⁹ or "the recognition, inscribed in the law, of the equality of representation of women and men."⁴⁰ Other countries have created a certain requirement, called a "quota" or a "reservation" which involves a percentage of candidates or seats dedicated to women.

The disparity between women's numbers and female elected representatives poses a variety of interesting questions. Why do parties choose few women candidates? Why do few women attempt political participation? What is the impact of many centuries of quasi-exclusive male political power? Interesting though such questions may be, this immediate project centers more directly on the political, philosophical, and cultural norms. Though the population of advanced democracies can colloquially (if not statistically) be

³⁸ Economic approaches and regulating role of the market have an interesting interconnection with globalization. As Dau-Schmidt explains, worldwide, women do the majority of household and childcare work, yet are more likely than men to be caught in a physically abusive or exploitive relationship. He states that due to the possibility of physical coercion and there is inequality in the division of the cooperative surplus. He explains that 'although economists commonly assume that exchanges are voluntary and therefore mutually beneficial, this would seem a naive assumption with respect to dealings between some men and women'. In addition, even when women are not physically coerced in their joint production efforts with men, they are often disadvantaged in bargaining for the surplus from their cooperative endeavors because their physical ties to their children leave them with high needs and low alternatives. Dau-Schmidt further notes that women are disadvantaged in bargaining although society as a whole will benefit from the increase in joint productive endeavors women's cooperation makes possible. However, it is also true that markets may limit such restricted status of women in bargaining, this possibility most likely being present in developed countries and considering that no such thing as perfect market exists, provided that the market allows a woman to take her resources to an employer not trying to take advantage of such poor bargaining positions. [Kenneth G. Dau-Schmidt, *Dividing the Surplus: Will Globalization Give Women a Larger or Smaller Share of the Benefits of the Cooperative production?*, 4 *Ind. J. Global Legal Stud.* 51, *Indiana Journal of Global Legal Studies*, Fall, 1996]

³⁹ Gaspard *Au Pouvoir!* 129, quoting *Le Petit Larousse*.

⁴⁰ Gaspard, 129.

referred to as "half and half," why is it legitimate that elected bodies do not have a composition anywhere near "half and half"?

This section will briefly describe the parity laws in France, Brazil, and India, the three most prominent countries which have adopted parity laws. It will also summarize Norway's Corporate Board Quota, which applies the principle of mandating women's leadership in the private sector context. This description will provide the basis for the analysis in Part III regarding the utility of parity laws in furthering the interests of women in globalization.

A. Parity in France

1. Background

France's Parity Law originally gained approval in 1982, but was overturned as unconstitutional. Parity again began to take hold among French politicians and feminists in the early 1990's with the 1992 publication of the manifesto *Au Pouvoir, Citoyennes! (To Power, Women Citizens!)*, which argued that the (French) Revolution, the suffrage movement, and the postwar period all failed to effect fair levels of women's participation in elected bodies. Although earlier versions of the law surfaced with a 30% quota for women in party list-elections, by the mid-1990's, "parity," that is, 50% became the standard for advocates.

France has a semi-proportional electoral system, in which some elections such as municipal, regional European and some Senatorial races follow a party list system, while others tally votes by each specific candidate. After the Socialist Party's victory in 1997, the party credited its success partly to a self-imposed quota of 30% women.⁴¹ Once in power, the new Prime Minister, Lionel Jospin, declared in June 1998 that he would propose a constitutional amendment regarding parity.

The final version of the law amended the Constitution of the Fifth Republic.⁴² Following the passage of the above mentioned law, another law, Number 2000-493 of June 6, 2000, favoring the equal access of women and men

⁴¹ Get cite from Le Monde

⁴² The language of the law, Number 99-569 of July 8, 1999, follows:

Article 1 – Article 3 of the Constitution of October 4, 1958 is completed by a paragraph as follows: "The law favors the equal access of women and men to elected office and elected functions."

Article 2 – Article 4 of the Constitution of October 4, 1958 is completed by a paragraph as follows: "They will contribute to the execution of the principal enunciated in the last paragraph of Article 3 of the Constitution under conditions determined by the law."

to electoral office and elected functions, was executed to implement the constitutional transformation.⁴³

The enforcement of the Parity Law depends on the election in question. In the list elections, parity simply obliged parties to have every second name correspond to the "other" sex. Should a party fail to present candidates of alternating gender, its list would not be registered by the Prefecture and as a consequence it would not appear on the ballot. Thus, a political party must name women to half its proposed candidates, or lose the ability to run any candidates.⁴⁴

⁴³ Title I states:

Dispositions related to elections following a list method, that is to say the principal elections: On each of the lists, the differential between the number of candidates of each sex cannot be higher than one. At the head of each group of six candidates in the order of presentation of the list should figure an equal number of candidates of each sex.

For senatorial elections and for the European Parliament, On each of the lists, the differential between the number of candidates of each sex cannot be higher than one. Each list is composed alternately of a candidate of each sex.

Title II states:

Dispositions related to the declarations of candidacy:

Henceforth, candidates are required to make a declaration including their signature, stating their name, sex, date and location of birth, residence, and profession.

Title III states:

Dispositions related to the aide given to political parties and groups

If, for a political party or group, the difference between the number of each sex, having declared party affiliation, since the last election of the National Assembly, conforming to the second paragraph of Article 9, goes beyond 2% of the total number of candidates, the total of the first fraction which is attributed in application of articles 8 and 9 is diminished by a percentage equal to the half of this difference related to the total number of candidates.

This reduction is not applicable to political parties and groups having presented exclusively overseas candidates if the difference in the number of candidates of each sex related to the party is not superior to one.

A report of evaluation of the instant law will be presented by the Government to the Parliament in 2002, and each three years afterward. It includes as well a detailed study of the evolution of the feminization of regional elections, of senatorial and municipal elections not affected by the law, deliberative bodies of intercommunal structures, and local executives.

Title IV states that the law will enter into force as of the next elections of the relevant legislative bodies. Granrut 39-41.

⁴⁴ May 2000 La Gazette de l'AFEM (Association des Femmes de l'Europe Meridionale)(Association of Women of Southern Europe) 3. Elections by list where three or fewer candidates appear also avoid the parity rules.

For uninominal elections, such as an executive post, the candidates presented by a party have as many women as men overall. Here, the enforcement of parity depends on the threat of withholding public funding for political parties. Political parties receive significant funding from the French state, covering many of their expenses.⁴⁵ The government will reduce its financial support for parties that fall short of fifty percent by the percentage differential between the actual percent and fifty percent.

Elections conducted since the adoption of the Parity Law reveal both sharp improvements in women's representation in some elections and less marked increases in other areas, revealing the efficacy and limitations of the recent law. The French Senate, which had earlier refused to support the Parity Law, has 320 members, each elected for 9-year terms. Approximately one-third of the Senate faces the voters every three years, in an irregular combination of list-ballot and direct election. Among the positions up for election, the number of women increased by more than three-fold, from 7 to 22, or in percentage terms, from 6.9% to 21.5%. Overall in the Senate, the number of women increased from 20 to 35, or from 6.25% to 10.9%. Of new Senators, 30% were women, a remarkable improvement.⁴⁶ In the municipal elections of March 2001, women's presence among the elected went from 21.7% to 47.5%, largely due to the strict restrictions imposed on parties that fall short of fifty percent. In 2002, the number of elected women for the National Assembly went from 35 deputies in 1995 to 59 in 1997. After the 2002 election, the total increased to 71, a small increase in the five years since 1997, leaving many observers markedly disappointed after the unquestionable success of the prior year's municipal elections.

The distribution of women candidates and winners among the political parties basically adhered to party size. Larger parties had lower levels of representation. For example, the party of President Chirac, who had supported the Parity Law, only had women for one-fifth of its candidates. Party leaders claimed that it was difficult to find women candidates, although the smaller parties' electoral slate belies the weakness of this assertion.⁴⁷ Underlying this response is the reality that the larger parties had the funds to function without their entire allocation. Rather than risk having what they considered to be losing candidates, the larger parties named fewer women candidates, accepting the cost of reduced subsidies. Despite this calculation, responding to these insufficient excuses for failing to meet the Parity Law's requirements, no less a source than *Elle* magazine warned cynical politicians to take note: "paying instead of applying the law will not always pay off." Indeed, some scholars have pointed to male bias

⁴⁵ Get support.

⁴⁶ August-October 2001 *La Gazette de L'AFEM* 4-5.

⁴⁷ May-June 2002 *La Gazette de L'AFEM* 3-4; June 3, 2002 *Elle Magazine* 7.

among the electorate as the reason why the Parity law has not led to a greater increase in women's representation.⁴⁸

B. Quotas for Women in Brazil

As in France, the first success of Brazilian women's advocates came in convincing a party of the left to adopt a voluntary provision for 30% quotas for women in its leadership. Other unions and political parties followed suit. In 1995, a proposal before the Legislature, the "Lei das Cotas," succeeded, requiring that 20% of the candidacies for municipal government be reserved for women. Later provisions increased this number to 25% and then to 30% beginning in the 2000 elections.⁴⁹ Brazil never considered adopting parity. The Lei das Cotas provided that instead of reducing the number of male candidates, the parties had the right to add 30 new (women) candidates to each 100 candidates.⁵⁰ This is easier when you have a proportional system of elections to the 3 levels of Legislature. The debate at that time over whether to adopt the provision centered on constitutional concerns about the validity of the law. The constitutional provision against sex discrimination, it was argued, prohibited such a law because it favored women over men. After considerable discussion, it was agreed that the constitutionality of these provisions rests on the understanding that women face substantial inequalities in the workplace.⁵¹

Several elections have taken place since the passage of the Lei das Cotas, permitting some measure of its success. Two separate inquiries measure its success: 1) whether the required numbers of female candidates were presented to the voters, and 2) how many of those candidates actually won elected office.

The figures for 1996 carry little weight because the Lei das Cotas had only recently passed; its provisions could not be effectively maximized. In 1998, however, with the exception of one state's party list, no other roster of candidates

⁴⁸ Maniquet, et al., Endogenous Affirmative Action: Gender Bias Leads to Gender Quotas (2004).

⁴⁹ Luis Felipe Miguel, *Theoria Política Feminista e Liberalismo: O caso das cotas de representação*, Vol. 15 N° 44 *Revista Brasileira de Ciências Sociais* 91 (Oct.2000); Malheiros Miguel, *supra* note 4, at 49.

⁵⁰ Part of the complexity of the Lei das Cotas provision lies in the nature of the Brazilian electoral process. This process requires the voter place a vote for the candidate and for the electoral coefficient. Thus, a candidate will only win if the party to which he or she belongs wins a sufficient electoral coefficient. A candidate therefore could receive enough votes to be elected but if his/her party fails to obtain the electoral coefficient, the candidate will lose. This system contrasts with traditional proportional system, such as list voting in which electoral success depends directly and solely along party-line votes. See, Malheiros Miguel, *supra* note 4, at 23.

⁵¹ Congresso, Senado Federal. Parecer de Proposta de emenda à Constituição n° 7, 1999. As far as I know, lei de cotas belongs to infra-constitutional legislation, and here you discuss an amendment to Federal Constitution – so it is probably a different matter.

included 25% women in 1998. Although no party made the quota, given the extensive efforts in 1998 to further the representation of women, progress had been expected. Women's representation actually decreased in 1998 to 5.65% of the representatives in the federal chamber.⁵² One party superceded the quota – the Communist Party of Brazil -- it had women as 40% of its candidates. Other parties on the left generally came closer to the quota requirement, including the Partido dos Trabalhadores (“PT”).⁵³ Subsequent to the 1998 elections, critics called the Lei das Cotas “timid, to say the least.”⁵⁴

In 2002, hopes again ran high that the election would make a difference in women's representation, in particular because of the strength of the candidacy of Luis Inacio Lula da Silva and the PT.⁵⁵ As Teresa Cruvinel stated in *O Globo*, “this time everything indicated that the quota policy would not be put aside as useless to strengthen women's presence in political representation, again.”⁵⁶ Despite this hope, no party met the 30% requirement for women candidates. As one commentator stated, “Historically, women have always been ignored in the system of power. Today, however, there exists much more room that may be characterized as feminine participation. It falls to us to use this moment to promote this transformation of gender in politics.”⁵⁷ Although earlier critics attacked the law as a half-hearted effort, the 2002 elections marked an advance for women's representation in Brazil. In the House and in the assemblies, women's representation increased by 20%.⁵⁸ As in France, Brazil's Lei das Cotas has not advanced women's representation as rapidly as some may have hoped.

C. India's Reservation Bill

⁵² Miguel, *supra* note 9, at 98, Malheiros Miguel, *supra* note 4, at 131.

⁵³ Malheiros Miguel, *supra* note 4, at 132.

⁵⁴ Miguel, *supra* note 9, at 92.

⁵⁵ The research I performed in several Brazilian news sources did not reveal results for the 2000 election. Further research would be required to ascertain the effects of these elections. However, since 2000 elections were held only in the municipal level, we should bear in mind that the most important post at stake in those polls – the mayorship of Sao Paulo – was won by a woman, Marta Suplicy, who is an important feminist leader, had been one of the proponents of the Lei de Cotas and, most important, had entered the political arena in the late 1980s as a sexologist (is that the correct word?), shocking the conservatives in Brazil, since she spoke everyday in the morning about sex and orgasm for a feminine audience. So, even if we lack numeric data about that election, its symbolic results were an important advance for feminine representation.

⁵⁶ Teresa Cruvinel, *Retratos de um Novo Brasil*, *O Globo* Oct. 8, 2002.

⁵⁷ Betania, quoted by Leticia Helena, “Eleições Brasil,” *O Globo* (October 10, 2002).

⁵⁸ “A Surpresa Feminina Nas Urnas” *O Globo* (Oct. 13, 2002).

India adopted a Reservation Bill in the mid-1990's, requiring one third of Village Council head positions be reserved for women, on a random basis.⁵⁹ Simultaneously, women's activists have advocated for a national reservation bill that would allocate not less than one-third of all seats in Parliament to women.⁶⁰ This bill still has not succeeded, but it is worthwhile to note that it has been repeatedly raised and rejected, largely due to opposition by Scheduled Castes and Scheduled Tribes ("SC & ST"). Although questions have arisen as to the constitutionality of these reservations, advocates have referenced the concept of legitimized "compensatory discrimination" to surmount some of these concerns.

D. Norway's Quota

This Part will summarize Norway's law in the context of broader gender equality efforts, and will explore Norway's engagement in creative solutions to public and private problems, employing methods of both free market and socialist economies. This description invokes a novel and unique law and therefore includes more detail than provided in the discussions of political representation quotas.

1. Norway's Gender Equality Efforts

Norway's legal system encompasses a broad range of remedies for gender inequality. Examining such efforts will contextualize the Corporate Board Quota that serves as the focus of this paper. In April 2002, Norway's Parliament (the Storting) amended the 1978 Gender Equality Act ("Act"), which sought to "promote gender equality." Particular attention centered on "equal opportunities in education, employment and cultural and professional advancement."⁶¹

The Corporate Board Quota is far from Norway's first manifestation of state intervention into the market in order to regulate gender equality. The 2002 amendments sought to promote equality in the workplace by extending already-existing duties of public officials to private employers.⁶² The amended Act requires employers to implement concrete steps toward attaining gender equality

⁵⁹ Raghavendra Chattopadhyay and Esther Duflo, *Women as Policy Makers: Evidence from a Randomized Policy Experiment in India* (2001) (hereinafter "Duflo").

⁶⁰ Sumita Ray, *The Women's Reservation Bill of India: A Political Movement Towards Equality for Women*, 13 *Temple International and Comparative Law Journal* 53 (1999).

⁶¹ See Gender Equality Act, *English translation available at http://www.likestillingsombudet.no/english/act_act.html* (last visited January 31, 2007).

⁶² See Kristine Nergaard, *Gender Equality Act to be Strengthened*, EIRONLINE, October 4, 2002, available at <http://eurofound.europa.eu/eiro/2002/04/inbrief/no0204101n.html>

and to provide an annual accounting of the measures they have undertaken.⁶³ It also codified existing practice on the right to equal pay for work of equal value, providing guidance on evaluating work for such determinations. “Equal pay for work of equal value” has the goal of decreasing the wage differences between women and men.⁶⁴ In the workplace context, the Act also contains provisions for greater protection during pregnancy and maternity leave, affirmative action and education, and sexual harassment.⁶⁵

With respect to families, in 1993, the law reinforced prior legislation regarding parental leave for fathers, remedying a shortcoming in enforcement. Whereas few had exercised this right previously, since the revision eight out of ten men take advantage of their right to parental leave.⁶⁶ This step also reflects a focus on gender equality in general and not simply improving the status of women. In 1998, the government instituted a cash benefit scheme to guarantee the family of every child between the ages of one and three to about \$420 a month, so long as the child did not attend a subsidized day care center, to permit families greater choice in childcare.⁶⁷

As Norway reported in its Fifth and Sixth Periodic Reports to CEDAW, domestic violence remains the major source of inequality between men and women. These reports demonstrate that forty-two percent of the violence suffered by women occurs in the home as compared with fourteen percent for men.⁶⁸ Such reports reflect some underreporting. In response to this crisis, Norway has developed measures to prevent violence against women, such as providing services, shelter and support for survivors of gender-related violence.⁶⁹ Amendments to the Criminal Procedure Act passed in 1994 strengthened the position of victims of violence and sexual offences. For example, victims are entitled to free legal aid. In addition, a “violence alarm” project has been instituted to ensure swift police response to reports of domestic violence. There is also service for men who have problems with violence and/or aggression named “Alternative to Violence” has been developed.⁷⁰

⁶³ See *Measures and Methods in Gender Equality Efforts (Norway)*, available at <http://www.norway.org/policy/gender/policy/policy.htm> (last visited January 31, 2007).

⁶⁴ *Norway Called ‘Haven for Gender Equality,’ As Women’s Anti-Discrimination Committee Examines Reports on Compliance with Convention*, available at <http://www.un.org/News/Press/docs/2003/wom1377.doc.htm> (last visited January 30, 2007).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

Regarding gender equality in political participation and representation, Norway's women's representation levels have consistently been near the highest in the world. In a recent election, women's voter turnout was higher than that of men: while seventy percent of women in the 18-21 age group voted, only fifty percent of men in the same age group did.⁷¹ The Report also notes that the Norwegian quota rule with respect to political parties is that women and men shall be represented by at least forty percent and that female representation in the Storting (Parliament) is higher than it is in municipal councils.⁷² This strong representation in the political context reflects success in the quota applied. The Corporate Board Quota reflects recognition by Norway's government of the need to extend this effort from the state into the private sector.

2. Norway's Corporate Board Quota

Norway passed a law in November 2003 which required companies⁷³ to have at least thirty three to fifty percent of each gender on their corporate boards.⁷⁴ The exact percentage each company is required to have varies with the size of the board, but the forty percent requirement applies to boards with over ten members.⁷⁵ Interestingly, the quota requirements are part of Norwegian business law (Public Limited Companies Act) rather than any anti-discrimination

⁷¹ *Id.* 1997 elections.

⁷² *Id.* Sixth periodic report.

⁷³ The law covers state owned limited liability companies, state-owned enterprises, companies incorporated by special litigation, inter-municipal companies and privately owned public limited companies, of which there are about 500 of on the Norwegian stock exchange. Ministry of Children and Equality, <http://www.regjeringen.no/en/dep/bld/Topics/Equality/Rules-on-gender-representation-on-compan.html?id=416864> (last visited July 6, 2007). With regard to public limited companies in the private sector, an agreement was signed with the business sector stipulating that these regulations would not come into effect if the desired gender balance was achieved voluntarily during the course of 2005. "According to figures from Statistics Norway, there were 519 public limited companies in Norway as of 1 July 2005. Of these, 68 (13.1%) satisfied the legal provisions relating to gender representation. The average women's representation in the permanent board appointments (owner and employed elected) in Norwegian public limited companies was 15.5%. In light of this, the Stoltenberg Government decided to implement the regulations as from 1 January 2006." Norway- the official site in the United States, Women in Norwegian Politics, available at <http://www.norway.org/policy/gender/politics/politics.htm> (last visited June 25, 2007). The law does not apply to privately owned, non-listed companies, which comprise the majority of Norwegian companies (over 160,000). European Professional Women's Network, *Women on Boards: The Inside Story on Norway's 40% Target*, available at <http://www.europeanpwn.net/women-on-boards/women-on-boards-the-inside-story-on-norways-40--target/> (last visited January 3, 2007).

⁷⁴ *See id.*

⁷⁵ *Id.*

legislation (like the Gender Equality Act).⁷⁶ As of January 1, 2004, all state owned companies were required to maintain “a minimum of forty percent representation of each gender” and all public limited companies were required to maintain the same minimums as of January 1, 2006.⁷⁷ The forty percent requirement obligates an approximate level of gender balance, basically preventing either sex from sinking far below a level proportionate to population. The Quota law does not apply to privately-held companies.⁷⁸ As of January 1, 2006, every new listed company that wishes to register on the Oslo Stock Exchange (OSE) must satisfy the law’s quota requirements. Existing companies have until the end of 2007 to comply. The punishment for noncompliance is draconian: company dissolution.⁷⁹

Application of the law depends on the board’s size. If the board is between two and nine members, the law proscribes the gender ratios that must be present. “If the board has two or three members, both sexes must be represented.”⁸⁰ The ratio requirements continue as the board size increases to

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ “No gender representation rules have been proposed for private limited liability companies. Most private limited liability companies in Norway are small family companies where the owners are physical person who personally attends the board. The legislation on gender representation does not fit very well for this kind of companies. In public limited companies, on the other hand, the shares are generally more widely spread, and the company’s management has a less personal feature.” See, Ministry of Children and Equality, *Balanced Gender Representation on Company Boards*, <http://www.regjeringen.no/en/dep/bld/Topics/andre/Balanced-gender-representation-on-compan.html?id=1250> (last visited, April 5, 2007).

⁷⁹ *Id.* Experience shows that most companies where discrepancies are pointed out, correct these in due time. Therefore, it is unlikely that any companies will be dissolved by the court on account of the gender representation rule. According to the Public Limited Companies Act, the King (the Ministry) can decide that a forced dissolution shall not be executed because of “substantial public interests”. In such cases, the company will have to pay a compulsory fine until the conditions are in accordance with the law. This regulation applies to different situations such as requirements regarding the board of directors, the general manager, the auditor and the annual accounts. Ministry of Children and Equality, <http://www.regjeringen.no/en/dep/bld/Topics/Equality/Rules-on-gender-representation-on-compan.html?id=416864> (last visited June 25, 2007).

⁸⁰ In other words, if there are only two board members, one must be male and one must be female. If there are three board members, two must be of one gender and the third member must be of the other gender. The ratio may be 2:1 female or 2:1 male. *Id.* “If the board has four or five members, each sex shall be represented by at least two representatives. If the board has six to eight members, each sex shall be represented by at least three representatives. If the board has nine members, each sex shall be represented by at least four representatives. . . .” *Id.* These statistics require categorizing individuals in one or the other sex, raising deeper problems with the gender binarism essential to the operation of the Corporate Board Quota (CBQ). The challenge of how to count transgender people in the evaluation of adherence to the CBQ reflects the problem of the underlying gender binarism. See *infra*, Part III.

nine members. Beyond nine members, each sex must make up at least forty percent of the representatives.” The law does not apply the forty percent requirement strictly to boards of nine or less members because it would practically result in a fifty percent requirement. The law provides a two-year transitional period: current companies are not required to comply until January 2008. However, any company formed after January 1, 2006, was required to comply upon formation of the initial board.⁸¹

Statistics suggest that these quotas have not yet been met. As of July 2006, only 29.6% of the companies on the OSE had achieved compliance (151 out of 510 companies), and nearly 33% of public companies don’t have any women on the corporate board at all.⁸² Out of the 562 women who are board members in Norway, only 11 serve as chair.⁸³

Norway is a leader in adopting a quota on corporate boards. Low representation of women on corporate boards is widespread. At the time the quota law was passed, women held only seven percent of Norwegian corporate board and executive positions. By comparison, women constituted twelve percent of corporate board positions in the United States.⁸⁴ Other countries have considered such a law: Spain proposed a forty percent quota on corporate boards in May 2006 (neither gender could make up more than sixty percent of the corporate board), which was originally slated to go before the legislature in June 2006.⁸⁵ After a delay (due to the 2006 elections), the legislation is expected to be approved in 2007.⁸⁶ Both Denmark and France have approved quota requirements,⁸⁷ but they have not yet been enacted.⁸⁸ Although Sweden

⁸¹ Ministry of Children and Family Affairs, *Balanced Gender Representation on Company Boards – Information About the Changes*, <http://odin.dep.no/bld/english/topics/gendereq/004051-990347/dok-bn.html> (last visited Jan. 24, 2007).

⁸² Chris Noon, *A Woman’s Place is in the Boardroom*, FORBES.COM, September 9, 2006, available at http://www.forbes.com/corporategovernance/2006/09/21/leadership-norway-women-lead-govern-cx_cn_0921norway.html.

⁸³ *Id.* The article also states that in the summer of 2006, a Swedish governmental advisor on sex equality proposed that companies listed on the Stockholm Stock Exchange whose corporate boards are not at least 40% female by 2010 should be fined until they comply.

⁸⁴ Carrie Seim Medill, *Closing the Corporation Gender Gap*, NEWS OF NORWAY, June 6, 2003, available at <http://www.norway.org/News/archive/2003/200303gender.htm> (last visited July 8, 2007).

⁸⁵ Renwick McLean, *In Spain, the 40% Solution*, INTERNATIONAL HERALD TRIBUNE, May 5, 2006, available at <http://www.iht.com/articles/2006/05/04/news/spain.php>.

⁸⁶ *Spanish women struggling to rise in the corporate world of modernizing but still macho society*, THE ASSOCIATED PRESS, December 30, 2006, available at http://www.iht.com/articles/ap/2006/12/31/europe/EU_FEA_GEN_Spains_Glass_Ceiling.php.

⁸⁷ S. Murlidharen, *Reservations About Quotas for Women on Boards*, THE HINDU BUSINESS LINE, October 12, 2006, available at <http://www.thehindubusinessline.com/2006/10/12/stories/2006101200091100.htm>.

considered the idea⁸⁹, currently has no corporate gender quotas.⁹⁰ Statistics reveal that the levels of corporate board representation of women in Europe has stagnated, as compiled by the European Professional Women's Network on June 12, 2006.⁹¹

The public policy goals behind the Corporate Board Quota point toward breaking the glass ceiling and to increasing competitiveness. The Quota law seeks to "secure greater gender equality and democracy and . . . [to] strengthen management in the business sector and boost the companies' competitive ability."⁹² Those in favor of the quota law argue that Norway's position in the world market could be severely limited by this under-representation.⁹³ In a handout prepared for Norwegian companies, The Ministry of Children and Family Affairs described the government's motivation for being the first country in the world to enact a quota law for corporate board of director gender representation.

⁸⁸ In February 2006, the French government took a similar step to impose a mandatory 20 percent representation by women on corporate boards by 2011. However, a recent decision by the Constitutional Court overturned this law.

⁸⁹ In 2002, the now-former equality minister, Margareta Winberg, threatened to introduce legislation requiring quotas if corporate boards did not meet a goal of 25% women representation by the end of 2004. See *The Great Equality Debate: Whither Swedish Women?*, THE LOCAL, June 18, 2004, available at <http://www.thelocal.se/230/20040618/>.

⁹⁰ Christina Summers, *The Case Against Gender Quotas*, available at http://www.aei.org/publications/filter.all.pubID.23967/pub_detail.asp (last visited January 30, 2007).

⁹¹ The number of women on Europe's top company boards is stagnating except in Scandinavia. Women occupy 8.5% of corporate boardroom seats, or 385 of the 4,535 positions considered, a tiny variation on the 8% found in 2004. The Scandinavian countries, through proactive policies and quotas are surging ahead. Norway has strengthened its lead, with 28.8% (up from 22%) board seats accounted for by women, after its government indicated they would introduce quotas of 40% this past year. Sweden (22.8%), Finland (20%) and Denmark (17.9%) are close behind. The rest of Europe trails these countries, although the number of companies with at least one woman on the board has increased over the past two years (from 62% to 67.8%). The UK, for example, now has 85.9% of its boards boasting at least one woman, but overall the percentage of women directors has shifted by only 1.4 percentage points, from 10% in 2004 to 11.4% today. Italy and Portugal are still the laggards, with Belgium, Spain and Greece a little ahead. It should be noted, however, that Spain will put before parliament this month the same 40% quotas that seem to have propelled the Norwegians to the head of the league, Available at <http://209.85.165.104/search?q=cache:E1JBaaxrxYgJ:www.aipbw.no/Attachment/060610%2520BoardWomenPressReleaseFINAL!!without%2520embargo1.doc+corporate+quotas+and+Sweden&hl=en&gl=us&ct=clnk&cd=14> (last visited January 30, 2007).

⁹² Ministry of Children and Family Affairs, *Balanced gender representation on company boards*, <http://odin.dep.no/bld/english/topics/gendereq/004051-990346/dok-bn.html> (last visited Jan. 24, 2007).

⁹³ Seim Medill, *supra* note 49.

Reaching a balanced participation is a question of democracy. The Government regards the legislation on women in boards as an important step towards equality between the sexes, a fairer society and a more even distribution of power, and as an important factor in the creation of wealth in society. The legislation will secure women's influence in decision making processes of great importance for the economy in the society. It is important to make use of all the human resources in our country, not just half of it.⁹⁴

The Corporate Board Quota reflects a respect for the primary international convention regarding women's rights, CEDAW.⁹⁵ The strongest argument for corporate quotas in CEDAW lies in Article 11, which states that men and women shall have the right to "the same employment opportunities,"⁹⁶ "promotion,"⁹⁷; and "equal treatment in respect of work of equal value,"⁹⁸ Prior to the adoption of the Corporate Board Quota, Norway recognized the dearth of women in leadership positions in the private sector in its Sixth Periodic Report.⁹⁹ The more general language of CEDAW Article 3 requires appropriate economic measures to ensure the advancement of women.¹⁰⁰ Given Norway's overall

⁹⁴ Ministry of Children and Family Affairs, *Rules on Gender Representation on Norwegian Company Boards*, <http://odin.dep.no/bld/english/topics/gendereq/004071-990149/dok-bn.html> (last visited Jan. 24, 2007)

⁹⁵ Article 11(1)(b) (and, to a lesser extent, 11(1)(c) and (d)).

⁹⁶ Article 11(1)(b).

⁹⁷ Article 11(1)(c).

⁹⁸ Article 11(1)(d).

⁹⁹ SIXTH PERIODIC REPORT OF NORWAY ON THE UNITED NATION'S CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 34-35 (2002), <http://daccessdds.un.org/doc/UNDOC/GEN/N02/426/55/PDF/N0242655.pdf?OpenElement>.

Finland also reflected this concern in its Fifth Periodic Report, Finland states that one of the concerns of its CEDAW Committee with respect to Article 11 has been the "low presence of women in high-ranking positions in many areas," (although no quota is specifically discussed). THE FIFTH PERIODIC REPORT OF THE GOVERNMENT OF FINLAND ON THE IMPLEMENTATION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 54 (2004).

<http://daccessdds.un.org/doc/UNDOC/GEN/N04/257/97/PDF/N0425797.pdf?OpenElement>.

¹⁰⁰ In its Sixth Periodic Report, France discusses its Equality Charter, which promotes as one of its goals "parity in the political and social spheres and women's access to positions of responsibility"; "professional equality" is another goal mentioned. FRANCE: SIXTH PERIODIC REPORT ON IMPLEMENTATION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 14 (2006), <http://daccessdds.un.org/doc/UNDOC/GEN/N06/304/02/PDF/N0630402.pdf?OpenElement>

adherence to CEDAW's goals, respecting international convention may be one of the supporting bases for its adoption of the quota.

The Corporate Board Quota has hit substantial resistance in the business community, despite Norway's extensive gender equality remedies. Despite this reputation, the county's business community has argued that the state should not be involved in a corporation's analysis of who is the better candidate irrespective of their gender. The government should not dictate who a corporation should place on its board.¹⁰¹ The law is disproportionately severe in relation to its goal.¹⁰² Corporations argue that they will self-regulate because it is bad business policy to exclude half of the population from their leadership roles.¹⁰³ Critics of the Norwegian law argue that the quota requirements constitute an onerous burden on corporations without actually advancing women's interests.¹⁰⁴ Indeed, in January of 2006, the European Free Trade Association began an investigation into whether Norway's new Corporate Board Quota law was in violation of European Union law on the grounds of positive (or reverse) discrimination.¹⁰⁵

3. Norway's Positioning in the Public/Private Spectrum

Norway's quota law reflects a deeper interaction between the public and private sectors that typifies Scandinavian countries. These countries consistently rank at the top of the World Economic Forum's annual list of most competitive economies,¹⁰⁶ a ranking drawn from publicly-available hard data and a comprehensive annual survey of over 11,000 business leaders in 125 economies. The explanation for this consistently strong ranking draws on good institutions and competent macroeconomic management, coupled with world-class educational attainment and a focus on technology and innovation."¹⁰⁷

¹⁰¹ Seim Medill, *supra* note 49.

¹⁰² Susie Measure, *Norway Shatters the Glass Ceiling – But Will it Promote Women's Cause?*, THE INDEPENDENT, Mar. 8, 2006, available at http://news.independent.co.uk/business/analysis_and_features/article349927.ece.

¹⁰³ Seim Medill, *supra* note 49.

¹⁰⁴ *Oslo Push for Women Directors*, BBC NEWS (INTERNATIONAL VERSION), June 13, 2003, available at <http://news.bbc.co.uk/2/hi/business/2988992.stm>.

¹⁰⁵ *Female Quota Can be Halted*, AFTENPOSTEN, Jan. 4, 2006, available at <http://www.aftenposten.no/english/local/article1190571.ece>.

¹⁰⁶ *The Global Competitiveness Report 2006-2007*, released by the World Economic Forum on 26 September 2006, available at <http://www.weforum.org/en/initiatives/gcp/Global%20Competitiveness%20Report/index.htm>

¹⁰⁷ Interview with Chief Economist of the Global Competitiveness Network, Augusto Lopez-Claros, available at <http://www.weforum.org/en/initiatives/gcp/Global%20Competitiveness%20Report/index.htm>

At the same time, Norway and the other Scandinavian economies pursue a particularly social form of democracy, in which residents receive substantial state support for every aspect of life from health and education to generous unemployment benefits, retirement, and parental leave.¹⁰⁸ This social safety net comes at the cost of high taxes for corporations and individuals. This intensive level of protection places Scandinavia as the region with the highest level of social protection in the world. The highly competitive economies of Scandinavia along with substantial social protections, reflects the region's distinctive construction of the relationship among government, the market, and individuals. It is imperative to note that Norway's wealth (including large offshore petroleum stocks) aids in furthering such an egalitarian system.¹⁰⁹

Norway's adoption of the Corporate Board Quota emphasizes public policy in one of the most private of private sector contexts, the corporate board. This new formulation of the relationship between public and private evokes feminist debates over this dichotomy.

E. Leadership in the Public and Private Sectors

These laws – the Parity Law in France, the Quota Law in Brazil, the Reservation Bill in India, and the Corporate Board Quota in Norway – each law provides for a level of women's representation. The goal of the states in adopting these measures is to legislate gender balance. The question that arises, then, is whether having women in leadership positions actually makes a difference in terms of the decisions made by those women leaders, as addressed in the following section.

¹⁰⁸ See, e.g., Stephen D. Sugarman, *A Comparative Law Look at Pain and Suffering Awards*, 55 DEPAUL L. REV. 399, 411, n.15 (2006) (remarking that Norway and other Scandinavian countries are known for their social welfare programs and systems). Jedediah Purdy, *The New Biopolitics: Autonomy, Demography & Nationhood*, 2006 B.Y.U. L. REV. 889, 947 (2006) (describing examples of social welfare programs in Norway such as extensive maternity and paternity leave). "The Nordic countries, Denmark, Finland, Iceland, Norway, and Sweden, are the most gender-equal in the world. The Nordic countries are also the most advanced social welfare states in the world, but Nordic advances in social welfare and gender equality are under threat." Maria Grahn-Farley, *A Ghost is Haunting Europe*, 24 MICH. J. INT'L L. 169, 170 (2002) (reviewing KEV AT NOUSIAINEN, ASA GUNNARSSON, KARIN LUNDSTROM, & JOHANNA NIEMI-KIESILAINEN EDS., RESPONSIBLE SELVES: WOMEN IN THE NORDIC LEGAL CULTURES (2002).)

¹⁰⁹ As I noted in *Internalizing Gender*, the establishment of a social system depends largely on development, and may have broad impacts on the construction of gender itself. Darren Rosenblum, *Internalizing Gender: Why International Law Theory Should Adopt Comparative Methods*, 45 COLUM. J. TRANSNATIONAL L. (2007).

III. Analyzing The Correlation between Leadership and Policy: India's Reservation Law

Esther Duflo and Raghavendra Chattopadhyay (collectively, "Duflo") performed a study of the effects of India's Reservation Law. The law requires that a third of randomly-chosen Village Council head positions must be reserved for women. Duflo accepts the conclusions of literature that demonstrates that women and men have different policy preferences. Other issues that one might think would impact decision-making, such as the inexperience of the women, and their disadvantaged social status, and concluded that these factors were not those responsible for the policy differential between them and men. The conclusion they come to is still broader: that the sex of the decision-maker does impact the political process.

A. Methods for Testing the Impact of Women in Government

First, Duflo's methodology involved a randomized study of two locations, Birbhum in West Bengal and Udaipur in Rajasthan. Duflo examined what issues were points of concern by women and men in each area. The results of this part of the study appear fairly simple: women elected as public leaders were more invested in public goods linked to women's concerns: drinking water and roads in West Bengal, and drinking water in Rajasthan. The differences between women and men were most notable regarding drinking water, presumably reflecting the fact that women probably were responsible for obtaining the water, so that provision of drinking water would alleviate their workload most. Duflo also interpreted the results to demonstrate that women representatives were more responsive to women's needs because they themselves are women, rather than because they were more receptive to women constituents' arguments.

One interesting element is that with regard to women's complaints, based on a prior study by Banerjee and Somanathan (2001), it appears that the cost to women of complaining is higher, thus to the extent that women do complain, it may be that these opinions are skewed toward strong preferences, whereas men will voice a preference that may be a weak one. The effect of this, although Duflo does not state it as such, is to undermine to some extent the validity of the data.

B. Sex-determined Outcomes in Political Representation

Another interesting element is that, even isolating other factors, such as class and caste background, sex is far more determinative of the outcome than these other factors are. Other elements may point to the basis for women's performance. Women tend to be new, whereas men have backgrounds in elected positions; women tend to be 'supported' by their spouses, whereas men are not; and finally 17% of women's husbands served in similar positions previously.

Duflo draws several conclusions from her study: that two prominent political participation models -- the Downsian model and Coasian model -- do not accurately reflect the importance that gender has in decision making processes. In the next subsection, the import of Duflo's findings for one region, the Middle East and North Africa, will be examined.

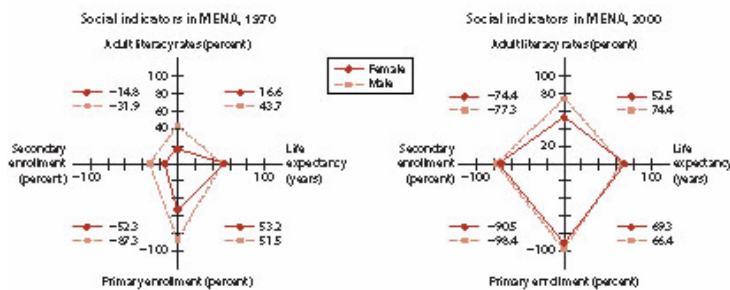
C. Applying Duflo's Conclusions to the Middle East Region

If Duflo's argument is accurate, then increasing women's presence in representative government would have the effect of causing governmental policy decisions to reflect issues important to women. This section will focus on the MENA (Middle East North Africa) Region and the impact that women's representation could have there in terms of women's economic participation.

Two charts recently produced for a study on Jobs, Growth, Gender and Governance by the World Bank on the MENA Region demonstrate the potential effects that parity laws could have on economic development and globalization. As this report demonstrates, this region sharply lags the rest of the world in nearly every measure of economic development, from per capita GDP to trade levels. As Figure 2.1 shows, public policies in the MENA region between 1970 and 2000 have fostered a level of education for women that nearly equals men, sharply curtailing women's illiteracy (although leaving some gap).

FIGURE 2.1

Progress in Female and Male Education and Life Expectancy in the MENA Region, 1970-2000

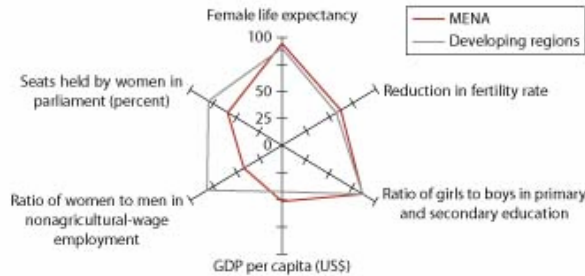


Source: World Bank 2009f

However, as Figure 0.1 shows, women's participation in nonagricultural employment, like women's representation in government, is very limited. Thus, for MENA countries, the major human resource represented by the population of educated and underutilized women represents a huge lost opportunity.

FIGURE 0.1

Progress in Empowering Women in MENA and Other Developing Regions, 2000



Note: These are normalized indicators; the aim is to show comparison.
Sources: World Bank 2003j and World Bank staff estimates.

As Duflo's assertions demonstrate, preferences held by women will be more likely policy outcomes when women have representation. Given the low representation of women in the workforce, and the priority for economies across the globe in maximizing efficient use of labor, the previous chart demonstrates, at least anecdotally, the final piece of this paper's argument: that women with low political representation will have low economic participation.

Even if one denies that causal relationship, external reasons for women's underemployment may be arise from cultural norms (families may prefer women to work in nonpublic places), or legal norms (limitations on women's property rights). In either case, Duflo's study demonstrates that there would be a sharp increase in policy responsiveness to women's issues if women had a larger role in government. If one takes the examples from Duflo's study, water vs. roads, the lack of access to water may cost women a great deal more time than ineffective roads may cost men. By including women in government, these decisions can be made in a fashion that incorporates the impact on women's economic lives. In the context of the MENA region, this may be relevant as we see the results of Morocco's institution of a 30% reservation for women in its Parliament.

Duflo's arguments regarding women's representation and its consequences, along with Bhagwati's regarding globalization point to the real possibility that increased participation in policy-making by women would 1) improve the condition of women in both the developed and the developing world; and 2) that such an improved condition would permit economies to compete more effectively in the global economy.

Duflo’s study establishes the relationship between sex and political decision-making. Where policy preferences divide men and women, political leaders of each sex will reflect those policy differences. In the United States, however, the resistance to quotas is widespread. For that reason, it is worthwhile to look to Title IX, which requires the allocation of funds in for sports be divided based on the gender balance of the student body. Title IX serves as a model for the constitutionality and relevance of quotas in the United States context.

IV. Quotas in the United States: Title IX’s Application to Political and Corporate Representation of Women

Title IX (20 U.S.C. §§1681-1688) was enacted in 1972 as a way to prevent discrimination by federally funded educational institutions on the basis of sex. The statute states that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federally funded assistance.”¹¹⁰ One of the prominent effects of this legislation was equality in funding for college sports, based on the proportion of male or female students. Another effect of Title IX is what many view as a quota system. “A system that requires a certain number of persons to be granted an opportunity based solely on one characteristic – such as sex – without regard for other qualifications – such as ability – is a ‘quota system’ in every sense of the words.”¹¹¹ Title IX’s current application is the result of an evolution from a general measure to eliminate gender discrimination to a form of government mandated gender quotas for public and private colleges and universities that receive federal aid.

A. Mining the Legislative History: Title IX as a Quota?

Congress created Title IX as an extension of Title IV, the Civil Rights Act of 1964. Title IX would add gender to the Civil Rights Act’s anti-discriminatory policy mandate.¹¹² Wary of quotas in any form, Congress passed Title IX under the assurance that it would not be used to create quotas.¹¹³ Senator Bayh, the

¹¹⁰ 20 U.S.C. §1681(a).

¹¹¹ Donald C. Mahoney, *Taking a Shot at the Title: A Critical Review of Judicial and Administrative Interpretations of Title IX as Applied to Intercollegiate Athletic Programs*, 27 Conn. L. Rev. 943, 944 (1995).

¹¹² *Id.*, 947.

¹¹³ *Id.*, 949.

sponsor of Title IX specifically stated that the purpose of Title IX was to eliminate quotas:

The amendment is not designed to require specific quotas . . . [t]he basis for determining compliance would not be an arbitrary ratio but the qualifications of the students who have made application. That would be the question – how many qualified men students were admitted and whether the institution required significantly higher standards for women students . . . [w]hat we are saying is that we are striking down quotas. The thrust of the amendment is to do away with every quota.”¹¹⁴

Other Congressional delegates harbored similar fears of a quota system being implemented in the nation’s colleges and universities. Representative Edith Green, the chairperson of a Special House Subcommittee on Education, felt that any quota, even one enacted to redress gender discrimination, would be harmful. She stated, “To my way of thinking a quota system would hurt our colleges and universities. I am opposed to it even in terms of attempting to end discrimination on the basis of sex.”¹¹⁵ Senator Daryl Beall noted that a gender quota could result in reverse discrimination against others:

“I hope it is the intent of the Senate in adopting the amendment that we are desirous of eliminating the sex discrimination that has taken place in education. As we eliminate this, I hope that we are not establishing still another form of bias. I hope that what we are saying is that we want everyone to be treated fairly and equally so far as the requirements for admission or employment are concerned.”¹¹⁶

This reluctance to adopt a quota reflects the fundamental reticence to recognize group rights within the United States constitutional system. However, looking at the actual provisions of Title IX reference the quota-like aspects of the law despite the disclaimers by its authors.

¹¹⁴ *Id.*, 946, (quoting 117 Cong. Rec. 30, 400 (1971)).

¹¹⁵ *Id.*, 947, (quoting 117 Cong. Rec. 39, 262 (1971)).

¹¹⁶ *Id.*, 948, (quoting 118 Cong. Rec. 5813 (1972)).

B. Enforcing Title IX in Collegiate Sports

Congress did not specifically address Title IX's effect on inter-collegiate athletic programs, and it is unclear whether Congress intended for Title IX to address athletic program inequity.¹¹⁷ Congress enacted the Javits Amendment in response to public concern over Title IX's effect on athletics. This amendment required the Department of Education Office for Civil Rights (OCR), formerly known as the Department of Health, Education and Welfare, to enact Title IX regulations that "shall include with respect to intercollegiate athletics . . . reasonable provisions considering the nature of particular sports."¹¹⁸ In 1979, the OCR published a "Policy Interpretation" to help clarify the provisions within the 1975 regulations dealing with intercollegiate athletics. The "Interpretation" set forth the "Effective Accommodation" section detailing the requirements for compliance with Title IX.¹¹⁹ The Policy Interpretation enunciated a three-part test to determine compliance. To properly comply, a college or university must satisfy one of these three elements:¹²⁰

- (1) Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
- (2) Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or
- (3) Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the

¹¹⁷ *Id.*, 949.

¹¹⁸ Christopher Paul Reuscher, *GIVING THE BAT BACK TO CASEY: SUGGESTIONS TO REFORM TITLE IX'S INEQUITABLE APPLICATION TO INTERCOLLEGIATE ATHLETICS*: 35 Akron L. Rev. 117, 124 (2001)

¹¹⁹ *Id.*, 126.

¹²⁰ Daniel M. Ganzi, *AFTER THE COMMISSION: THE GOVERNMENT'S INADEQUATE RESPONSES TO TITLE IX'S NEGATIVE EFFECT ON MEN'S INTERCOLLEGIATE ATHLETICS*, 84 B.U.L. Rev. 543, 546-547 (2004).

members of that sex have been fully and effectively accommodated by the present program.¹²¹

The first element of these requirements, requiring athletic programs to be offered in substantial proportion to undergraduate gender ratios, is the root of Title IX's quota system. In *Cohen v. Brown University*, the United State Court of Appeals for the First Circuit held that the first element provides a safe harbor for institutions to achieve compliance and that the second and third parts of the test provide additional means for achieving compliance.¹²² Upon later review of *Cohen*, the First Circuit maintained that Title IX is not a quota and that no part of Title IX mandates gender-based preferences. The First Circuit viewed the substantial proportionality element as a starting point for compliance analysis and that compliance may be had by satisfying another element.¹²³ The court failed to realize that its interpretation of the OCR's compliance elements left the first prong as the only mechanism for a financially burdened institution to achieve compliance with Title IX.¹²⁴ *Cohen* is currently the model case that other Circuit and District courts reference in upholding Title IX's substantial proportionality requirement.¹²⁵

In the past, it was held that if a specific program in an academic institution receives federal financial assistance, the entire institution must comply with Title IX. In 1984 the United States Supreme Court rejected this broad application of Title IX in *Grove City College v. Bell*, holding that Title IX governed only those programs that directly benefited from federal financial assistance.¹²⁶ In response, Congress restored Title IX's institution-wide effect with the 1987 Civil Rights Restoration Act. The Act codified the definition "program or activity," as used in Title IX, to mean "all of the operations of . . . (2)(A) a college, university, or other postsecondary institution, or public system of higher education."¹²⁷ In effect,

¹²¹ See Mahoney, *supra* at 954, (quoting 44 Fed. Reg. 71, 418 (1979)).

¹²² Jennifer R. Capasso, *STRUCTURE VERSUS EFFECT: REVEALING THE UNCONSTITUTIONAL OPERATION OF TITLE IX'S ATHLETICS PROVISIONS*, 46 B.C. L. Rev 825, 825-826 (2005) (citing *Cohen v. Brown University*, 991 F.2d 888, 891 (1st Cir. 1993)).

¹²³ *Id.*, 837 (citing *Cohen v. Brown Univ.*, 101 F.3d 155, 170-71 (1st Cir. 1996)).

¹²⁴ *Id.*, (citing *Miami Univ. Wrestling Club v. Miami Univ.*, 302 F.3d 608, 613 (6th Cir. 2002)).

¹²⁵ See Mahoney, *supra* at 954.

¹²⁶ Danielle M. Ganzi, *AFTER THE COMMISSION: THE GOVERNMENT'S INADEQUATE RESPONSES TO TITLE IX'S NEGATIVE EFFECT ON MEN'S INTERCOLLEGIATE ATHLETICS*, 84 B.U.L. Rev. 543, 555 (2004) (quoting *Grove City College v. Bell*, 465 U.S. 555, 573-74 (1984)).

¹²⁷ *Id.*, (quoting 20 U.S.C. § 1687 (2000)).

collegiate athletic programs that do not receive any federal aid must comply with Title IX requirements if another program in the institution receives federal aid.¹²⁸

C. The Broadening Gender Gap and College Athletics

Recently gender disparity in colleges and universities has grown larger, and some analysts predict that by 2010 women will encompass 60% of all college students.¹²⁹ A side effect of this is that minor men's sports have been cut by schools to enable funding of women's sports in order to comply with Title IX.

Some analysts argue that Title IX has had a profound effect on the number of women participating in competitive sports, from less than 300,000 in the year before its enactment (1971) to over 2.7 million by 2001.¹³⁰ Other commentators also believe that the elimination of minor men's teams for fiscal reasons should not be a concern, since these teams have for many decades received resources that should have been going to women's teams.¹³¹

In regards to academics, as opposed to athletics, supporters of Title IX claim that the number of advanced degrees awarded to women have increased dramatically since its inception. For example, in 1972 women received 9% of medical degrees and 7% of law degrees. In 1994, those numbers increased to 38% and 43% respectively.¹³² If these figures increase with proportion to the number of women in college today, then it is possible that women will make up a majority at the graduate level also.

As women solidify their position as a majority in collegiate institutions, it is likely that funding for women's programs will be greater than the funding for men's programs. Therefore, the substantial proportion requirement of Title IX will still result in the favoring of one gender over another

Critics of Title IX argue that regardless of the fact that women make up a greater portion of the college student population, men make up a greater number

¹²⁸ Kristin Rozum, *STAYING INBOUNDS: REFORMING TITLE IX IN COLLEGIATE ATHLETICS*, 18 Wis. Women's L.J. 155, 163 (2003).

¹²⁹ Debra Franzese, "The Gender Curve: An Analysis of Colleges' Use of Affirmative Action Policies to Benefit Male Applicants," 56 AM. U. L. REV. 719, 720 (2007).

¹³⁰ See National Women's Law Center, "Facts on Title IX," (available at <http://www.nwlc.org/pdf/FactsOnTitleIXAthletics.pdf>).

¹³¹ *Id.*

¹³² See <http://bailiwick.lib.uiowa.edu/ge/aboutRE.html>

of participants in college sports.¹³³ In addition, male sports like football tend to be the ones that generate the most income for schools.¹³⁴ Since the amount generated in booster support, ticket sales, and bowl game payouts go towards funding the school athletic program in general, women's sports teams are sometimes dependent upon a strong men's football program.¹³⁵ In fact, college football programs that do not regularly participate in bowl games lose an average of \$1 million per year. This loss adversely impacts the other sports programs, creating a "trickle down" effect.¹³⁶ Critics argue that these impacts violate the "effective accommodation test" of Title IX.¹³⁷

D. Title IX as Compared to Legislated Representation

When comparing this type of proportional funding or allocation method to the Norway Corporate Board Quota, there is evidence of differences. The Norway Quota was enacted with the goal of women making up at least 40% of corporate boards. That number was set as a floor, and prevented any gender from falling below that point. Parity, in France, sets a fifty percent goal, a harder point to fix, while the Brazil and India laws set lower numbers.

Title IX, in contrast, sets a variable floor, making funding based merely on proportion. If the National Women's Law Center (NWLC) is correct, critics point out that in the future there will be a possibility of women making up perhaps 60% to 70% of the student body, with men still making up a higher portion of the student athletes. Even in this case, the funding for college sports would remain proportional to the student body, rather than the student athlete population. The NWLC has countered this by saying that regardless of whether women are a majority of students, men's sports still get more funding because of extraneous sources of income, like boosters, donations, ticket sales, merchandise and NCAA payouts for championship games.¹³⁸

¹³³ See *infra*, note 3. The National Women's Law Center (NWLC) states that male college athletes exceed the number of female college athletes by nearly 61,000, even though women make up more than 53% of the college population.

¹³⁴ See Kevin Rapp, "Forced to Punt: How the Bowl Championship Series and the Intercollegiate Arms Race Negatively Impact the Policy Objectives of Title IX," 80 IND. L.J. 1167, 1168 (2005). Rapp noted that the Bowl Championship Series (BCS) or the championship games of college football, paid out handsome awards to schools playing in these prestigious games, up to \$18 million. Even the smaller bowls (there are 34 total bowl games) payout large awards, from the hundreds of thousands of dollars to the millions of dollars.

¹³⁵ *Id.* at 1169.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ See *infra*, note 3.

The argument exists as to whether Title IX, as applied, is a quota system. In denying that Title IX is a quota, Norma Cantu, the Assistant Secretary of the OCR, explains that in the context of sex-separate athletic opportunities, any test for equality must look at the numbers of opportunities available to men compared to the numbers available to women.¹³⁹ Other supporters use the additional elements of Title IX to demonstrate that Title IX is not a quota. “Only one of the three possible methods of compliance involves proportionality: stating that opportunities and participation of male and female students at the institution are to be “substantially proportionate” to their respective full-time undergraduate.”¹⁴⁰ However, given the power of the substantial proportionality element, it is hard to deny the quota effect of Title IX. The OCR’s explanation of the substantial proportionality all but admits that Title IX, as applied, is a quota. The OCR stated that “an institution may meet substantial proportionality if the disparity between the number of women athletes and the number of women students is less than five percent and no additional viable women's teams could be added.”¹⁴¹

Economically speaking, college athletes are similar to homemaking women. Both provide services at little or no cost, and their beneficiaries experience gain from those services.¹⁴² In college sports however, the incentive to support revenue generating teams is quite great. These revenue producing programs provide the university with goodwill, greater recruiting numbers, free advertising through sports channels and talk-radio, and financial incentives. As such, non-revenue sports programs, like wrestling for example, are cut.¹⁴³ An argument can be made then, that Title IX actually does not have as great of an effect on men’s sports as is made out to be, and that in fact economics and bottom line gains are the main reason why some men’s sports are being eliminated.¹⁴⁴

E. Is Title IX a More Extreme Step than Legislated Representation?

¹³⁹ Deborah Brake, *THE STRUGGLE FOR SEX EQUALITY IN SPORT AND THE THEORY BEHIND TITLE IX*, 34 U. Mich. J.L. Reform 13, 59 (citing Letter from Norma V. Cantú, Assistant Secretary, Office for Civil Rights U.S. Dep’t of Educ. (Jan. 16, 1996), available at <http://www.ed.gov/offices/OCR/clarific.html>)

¹⁴⁰ Martha Burk and Natasha Plumly, *WHO OWNS SPORTS? THE POLITICS OF TITLE IX*, 14 Marq. Sports L. Rev. 49, 53 (2003).

¹⁴¹ See Rozum, *supra* at 169 (citing Department of Education, Office of Civil Rights, Clarification of Intercollegiate Athletic Policy Guidance: The Three-Part Test, note 35 at 5 (1996), available at <http://www.ed.gov/offices/OCR/docs/clarific.html>)

¹⁴² See generally Daniel Marburger, Nancy Hogshead-Makar, “Is Title IX Really to Blame For the Decline in Intercollegiate Men’s Nonrevenue Sports?” 14 MARQ. SPORTS L. REV. 65 (2003).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

As described earlier, the Title IX legislation was aimed at providing proportional funding for education programs and activities that receive federal funding, between men and women. The remedies in France, Brazil, India and Norway seek to set a fixed quota on the percentage of men and women on a corporate board. Title IX's proportionality test does not take into consideration the current trend of women making up a greater percentage of college students however, and theoretically it is possible that women will one day receive a far higher percentage of funds for these activities than men. The Norway Quota does not take into account shifts in participation in the work place between men and women, and sets a fixed number for each gender. As such, the Norway Quota will "protect" each gender, and maintain a relatively equal number of seats on these boards, regardless of the participation in the workplace by men or women. In that regard, it is conceivable that the Norway Quota is a more fair system for both men and women, unlike Title IX, which can be considered more extreme if levels of participation between genders ebb and flow as they are now.¹⁴⁵

V. Conclusion: Improving Women's Leadership Would Effect Change

Several countries have adopted provisions to enforce levels of women's representation both in government and in industry. Even the United States, with its sharp reluctance to adopt measures resembling quotas, has a significant piece of gender equality law – Title IX – that functions as a quota in many ways. Thus, the concept of regulating gender balance is not as foreign as it seems on the surface.

With regard to globalization, many women's NGOs, such as International Gender and Trade Network and Women's Edge, argue that free trade must be fair for women. Economists such as Bhagwati counter this argument by stating that globalization simply cannot be tailored to a particular group, including women.¹⁴⁶ "Can we manage to achieve such parity of results from trade liberalization for any group, whether women, Dalits (India's untouchables), or African-Americans or Hispanics in the United States? Can we manage such equality of outcomes for *any* policy reform?"¹⁴⁷

¹⁴⁵ My point here is that there may be a concern that some years from now men will complain that more funding is going to women than men. At that point is it reasonable to assume that Congress will enact a law that favors a more equitable solution for men? In my opinion, a quota system like the one implemented in Norway may be an appropriate solution then.

¹⁴⁶ Bhagwati, at 79.

¹⁴⁷ Id.

However, it's not that simple as such skeptical comments may seem – women play a unique role in the global economy, permitting economies to respond to changing global needs. Women's underutilized labor presents a crucial challenge that must be addressed for national economies, and indeed for globalization itself, to advance. Thus, policies that create space for women's leadership, both in the public and the private sector, would foster greater equality. Women could participate more fully in the economy, rules tailored toward encouraging their participation would prove worthwhile. Most notably, this paper argues, the adoption of policies that favor women's participation in decision making processes would presage improvement in their economic participation.