

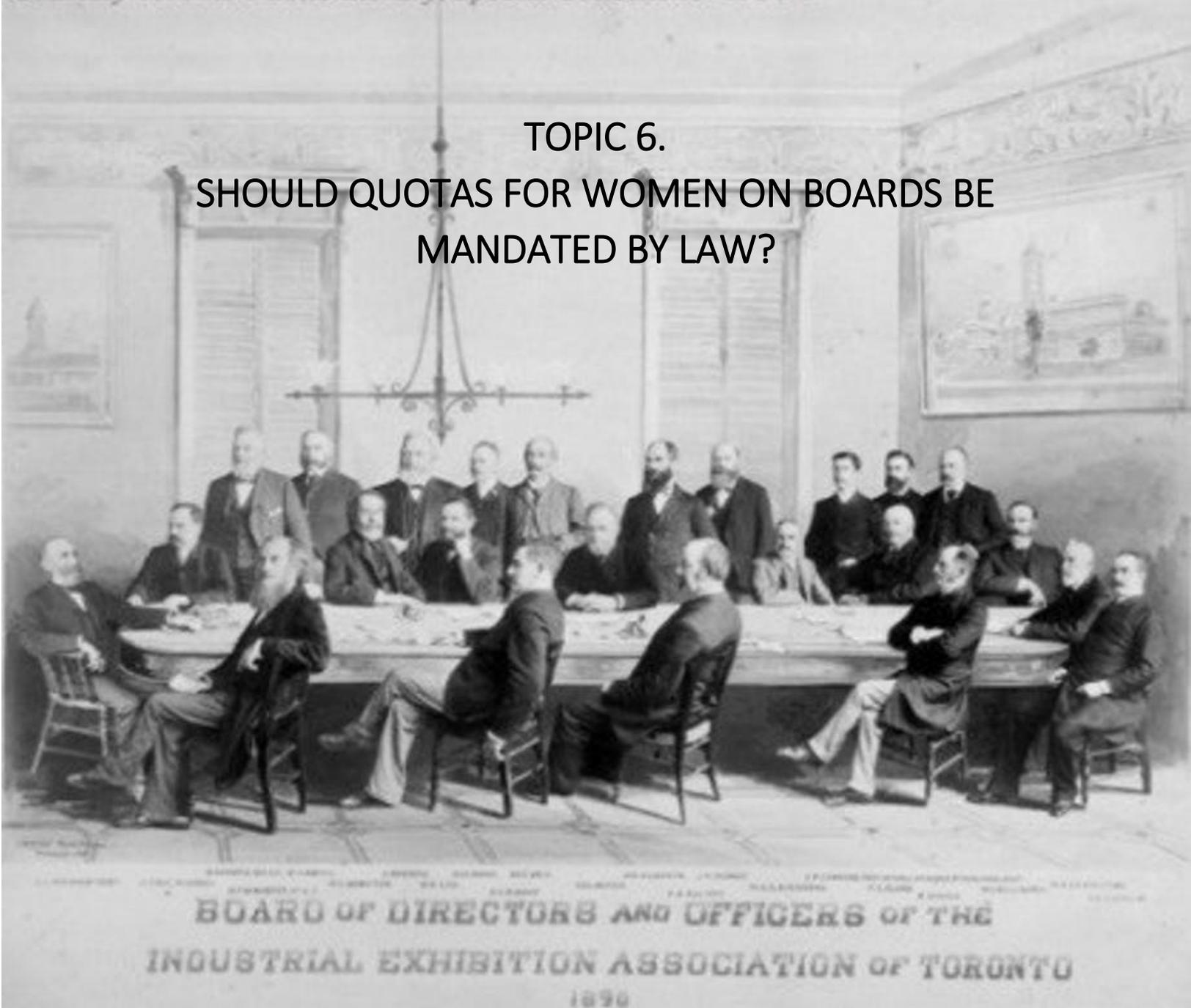
# ENTREPRENEURIAL ETHICS TOPICS

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## TOPIC 6. SHOULD QUOTAS FOR WOMEN ON BOARDS BE MANDATED BY LAW?



### Introduction

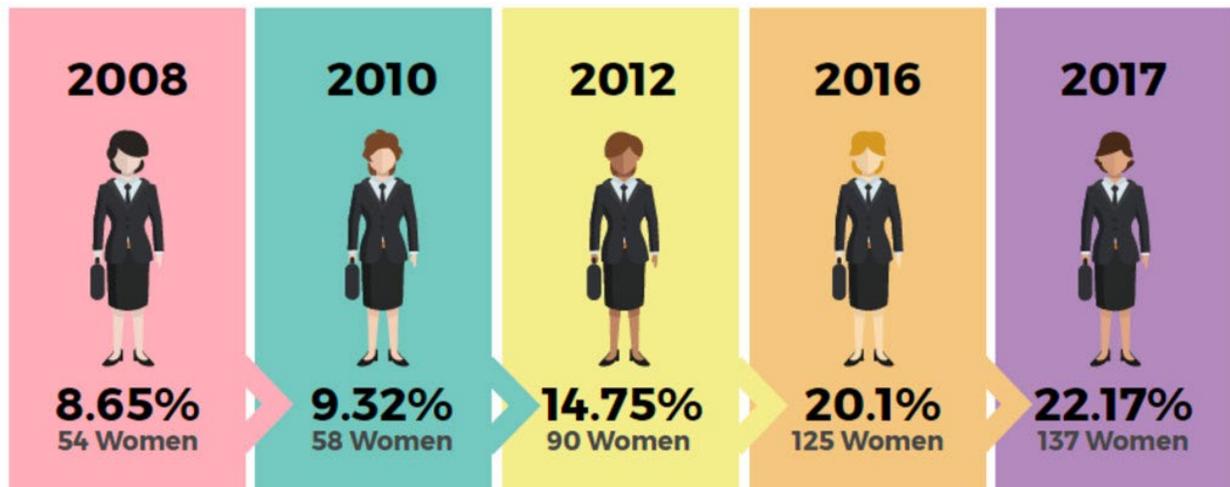
**N**obody likes the idea of having mandatory quotas. Quotas are only a last resort when all else has failed. This is the position of Gael O'Brien in her article below. But, according to O'Brien, the problem is that businesses in the United States have not moved fast enough to include more women on their boards, as the statistics show.

In 2015 the percentage of women on Boards of Directors of American companies was 17.5%--still well below the target of 20% set by some advocates. The European Union has set a goal of 40%. And there is the example of Norway's achievement with quotas, although this has been questioned by the University of Michigan study since the achievement of 40% representation occurred so quickly that readiness may have been compromised.

## **2018 GENDER DIVERSITY INDEX**

O'Brien seems to suggest that the reason for the lack of gender diversity on BoD in the US is the entrenched sexism among the 'old boy' networks of upper management, especially in large, publicly traded companies. Unfortunately, quotas are the only way to break through this sexist, immoral glass ceiling at the top, O'Brien argues.

Nilofer Merchant, on the other hand, herself a director, thinks that quotas simply won't work, as she says in her article listed below, and likely will be counter-productive to the goal of achieving gender parity on boards. Quotas signal tokenism, dilute the qualifications of the board to lead, do a disservice to qualified women board members and will in all likelihood not change the real attitudes of upper management. A pragmatic view from the trenches.



The real problem is that not enough women are moving into executive management and leadership positions where they would get the experience they need to be effective directors, so Merchant thinks that more of these types of opportunities for women need to be created in order to expand the pool of board-ready women. Sounds like a reasonable plan, but does it take into account the actual, existential situation of contemporary women in the workplace?

Gene Marks thinks that in all likelihood Merchant's solution won't work because the real culprit here is the fact that women face much greater socially and situationally reinforced obstacles in the form of gender expectations than men do, which seriously complicates their positioning themselves in the workplace for upper management. The prospect of climbing the corporate ladder, with all the time and energy commitment that requires, is less attractive to women who would like to have a family *and* a career and thus choose other, more flexible career paths, leaving the pool of board-ready women insufficient for the demand and susceptible to the entrenched sexist attitudes at the top. Some things will never change, Marks seems to be saying.

It may be that the net result of why there is an insufficient pool of board-ready women is a combination of these two sources of constraint, a problem at the bottom and a problem at the top. Regardless of how you feel about biological determinism and career preferences, it seems as if women are presented with more career constraints 'from below' than men by virtue of

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being female. And, it is well-known that they are held to a higher standard at the top, get paid disproportionately to men, and must run the gauntlet of entrenched sexism that remains widespread in business from Wall Street to Hollywood to the halls of political power in Washington, D.C. Are quotas sufficient to solve these challenges to women's choice of a business career?

Read the articles. What do YOU think?

### **Gael O'Brien - Women in the Boardroom: Quotas needed**

#### **Women in the Boardroom: Should the U.S. Have Quotas<sup>1</sup>**

A recent article in The Economist argues that quotas used by some European countries to increase the numbers of women on corporate boards are the wrong way to promote women.



*Gael O'Brien*

While I take issue with the article, the subject of quotas stirs up discomfort. Opponents say quotas are a bad idea for companies headquartered in the United States because they would undermine corporate governance, dilute the caliber of board members, and insult woman currently sitting on boards.

However the gap is addressed, the problem remains that the U.S. is not showing any leadership in gender diversity on boards. This raises questions about what it can learn from other countries.

Gender should never be the only reason someone is nominated to serve on a corporate board. Statistics show a long-established pattern of qualified white males who have defined the province of corporate governance and corporate leadership for generations. How that pattern can be shifted to seek out and include many more qualified women and minority candidates is an urgent priority. Progress has been far too slow.

In 2000, the representation of women on Fortune 500 boards was 11.7 percent. Ten years later that number inched up only four percentage points. This was during a decade of heightened attention to the issue, as well as a proliferation

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<sup>1</sup> O'Brien, Gael. "Women in the Boardroom: Should the U.S. have quotas? Business Ethics Magazine. <http://business-ethics.com/2011/08/03/women-in-the-boardroom-should-the-us-have-quotas/> August 2011.

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of research by Catalyst, McKinsey and others on the business case for having women on boards. Bottom line: the needle barely moved.

It is hard to see how the recent Securities and Exchange Commission (SEC) diversity disclosure rule will have much impact moving that needle. The new rule leaves it up to companies to explain how they consider diversity in identifying nominees. Gender diversity isn't flagged as something the SEC would like included in what the company explains. They don't send a message that it isn't acceptable to have 15.7 percent women (white and minority) on boards.

Gender diversity is a global problem – 40 percent of the world's largest publicly listed companies don't have any women on their boards; when women do have board seats, they hold less than one in ten.

To address the gap in representation, in the last several years, many countries have been far more aggressive than the U.S. This has included imposing, or threatening to impose, quotas to increase the representation of women on boards to between 20 to 40 percent in companies in Norway, Finland, Denmark, Iceland, Sweden, The Netherlands, France, Italy and Spain.

Norway's quota required that publicly-held companies raise the percentage of women on boards from 9 percent in 2006 to 40 percent by 2008; a very ambitious target in a very short window. A University of Michigan study makes the case that forced diversity in Norway hurt stock price. In the three days following the announcement of the quota, stock prices fell 5 percent for companies that had no women directors. Cited as a reason why quotas don't work, it is too soon to know the full impact of Norway's actions to increase the representation of women on boards. There are also many other ways to create and implement quotas. More study is needed.

In both the United Kingdom and Germany, companies are being asked to voluntarily increase gender diversity on boards with the caveat that government may step in if companies don't succeed. Kuala Lumpur's approach has been in two phases: over a five-year period, they increased the percent of women leaders in the public sector to 30 percent; then in May 2011, they passed a requirement that over the next five years, companies will ensure that women make up 30 percent of corporate decision makers.

Quotas to increase gender diversity on corporate boards or in public office have the common denominator of trying to address substantial underrepresentation not resolved in a business-as-usual approach.

"Whether it is women in elective office, women judges, or women on boards, the evidence is overwhelming that increasing the numbers of women in the pipeline is insufficient to overcome women's barriers to office," says Sally J. Kenney, Executive

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Director, Newcomb College Institute and Professor of Political Science Newcomb College Endowed Chair, Tulane University. According to Kenney:

“That is why, from Rwanda to Egypt to Latin America, nations have adopted electoral quotas to increase the number of women in legislative office. Just as it is no longer defensible to deny women the vote, the right to serve on juries, or the right to practice their profession and participate in the governance of professional associations, so too, do basic principles of democracy, representation, and nondiscrimination require that women serve on corporate boards.”

One of the reasons given for the paucity of women and minorities on boards is difficulty in finding them. Agenda developed nearly a year ago a resource for nominating committees called, “A Guide to Board Diversity”. The guide includes backgrounds on 100 candidates vetted by a panel of governance experts. Agenda hasn’t done a follow-up survey yet to learn whether inclusion in the guide got candidates interviews or invitations for board service. However, if they do, it will be very telling to learn how many Fortune 1000 companies pursued any of the 100 candidates.

I am concerned that there is complacency, even smugness, about how we view corporate governance in the U.S. that lacks urgency in dealing with the under-representation of women and minorities on boards. Without outside pressure from the SEC, a prestigious commission, or even the threat of a quota, I don’t see the momentum for change that will put sufficient value on the contributions of talented, qualified women and minorities to aggressively recruit them.

Ten years from now, will our progress be measured in coffee spoons? In 2021 will there be those who rationalize that moving the needle up four more points, to 19.7 percent representation is an achievement?

And for those companies in Europe that have worked to achieve 30 percent or even 40 percent representation of women (white and minorities) by 2021, what will they have discovered about the strength of diversity? About the value of gender, ethnicity, background, perspectives, talent, and experience – and how it impacts financial return and culture – that will be still beyond our reach?

## **Nilofer Merchant: No Quotas for Women on Boards**



*Nilofer Merchant*

### **Quotas for Women on Boards are Wrong<sup>2</sup>**

One thing I learned before I became a director is that there are an abundance of board readiness events for newbies like me. Since there are so many, I recently chose to go to one that had four impressive women who had served on a mix of non-profit and corporate boards. About 200 people, mostly women, listened attentively to the discussion. At one point in the discussion, one of the panelists, a director on a Fortune 500 company BoD, shared this insight:

“If a board already has one woman on their board, it is unlikely — actually impossible — to elect another. [...] No woman board member can nominate another woman board member...”

I waited for a “but” or even a “when” or perhaps a pause followed by “I’m joking.” But no. No one gasped (except, of course, myself) and the moderator did not ask any clarifying questions. The statement was left unchallenged by the other panelists, perhaps accepted as a truth.

I left the event deeply disturbed — not just by her comment, but by the non-response of the rest of her peers, and the audience’s silence. Even female board directors, apparently, have accepted that there is such a thing as a “woman’s seat” for a corporate board. And, while it’s not a legally imposed quota, the room’s response suggested that it has become a de facto quota.

I have never believed in quotas; now I started to consider if they made sense, if they would expand the number of women serving on corporate boards.

Women are half of the labor population and 75% of the buying power, yet hold less than 15% of board seats in the US and less than 10% in Europe. There has been research showing that companies with mixed gender boards perform better than those without. Consider the findings of Catalyst’s study of Fortune 500 companies:

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<sup>2</sup> Merchant, Nilofer. “Quotas for Women on Boards are Wrong.” *Harvard Business Review* <https://hbr.org/2011/09/quotas-for-women-on-boards-are-wrong> September 2011.

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**Return on Equity:** On average, companies with the highest percentages of women board directors outperformed those with the least by 53 percent.

**Return on Sales:** On average, companies with the highest percentages of women board directors outperformed those with the least by 42 percent.

**Return on Invested Capital:** On average, companies with the highest percentages of women board directors outperformed those with the least by 66 percent.

There is also evidence that women are more effective as board members. Reuters describes this phenomenon: among other things, women do more homework before board meetings and cause higher attendance rates overall. Many have argued it just makes good business sense to create diversity. Sure, there are some counter arguments that this research could be correlation, not causation. Perhaps effective boards just choose to include more women. But who wouldn't want these performance results?

We should not be surprised, then, that some countries and financial stewardship organizations have suggested quotas are the way to go. Governments throughout Europe have especially decided that action is required to increase the number of women in the executive suite. The thinking is that quotas will create a force function to overcome gender gap barriers that have been well documented.

But will mandating change via quotas actually make a difference? I have doubts, for four main reasons:

Quotas signal tokenism. As suggested by what I saw at the panel, some woman currently serving on boards view their seat as a "woman's seat." Quotas would exacerbate this problem. Instead, we need all board members, male and female, to regard their ability to contribute as being on equal footing with all other members. Only then can boards be capable of being effective.

Groups don't change dynamics until they decide to change their dynamics. If change is imposed from external pressures, groups simply find a way around the new rules. That's been proven in research in many areas, but is especially well captured in by Lee Ann Banaszak's classic on suffrage, *Why Movements Succeed or Fail*. The key is for those involved to recognize — for themselves — that something has to change. When change is forced onto communities, often the change is rejected. If a quota forced a board to accept a bunch of new (female) members, it's easy to imagine that key discussions would end up being made over a pre-call, dinner, or a golf game, rather than within the board meeting itself — thus undermining the well-intentioned goals of the quota.

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Quotas don't necessarily increase the right kind of diversity. It's possible to improve the gender ratio of boards without improving the diversity of the conversation. Perhaps the reason that mixed-gender boards perform better, for instance, is that the companies who elect to have more women on the board have chosen more forward-thinking business practices generally. Quotas could encourage less-enlightened firms to change the gender of the board members but still seek the same biases, education, and experiences, hence leading to more of the status quo. Again, we can turn to research done by Margaret Heffernan to show how our bias is a blindness that affects each of our ability to take in new ideas.

Quotas de-emphasize qualifications. In Norway, the first country to mandate quotas, research showed that the women promoted were less experienced than the directors they replaced. Professors at the University of Michigan found that firms that were forced to increase the share of women on their boards by more than ten percentage points saw one measure of corporate value fall by 18%.

Imposing quotas only targets a symptom — not the disease. Quotas won't encourage meritocratic selection, or even increase the pipeline of qualified candidates, but merely propagate gender-oriented approach that is guaranteed to provoke a backlash. All of this is doing a disservice to the higher-level goal: better performance.

Some might suggest an answer is the firms that claim to help individuals achieve "board readiness." I have invested a good bit of energy looking into these groups, and even joining some. And in my own, albeit limited experience of different organizations, these firms mostly exacerbate the problem. Rather than helping individuals recognize what key career experience they have (or lack), they accept fees for polishing resumes, promoting the use of buzzwords, and emboldening people without sufficient qualifications to believe they are ready for board positions. This merely dilutes the average strength of the applicants, and generates noise in the marketplace that makes connecting qualified candidates with those seeking them, harder.

The goal should not be just "more female board members," but more female board members who are capable and credible once serving. To do that, we need to promote women into roles where they can gain the relevant experience: running a P&L, leading a company, delivering performance numbers, leading transformational initiatives, and managing risk. Once experience has been gained, "discovery" of these talents needs to be sponsored. Ultimately, most of work belongs to the exceptional person herself.

We need to have experienced people of all types, including women, serving boards effectively. There is no shortage of important problems that companies and

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our economies face that will benefit from a fresh point of view. Imposing quotas will quickly provide the appearance of change, but will in fact delay real change. In order for their ideas be heard, valued and therefore acted upon, women must be truly welcomed by the board's selection process, not forced upon it. This may mean that changing the makeup of boards takes longer. But it will result in real change faster.

### **Gene Marks: Why Most Women Will Never Become CEO<sup>3</sup>**



*Gene Marks*

I run a small technology firm. We do business with a lot of larger technology companies. I meet plenty of women in senior positions. But it's rare that I come across a female CEO. Why is that?

Only recently, Meg Whitman was appointed CEO of HP. And Virginia Rometty was just named CEO of IBM. These are two smart women leading two giant technology firms. But they are anomalies. They are abnormal. The fact is that most women just don't make it to this level.

As of this past May, only twelve of the Fortune 500 companies were run by women. This is down from fifteen the previous year. Really? In the world of Rosie, Oprah, Kim Kardashian and Hillary Clinton less than 3% of our largest companies have female leaders?

Look, I'm not surprised. I'm a guy. I know why.

Reason 1: One Friday night I picked up my teenage son at the movies along with four of his teenage friends. The ride home was filled with laughter, profanity, burps, flatulence and a few head slaps. It took a week for the smell to dissipate.

Reason 2: The next night I picked up my teenage daughter at the movies along with four of her teenage friends. Deathly silence. Apparently, one of the girls' boyfriends at the theatre had made a remark about another girl's makeup in the

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<sup>3</sup> Marks, Gene. "Why Most Women Will Never Become CEO." *Forbes*. [www.forbes.com https://www.forbes.com/sites/quickerbetteertech/2011/10/31/why-most-women-will-never-become-ceo/#55f22cf348ff](https://www.forbes.com/sites/quickerbetteertech/2011/10/31/why-most-women-will-never-become-ceo/#55f22cf348ff)

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group. He thought she looked...hot. Oh boy. Sides had been chosen. And except for the occasional hissed whisper, no one was talking to each other. It took two weeks for the tension to dissipate.

These are the reasons why most women do not become CEOs.

Ever seen what it's like to be a woman in today's workplace? Sure, things have come a long way since the days of Mad Men. I don't see guys patting their secretaries on the backside or calling them "honey" or "darling." But the sexism is still there. It's just more concealed. I've been in more than a few meetings where once an attractive female staffer leaves the room one or two of the guys will comment on her hotness. This goes on, believe me. Guys are still checking out the girls in the office. I see their body language noticeably change whenever a pretty female employee enters the room. Words, thoughts and important points are missed because of a new perfume or a low-cut blouse. It works the other way too. The less attractive female employees are also frequently ignored...for the opposite reason. Men are still trying to take women seriously in the workplace. But most haven't progressed beyond the maturity level of my teenage son and his friends.

But that's just the beginning. Women also have more personal and social pressures than men. And this affects their ability to further their careers and get the experience they need to become good managers. It's common today for families to have two working parents. But let's admit it, when little Johnny gets sick at school who's the first person that's usually called? When a child is up at night coughing, which parent is staying up with her? When the plumber has to make an emergency morning visit, who's generally staying at home to deal with it?

It's usually mom. And even if she has a full-time job too.

When my wife and I were younger and our baby would cry in the middle of the night I would put a pillow...over my head. That stopped the crying for sure. My wife (who was working full time by the way) was the one who got out of bed to

care for the child. Yes, I was an ass. I'm not saying that many dads don't pitch in or try to do their fair share. But as much as women have achieved in earning their equality, there are still some age-old cultural habits that won't die. Children need



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their mommies. And most moms I know, whether they have a full-time job or not, want to be there for their child. I know plenty of women who admit they struggle with this instinctual tug on their gut. Men don't have this kind of instinctual tug. Let's face it: unless there's beer involved, men don't have many instincts at all. We figure our wives will ultimately handle these things. And in many cases, they just do.

Which puts a noticeable strain on a woman's career. She can be earning twice what her husband earns but that's still not enough. She's also expected to be a good mom too (and a good daughter-in-law, and a good housekeeper and a good neighbor). And if she's not "there" for her kids then she's criticized. She can't win. And by choosing her family responsibilities over her professional responsibilities (which, by the way, is the right thing to do in my opinion) she leaves her flank open to the men in her office who can do the things she can't do because she's not there to do it. The men running companies look at each other and nod in sympathy when Joyce misses that meeting because of a sick child. But they move on, with Richard stepping in to replace her. Business continues. And Joyce is left out in the cold.

**And by the way...quadruple that pressure for women trying to raise children on their own.**

Like my teenage son and his friends, men can also get away with more stupidity. They can make the occasional inappropriate joke and then just apologize. If a woman does that she's treated like a leper. Men can sprinkle profanity in their conversation, and it endears them as one of the folks. God forbid if a woman drops an f-bomb in the office – she's a total you-know-what (hint: it's not a snitch). Men can date women thirty years younger and get high fives from their peers. As much as many women would like to do that (oh, I see my wife checking out those college guys playing Frisbee on the beach!) they just won't. Because they can't. Men can make mistakes like this and get off with a warning. Women are held to a much higher standard.

That's because the standards in today's business world are still made and enforced...by men. And guys say to themselves: how would we feel if that was our daughter? Which is why we joke about the woman teacher that had a one-nighter with the high school football player. And then we're enraged by the male teacher who did the same thing with one of his female students. Women are not allowed to make off-color jokes. They have to appear to be embarrassed by that YouTube video. They could never comment on the looks of a fellow co-worker. They shouldn't be talking about how many beers they consumed the night before. Men can do all of this with ease and not be judged by their bosses. Women cannot. And this limits their ability to connect with other employees and build the kind of invisible bonds

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that men get to build. Bonds that help these same men progress further in their companies than their female co-workers.

A woman's physical appearance is way more under the radar than a man's. Look at the women who do make it to the very top of technology companies: Whitman, Rometty, Carly Fiorina. Notice something? Um....they're good looking! They are slim, attractive, well put together. Do you think a woman who looks like Reid Hoffman stands a chance at becoming CEO?



*Reid Hoffman*



*Carly Fiorina*

Don't deny it- a female's looks are held to a much higher level of scrutiny than a man's. A guy can pull any one of his two or three suits out of a closet and throw it on top of the same shirt he wore the previous day (and probably the same undershirt too). Most women in the workplace spend hours putting themselves together. They always have to appear like it's 9AM. They're not allowed to let their guard down, even if they're working late into the evening. Because men (and other women) will judge their appearance. And make comments to each other like, "sure she's OK, but remember how she looked that night we were putting together the proposal? Yeesh!" Yes, men say that stuff. And then they let these things cloud their decision making when it's promotion time. It happens.

All these things add up. The surreptitious judgments in the office. The social pressures. The double-standard of behaviors. The burden of maintaining physical appearances. And you know what happens? Most women throw in the towel. They don't want to put up with it. They leave the corporate world to raise families. Or start their own small businesses. And if they stay in the corporate world many do so without aspirations of becoming the top dog. They don't want the headaches, the scrutiny, or the responsibility.

So, who's left? The women with the thickest skin. Which is not always the best qualification to be an effective CEO. This is why we don't see as many women CEOs as we do men. Still. Yes, women have advanced a great deal in the business world. Unfortunately, the business world hasn't advanced along with them. I'm not

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sure this will change anytime soon. Because remember: *My son and his idiot friends are the up and coming generation. It ain't pretty.*



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