

SCHOLARLY ARTICLE

# Women and the ‘Business’ of Human Rights: The Problem with Women’s Empowerment Projects and the Need for Corporate Reform

Roseanne Russell\* 

Senior Lecturer, University of Bristol Law School, Bristol, UK

\*Corresponding author. Email: [roseanne.russell@bristol.ac.uk](mailto:roseanne.russell@bristol.ac.uk)

## Abstract

Corporate-led women’s empowerment initiatives appear, in their proactiveness, to be a welcome addition to a range of measures addressing adverse human rights impacts by business. This article questions the claim that these projects significantly advance women’s rights. Instead, they can be understood as a manifestation of what Catherine Rottenberg terms ‘neoliberal feminism’ with women at risk of being transformed into ‘gender capital’ for business gain. This article rejects the claim that empowerment can only be delivered by encouraging women into market-based work. Instead, it is argued that the corporate responsibility to respect the human rights of women can better be supported by reorienting business away from its preoccupation with delivering value for shareholders, towards an approach that values women’s unpaid socially reproductive labour.

**Keywords:** business and human rights; care; empowerment; shareholder primacy; women

## 1. Introduction

Transnational companies and global governance actors are embracing gender equality as a catalyst for greater economic growth. Captured in the World Bank’s claim that ‘the business case for expanding women’s economic opportunities is becoming increasingly evident; this is nothing more than smart economics’,<sup>1</sup> investing in women is lauded for its commercial advantages while simultaneously offering significant opportunities for individual empowerment. These corporate initiatives vary in form. Businesses can expand into new markets by partnering with women’s existing informal networks. The paradigm example of this is the work of the cosmetics company Avon in South Africa. Tapping into existing relationships and the long-term nature of beauty-selling,<sup>2</sup> Avon can significantly extend its distribution chains while the new Avon agents increase their household income and participate in ‘personal and social transformation’.<sup>3</sup> Other initiatives, such as the

<sup>1</sup> World Bank, ‘Gender Equality as Smart Economics: A World Bank Group Gender Action Plan (Fiscal Years 2007–10)’ (2006), <https://documents1.worldbank.org/curated/en/295371468315572899/pdf/37008.pdf> (accessed 11 October 2021) 2.

<sup>2</sup> Kathy Peiss, ‘On Beauty... and the History of Business’ (2000) 1:3 *Enterprise & Society* 485, 492.

<sup>3</sup> Catherine Dolan and Linda Scott, ‘Lipstick Evangelism: Avon Trading Circles and Gender Empowerment in South Africa’ (2009) 17:2 *Gender & Development* 203, 215.

Goldman Sachs 10,000 Women programme, focus on providing women with business education, networking and mentoring. From its initial conception 'to foster greater economic growth in developing nations by providing 10,000 underserved women entrepreneurs with business and management education, access to mentors and networks, and links to capital',<sup>4</sup> 10,000 Women now partners with the education platform Coursera and academic institutions to offer a range of online training modules focused on female entrepreneurs.<sup>5</sup> A further strand of empowerment work centres on providing micro-credit to enable women to develop their entrepreneurial capacity.<sup>6</sup> By targeting women – who are often unable to access credit from mainstream financial institutions – micro-loans were conceived as an important 'alternative to local loan-sharks, to burdensome collection techniques and to deepening levels of indebtedness.'<sup>7</sup> As such, they promised greater gender equality in economic participation.<sup>8</sup>

What links these initiatives is a distinctly market-oriented discourse of gender equality. Multinational companies and global financial actors are helping shape this narrow vision of empowerment. The World Bank's views on this are instructive. While it recognizes that 'increasing women's voice and agency are valuable ends in themselves', it discusses women's empowerment in overtly market terms:

...both voice and agency have instrumental, practical value too. Amplifying the voices of women and increasing their agency can yield broad development dividends for them and for their families, communities, and societies. Conversely, constraining women's agency by limiting what jobs women can perform or subjecting them to violence, for example, can create huge losses to productivity and income with broader adverse repercussions for development. We argue that overcoming these deprivations and constraints is central to efforts to end extreme poverty and boost shared prosperity.<sup>9</sup>

The interest shown by companies in women reflects the increasing recognition of the gendered impact of human rights abuses by business.<sup>10</sup> Corporate-led women's empowerment projects suggest engagement, rather than mere compliance, with human rights norms. Yet, despite this apparent enhancement to the business and human rights (BHR) movement, arguably these initiatives frequently fall short of the critical and far-reaching responsibilities of business to respect human rights. As Bonita Meyersfeld

<sup>4</sup> Martine Liautaud, *Breaking Through: Stories and Best Practices From Companies That Help Women Succeed* (New Jersey: Wiley, 2016) 198.

<sup>5</sup> Goldman Sachs, 'Empowering Women', <https://www.goldmansachs.com/citizenship/10000women/#> (accessed 11 October 2021).

<sup>6</sup> A fuller discussion of these initiatives is contained in Section II below. See also Elisabeth Prügl, 'Corporate Social Responsibility and the Neoliberalization of Feminism' in Kate Grosser, Lauren McCarthy and Maureen A Kilgour (eds.), *Gender Equality and Responsible Business: Expanding CSR Horizons* (London: Routledge, 2016) 46.

<sup>7</sup> Rob Aitken, 'The Financialization of Micro-Credit' (2013) 44:3 *Development and Change* 473, 476.

<sup>8</sup> Shalini Aggarwal, Praveen Kumar and Vikas Garg, 'Empowering SHGs Women Through Micro-Finance in Uttar Pradesh' (2020) 62:6 *International Journal of Law and Management* 591, 592.

<sup>9</sup> Jeni Klugman et al, 'Voice and Agency: Empowering Women and Girls for Shared Prosperity', (2014), <https://openknowledge.worldbank.org/handle/10986/19036> (accessed 11 October 2021) 2 (emphasis in original).

<sup>10</sup> Götzmann et al, *Women in Business and Human Rights: A Mapping of Topics for State Attention in United Nations Guiding Principles on Business and Human Rights Implementation Processes* (Copenhagen: Danish Institute for Human Rights, 2018); Human Rights Council, 'Gender Dimensions of the Guiding Principles on Business and Human Rights: Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises', A/HRC/41/43 (23 May 2019); Penelope Simons and Melisa Handl, 'Relations of Ruling: A Feminist Critique of the United Nations Guiding Principles on Business and Human Rights and Violence Against Women in the Context of Resource Extraction' (2019) 31:1 *Canadian Journal of Women and the Law* 113.

argues, corporate compliance with human rights requires measures ‘to attenuate gender-based harm.’<sup>11</sup> This is underpinned by ‘the due diligence standard that requires an active approach by the state to guide and constrain corporate conduct, if necessary.’<sup>12</sup> Although Ingrid Landau has pointed to the risk of ‘cosmetic compliance’ with human rights due diligence (HRDD) requirements, engagement with HRDD offers considerable potential for companies to examine the impacts of their activities on human rights; to explore how these impacts can be avoided or mitigated; and, importantly, to disclose transparently how they are performing in this regard.<sup>13</sup> By contrast, many of the initiatives supported by corporations falling under the broad guise of women’s empowerment appear only superficially to address human rights harms. This is troubling because while human rights abuses go unchallenged, corporate efforts to empower women ‘imply that ... corporate actors have endorsed human rights, sustainability, gender equality, and minority rights’.<sup>14</sup>

This article challenges the optimistic reading of corporate women’s empowerment initiatives. I take as a point of departure Naila Kabeer’s thesis that ‘empowerment relates to processes of change. In particular, it refers to the processes by which those who have been denied the capacity for choice gain this capacity.’<sup>15</sup> I argue that these initiatives fail to disrupt sufficiently the structural barriers to gender equality and are illustrative of a ‘business friendly form of feminism’.<sup>16</sup> Drawing on Catherine Rottenberg’s observation that we are witnessing the rise of ‘neoliberal feminism’,<sup>17</sup> this paper advances the claim that corporate-led women’s empowerment projects in their current form can be read as a manifestation of a broader neoliberal feminist project in which women risk being commodified for corporate advantage.<sup>18</sup> Such instrumental treatment of women can be explained by the corporate preoccupation of privileging shareholder’s interests, yet this is not what company law demands. Instead I suggest that shareholder primacy is a normative choice with which many women’s empowerment projects align.

The paper proceeds as follows. Section II outlines a range of corporate-led women’s empowerment initiatives and reveals the connections between them in their valorization of productive over reproductive labour, essentializing of women’s experiences, and timidity in tackling structural and institutional barriers to equality. Section III offers a theoretical critique of these initiatives and posits that they can be interpreted as a manifestation of neoliberal feminism. In Section IV, the central argument of the paper is advanced: at their most reductive, corporate-led women’s empowerment projects can be rationalized as another instrument of shareholder primacy. It follows that if the corporate responsibility to respect the human rights of women is to be safeguarded, reform of the purpose of corporations is needed. Section V concludes.

<sup>11</sup> Bonita Meyersfeld, ‘Business, Human Rights and Gender: A Legal Approach to External and Internal Considerations’ in Surya Deva and David Bilchitz (eds.), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (Cambridge: Cambridge University Press, 2013) 193, 204.

<sup>12</sup> *Ibid.*, 211.

<sup>13</sup> Ingrid Landau, ‘Human Rights Due Diligence and the Risk of Cosmetic Compliance’ (2019) 20:1 *Melbourne Journal of International Law* 221, 225.

<sup>14</sup> Sofie Tornhill, *The Business of Women’s Empowerment: Corporate Gender Politics in the Global South* (London: Rowman & Littlefield, 2019) 2.

<sup>15</sup> Naila Kabeer, ‘Economic Pathways to Women’s Empowerment and Active Citizenship: What Does the Evidence From Bangladesh Tell Us?’ (2017) 53:5 *The Journal of Development Studies* 649, 650.

<sup>16</sup> Catia Gregoratti, ‘Cracks in the Corporatisation of Feminism’ (2016) 13:6 *Globalizations* 922.

<sup>17</sup> Catherine Rottenberg, ‘The Rise of Neoliberal Feminism’ (2014) 28:3 *Cultural Studies* 418.

<sup>18</sup> Adrienne Roberts, ‘The Political Economy of “Transnational Business Feminism”: Problematising the Corporate-Led Gender Equality Agenda’ (2015) 17:2 *International Feminist Journal of Politics* 209.

## II. Corporate-Led Women's Empowerment Initiatives

Concerns about asymmetrical distributions of power are central to feminist scholarship and strategies. While feminist communities may diverge in their understandings of the precise role that power plays in the exclusion or subordination of women,<sup>19</sup> paradoxically transnational companies and global governance actors are converging on an idea of women's empowerment that centres on their ability to participate in economic life. Corporate engagement with women has been framed in market-oriented terms, or what Sydney Calkin calls 'the business case'.<sup>20</sup> For Calkin, 'gender equality claims have become visible through their mediation by the market and rhetorical reformulation along economistic lines.'<sup>21</sup> This coalescence by transnational companies, non-governmental organizations (NGOs), and international actors such as the World Bank around the promotion of women's equality as a benefit to business has been termed 'transnational business feminism' (TBF) by Adrienne Roberts.<sup>22</sup> Three inter-related ideas motivate TBF.<sup>23</sup> First, and evident in debates about women board members, is the idea of women as post-financial crisis saviours of companies and the wider financial sector due to their presumed differences from men.<sup>24</sup> Second is the notion of women as consumers and producers captured in the concept of 'womenomics'. Third is the concern to empower women, particularly through the creation of entrepreneurship opportunities financed via the extension of microcredit in the development context.<sup>25</sup>

The range of corporate-sponsored women's empowerment projects is vast. One difficulty in attempting to provide a comprehensive typology of these initiatives stems from the plural meanings and ways of measuring empowerment.<sup>26</sup> For example, empowerment may be collective or individual; it may be measured subjectively or objectively; and it may refer to external obstacles or internal barriers.<sup>27</sup> Gita Sen similarly points to the malleability of the term 'empowerment' and argues that the multi-dimensional and fluid nature of the concept

<sup>19</sup> For example, see Catharine MacKinnon's thesis on dominance feminism in Catharine MacKinnon, *Towards a Feminist Theory of State* (Cambridge: Harvard University Press, 1989) and Catharine MacKinnon, 'Feminism, Marxism, Method and the State: Toward a Feminist Jurisprudence' (1983) 8:2 *Signs* 635. For an analysis of MacKinnon's work see Emily Jackson, 'Catharine MacKinnon and Feminist Jurisprudence: A Critical Appraisal' (1992) 12:2 *Journal of Law and Society* 195.

<sup>20</sup> Sydney Calkin, "'Tapping" Women for Post-Crisis Capitalism: Evidence From the 2012 World Development Report' (2015) 17:4 *International Feminist Journal of Politics* 611, 612.

<sup>21</sup> *Ibid.*

<sup>22</sup> Adrienne Roberts, 'Financial Crisis, Financial Firms ... and Financial Feminism? The Rise of "Transnational Business Feminism" and the Necessity of Marxist-Feminist IPE' (2012) 8:2 *Socialist Studies* 85, 87.

<sup>23</sup> Adrienne Roberts, 'Gender, Financial Deepening and the Production of Embodied Finance: Towards a Critical Feminist Analysis' (2015) 29:1 *Global Society* 107, 108.

<sup>24</sup> Elisabeth Prügl, "'Lehman Brothers and Sisters": Revisiting Gender and Myth After the Financial Crisis' in Aida A Hozic and Jacqui True (eds.), *Scandalous Economics: Gender and the Politics of Financial Crises* (Oxford: Oxford University Press, 2016) 21, 35; Elisabeth Prügl, "'If Lehman Brothers Had Been Lehman Sisters...": Gender and Myth in the Aftermath of the Financial Crisis' (2012) 6 *International Political Sociology* 21; Roseanne Russell, 'The Uneasy Relationship Between Corporations and Gender Equality: A Critique of the "Transnational Business Feminism" Project' in Beate Sjøfjell and Irene Lynch Fannon (eds.), *Creating Corporate Sustainability: Gender as an Agent for Change* (Cambridge: Cambridge University Press, 2018) 237.

<sup>25</sup> Juanita Elias, 'Davos Woman to the Rescue of Global Capitalism: Postfeminist Politics and Competitiveness Promotion at the World Economic Forum' (2013) 7 *International Political Sociology* 152.

<sup>26</sup> Lu Gram, Joanna Morrison and Jolene Skordis-Worrall, 'Organising Concepts of "Women's Empowerment" for Measurement' (2019) 143 *Social Indicators Research* 1349.

<sup>27</sup> *Ibid.*, 1353–4.

risks 'giving the appearance of promoting strong action without any intrinsic policy accountability for actually doing so'.<sup>28</sup>

Just as empowerment has been interpreted in diverse ways, corporate initiatives to empower women are also varied in their aims, methods and scope. As Sofie Tornhill argues, such diversity is to be 'expected'<sup>29</sup> given the plurality of businesses engaged in women's empowerment projects. Calkin's survey of transnational business initiatives includes 'the Nike Foundation's partnerships with the UK Department for International Development and the World Bank, the UN Women partnership with Coca Cola, the United Nations Foundation's partnership with Exxon Mobile, USAID, and the Ford Foundation, the UN Global Compact, and a variety of partnerships between corporations and non-profits for empowerment including Goldman Sachs, Intel, and Hindustan Unilever, among others.'<sup>30</sup> Regardless of the context in which these projects take place there are several common themes.

One factor is the sponsorship by private businesses of projects that overlap with support traditionally provided by the state, for example, education, access to the paid labour market, water and sanitation, and healthcare.<sup>31</sup>

A second commonality is that many empowerment projects are promulgated by actors in wealthy countries for delivery in low income regions.<sup>32</sup> This is problematic as the 'former discourses of colonial paternalism'<sup>33</sup> are evident both in the promotion of a Global North vision of womanhood and economic justice to which others are invited to join, and in the characterization of women across the Global South as being in need of empowerment. As Ann Stewart notes, 'economic globalization' has been 'built on imperial and colonial histories'.<sup>34</sup> The lack of cultural sensitivity shown by initiatives that frame whole groups of women as economically unproductive and full of potential is redolent of colonialism and its (re)construction of distinct gender roles.<sup>35</sup>

A third site of coherence between many of these empowerment initiatives is their connection with the brands of their sponsors. Tornhill has observed that 'corporate empowerment programs ... can be conceived of as intrinsic, rather than surprising, parts of contemporary corporate legitimacy building'.<sup>36</sup> Focusing on the economic benefits of empowerment as part of a 'win-win' rhetoric is attractive to corporate decision-makers seeking more creative ways of delivering value for investors. As Carol Liao has argued, 'since CSR is able to co-exist alongside shareholder primacy ... there tends to be little desire to reform the model in order to incorporate stakeholder interests beyond what companies are already driven to do from the market.'<sup>37</sup>

<sup>28</sup> Gita Sen, 'Introduction: Empowering Women for Health' in Shari L Dworkin, Monica Gandhi and Paige Passano (eds.), *Women's Empowerment and Global Health: A Twenty-First-Century Agenda* (University of California Press, 2017) 1.

<sup>29</sup> Tornhill, note 14, 7.

<sup>30</sup> Sydney Calkin, 'Globalizing "Girl Power": Corporate Social Responsibility and Transnational Business Initiatives for Gender Equality' (2016) 13:2 *Globalizations* 158, 159.

<sup>31</sup> Regina Scheyvens, Glenn Banks and Emma Hughes, 'The Private Sector and the SDGs: The Need to Move Beyond "Business as Usual"' (2016) 24 *Sustainable Development* 371.

<sup>32</sup> Jessica H Jönsson, 'Beyond Empowerment: Changing Local Communities' (2010) 53:3 *International Social Work* 393, 395. See also Lauren McCarthy, "'There Is No Time for Rest": Gendered CSR, Sustainable Development and the Unpaid Care Work Governance Gap' (2018) 27 *Business Ethics: A European Review* 337, 338.

<sup>33</sup> Lyndsay M C Hayhurst, 'Corporatising Sport, Gender and Development: Postcolonial IR Feminisms, Transnational Private Governance and Global Corporate Social Engagement' (2011) 32:3 *Third World Quarterly* 531, 534.

<sup>34</sup> Ann Stewart, *Gender, Law and Justice in Global Markets* (Cambridge: Cambridge University Press, 2011) 41.

<sup>35</sup> On how law shaped gender relations under colonialism, see *ibid.*, 102–105.

<sup>36</sup> Sofie Tornhill, "'A Bulletin Board of Dreams": Corporate Empowerment Promotion and Feminist Implications' (2016) 18:4 *International Feminist Journal of Politics* 528, 530.

<sup>37</sup> Carol Liao, 'Power and the Gender Imperative in Corporate Law' in Beate Sjäffell and Irene Lynch Fannon (eds.), *Creating Corporate Sustainability: Gender as an Agent for Change* (Cambridge: Cambridge University Press, 2018) 282, 290.

A final commonality is that rather than seeking to disrupt the negative internal and external impacts of business activities on the human rights of women, many corporate-sponsored empowerment projects are steeped in a neoliberal worldview that promotes self-help and entrepreneurialism as synonymous with empowerment. This approach ignores the reality that empowerment is not only economic.<sup>38</sup> It is, at best, reductive in its portrayal of women as harbouring 'latent power and confidence'<sup>39</sup> that can be put to profitable use and, at worst, cynical in its instrumental treatment of women. Not all scholars agree, however, that we can read these projects as an example of women's commodification by corporations. Tornhill, for example, argues that this is too simplistic and risks overstating the impact of many of these projects which 'tend to be undermined by the precarious conditions in which they intervene'.<sup>40</sup> Even if we concede that something more subtle is going on than treating women as mere commodities, I would argue that there is little doubt that women are being constituted as entrepreneurial subjects by the operation of these programmes and their capacities are being used to benefit economic growth.

Two high-profile examples of corporate-led women's empowerment projects are illustrative of the tensions in this area. The Coca-Cola Company's 5by20 campaign aims to 'empower 5 million women entrepreneurs in 100 countries by 2020'.<sup>41</sup> The programme operates by providing women with 'training in business and finance management, access to finance for enterprise growth, formation of self-help groups to create a support structure for participants and the provision of post-training support'.<sup>42</sup> The campaign allows Coca-Cola to gain access to previously hard-to-reach areas such as South African townships, thus assisting in its business expansion. Despite the rhetoric, the experiences of these micro-entrepreneurs suggest that the equation of participation in the programme with empowerment is overly simplistic. In her ethnographic study of the 5by20 campaign's work in Mexico, Tornhill recounts how participants were typically framed as having untapped potential despite these women already labouring at home or engaging in paid work in the informal labour sector.<sup>43</sup> Her observations of empowerment workshops led by Coca-Cola are unsettling. Well-intentioned advice to attendees to move outside their 'comfort zone' appeared to ignore the 'brutality of the inequalities that define their everyday struggles to make a living'.<sup>44</sup>

Another initiative, Unilever's Shakti project, operates by providing training and micro-loans to women in rural villages in India so that they can sell Unilever's products as micro-entrepreneurs.<sup>45</sup> Financial resources are important in transforming power dynamics but equating empowerment with extending loans to women to transform them into creditors has been treated with considerable scepticism.<sup>46</sup> Although Linda Mayoux is 'tentative' about drawing conclusions on the efficacy of micro-finance as an empowerment strategy, given that its impact will depend on a range of cultural and contextual factors, she

<sup>38</sup> Fitsum W Bayissa, Jeroen Smits and Ruerd Ruben, 'The Multidimensional Nature of Women's Empowerment: Beyond the Economic Approach' (2018) 30 *Journal of International Development* 661.

<sup>39</sup> McCarthy, note 32, 338.

<sup>40</sup> Tornhill, note 14, 4.

<sup>41</sup> Sofie Tornhill, 'The Wins of Corporate Gender Equality Politics: Coca-Cola and Female Entrepreneurship in South Africa' in Kate Grosser, Lauren McCarthy and Maureen A Kilgour (eds.), *Gender Equality and Responsible Business: Expanding CSR Horizons* (London: Routledge, 2016) 185, 188.

<sup>42</sup> *Ibid.*, 191.

<sup>43</sup> Tornhill, note 36, 536.

<sup>44</sup> Tornhill, note 41, 199; Tornhill, note 36, 536.

<sup>45</sup> Unilever, 'Empowering and Creating Livelihoods for Women', <https://sellingwithpurpose.unilever.com/?p=43> (accessed 11 October 2021).

<sup>46</sup> Fiona Leach and Shashikala Sitaram, 'Microfinance and Women's Empowerment: A Lesson From India' (2002) 12:5 *Development in Practice* 575.



highlights that concerns have been raised about how micro-lending unsettles existing family dynamics and can result in women being treated as ‘unpaid debt collectors for development agencies’.<sup>47</sup> Like 5by20, the Shakti initiative also operates on the logic of ‘win-win’ outcomes for all participants: women have access to increased income, Unilever can expand into rural India, and, as Elisabeth Prügl observes, ‘public authorities achieve a health outcome’ through the buying and selling of Unilever’s sanitary products.<sup>48</sup>

Despite the claims of empowerment made by the companies sponsoring these initiatives, there is considerable scepticism among scholars and practitioners about whether these projects result in any long-term and significant redistributions of economic power in favour of women. As Andrea Cornwall observes of the term ‘empowerment’, ‘[o]nce used to describe grassroots struggles to confront and transform unjust and unequal power relations, it has become a term used by an expansive discourse coalition of corporations, global non-governmental organizations, banks, philanthrop capitalists and development donors.’<sup>49</sup> For Kabeer, the use of the term ‘empowerment’ by multiple actors to describe a range of activities has meant that the concept has ‘gradually neutralised its original political edge’.<sup>50</sup> Such depoliticization of the more radical idea of empowerment – a process of moving from being disempowered to acquiring the capacity for meaningful choice over one’s life<sup>51</sup> – has been accompanied by a corporate worldview that prioritizes encouraging more women into the paid work of the market and providing them with economic resources such as credit as the optimal ways of achieving a raft of development and equality goals.<sup>52</sup> Moreover, it is the companies themselves who are shaping what it means to be empowered rather than respecting the agency of the projects’ participants.

The ideological objective of partnering women with business to achieve the linked goals of market expansion and poverty eradication appears, intuitively, to offer ‘a compelling proposition’.<sup>53</sup> As Catherine Dolan observes, these projects promise ‘a new form of inclusive capitalism that simultaneously cleanses development of its paternalist and interventionist heritage and repositions capital accumulation as moral.’<sup>54</sup> It is no coincidence that these initiatives have gained momentum in the years following the 2008 global financial crisis, where concerns emerged that companies and financial markets were lacking a robust ‘ethical foundation’<sup>55</sup> and that ‘[i]mproved gender equality is associated with ... faster economic growth’.<sup>56</sup> Yet, these projects offer very limited critique of how macro-economic policies and corporate practices create and entrench the very inequalities that the empowerment initiatives are supposed to address.<sup>57</sup> Instead they risk embedding essentialist notions of feminized work (the ‘nimble-fingered’ factory worker<sup>58</sup> or

<sup>47</sup> Linda Mayoux, ‘Questioning Virtuous Spirals: Micro-Finance and Women’s Empowerment in Africa’ (1999) 11 *Journal of International Development* 957.

<sup>48</sup> Prügl (2016), note 6, 53.

<sup>49</sup> Andrea Cornwall, ‘Women’s Empowerment: What Works?’ (2016) 28 *Journal of International Development* 342.

<sup>50</sup> Kabeer, note 15, 650.

<sup>51</sup> Naila Kabeer, ‘Resources, Agency, Achievements: Reflections on the Measurement of Women’s Empowerment’ (1999) 30 *Development and Change* 435, 437.

<sup>52</sup> Calkin, note 20, 625; Cornwall, note 49, 356.

<sup>53</sup> Catherine Dolan, ‘The New Face of Development: The “Bottom of the Pyramid” Entrepreneurs’ (2012) 28:4 *Anthropology Today* 3.

<sup>54</sup> *Ibid.*

<sup>55</sup> Magdalena Bexell, ‘Global Governance, Gains and Gender: UN-Business Partnerships for Women’s Empowerment’ (2012) 14:3 *International Feminist Journal of Politics* 389, 395.

<sup>56</sup> Sarah Hendriks, ‘The Role of Financial Inclusion in Driving Women’s Economic Empowerment’ (2019) 29:8 *Development in Practice* 1029, 1033.

<sup>57</sup> Bexell, note 55, 399.

<sup>58</sup> Juanita Elias, ‘Hegemonic Masculinities, the Multinational Corporation, and the Developmental State: Constructing Gender in “Progressive” Firms’ (2008) 10:4 *Men and Masculinities* 405, 406.

micro-entrepreneur selling beauty products) and racialized stereotypes of women in the Global South. As Rafia Zakaria puts it:<sup>59</sup>

[i]n handing out chickens or sewing machines, Western feminists and development organizations can point to the non-Western women they have 'empowered'. The non-Western subjects of their efforts can be shown off at conferences and featured on websites. Development professionals can point to training sessions, workshops and spreadsheets laden with 'deliverables' as evidence of another successful empowerment project.

### III. Critiquing the 'Feminism' of Corporate-Led Women's Empowerment Initiatives

While the engagement of business actors with women's empowerment has made gender inequality more visible, a body of feminist literature has expressed unease at the apparent co-opting of feminism by neoliberalism or, perhaps to put it more accurately, the coalescence of business actors around a purported strand of 'feminist' thinking that is embedded in the logic and language of markets. The reason for such circumspection on the part of feminist scholars lies in the absence of any acknowledgement of, or challenge to, the structural operations of the patriarchy. Rather than confront their own role in women's subjugation, companies have used the language of feminism to deflect attention through empowerment initiatives. Corporations have expanded their reach through partnerships in the Global South and cultivated a new pool of cheap, precarious labour in the name of women's empowerment. This has been rendered legitimate by the norm of shareholder primacy, which privileges shareholder interests and externalizes costs associated with the negative social impacts of corporate behaviour. Before addressing in Section IV how companies might work for the advancement of the human rights of women, this part of the paper considers the implications of corporate actors' appropriation of feminist vocabulary.

The corporate interest in women is mirrored by a general rise in discussions of feminism and gender equality, a move which Sarah Banet-Weiser has termed 'popular feminism'.<sup>60</sup> The growing number of organizations with gender empowerment as their mission has emerged 'within a particular historical moment ... one of neoliberal capitalism and new labour markets, one in which class identities are seen to have disappeared, leaving in their wake the independent, entrepreneurial subject'.<sup>61</sup> The ensuing 'market for empowerment'<sup>62</sup> has, argues Banet-Weiser, positioned women and girls as 'both in crisis and a powerful consumer' with products and campaigns designed to capture this 'commodified girl power'.<sup>63</sup> Corporate-led empowerment projects can, therefore, be viewed as part of a broader landscape in which companies are finding in women new forms of profit enhancement. The socially reproductive labour upon which capitalist production depends<sup>64</sup> is taken for granted while the pool of productive labour is expanded by claims that empowerment can be found through paid work. The point here is not that paid work for women is unimportant – to argue this is to risk confining women to the domestic sphere – but that the coding of many women as hitherto 'unproductive' both belittles the

<sup>59</sup> Rafia Zakaria, 'The Myth of Women's "Empowerment"', *The New York Times* (5 October 2017), <https://www.nytimes.com/2017/10/05/opinion/the-myth-of-womens-empowerment.html> (accessed 11 October 2021).

<sup>60</sup> Sarah Banet-Weiser, *Empowered: Popular Feminism and Popular Misogyny* (Durham: Duke University Press, 2018).

<sup>61</sup> Sarah Banet-Weiser, "'Confidence You Can Carry!': Girls in Crisis and the Market for Girls' Empowerment Organizations' (2015) 29:2 *Continuum* 182, 191.

<sup>62</sup> *Ibid.*, 182.

<sup>63</sup> *Ibid.*

<sup>64</sup> Katie Cruz, 'Feminism, Migrant Sex Work, and Labour Unfreedom' (2018) 26 *Feminist Legal Studies* 65, 68.



work of social reproduction where many are engaged and offers no critique of the macroeconomic and societal forces that perpetuate women's relative disempowerment. As Nanette Funk has observed, '[n]eoliberal IMF structural adjustment programs ... wiped out women's work as the majority of subsistence farmers, leaving few options other than going to cities for paid "Mcjobs" ... taking microcredit loans, entering prostitution, doing reproductive labour for first-world women'.<sup>65</sup> Financial actors, however, are silent on how their policies have enabled the conditions where women have been drawn further into precarity, while companies have offered no reflection on how globalized modes of production have benefited from the exploitation of women's labour. Corporate initiatives to empower women are therefore more reflective of a present-day, popular brand of 'feminism', which taps into the neoliberal language of investing in yourself as a market player. Proclamations by highly visible, usually white, middle-class women in the Global North such as Sheryl Sandberg's *Lean In*<sup>66</sup> and Ivanka Trump's *Women Who Work: Rewriting the Rules for Success*<sup>67</sup> are further examples of how 'feminism' is being publicly signalled, but in ways that are entirely in tune with and palatable to contemporary corporatism.

How might we make theoretical sense of the corporate-sponsored empowerment projects that are emerging now? What does it mean for businesses to be shaping the content of 'feminism'? And can empowerment projects lacking in critique of structural gendered power inequalities be considered feminist?

It is important to note that despite a popular tendency to assume a feminist orthodoxy, feminist scholarship is expressive of significant diversity.<sup>68</sup> There is, however, a risk when classifying the complexity of feminist thought into distinct theoretical approaches that we engage in 'simplistic categorisation'<sup>69</sup> or fragmentation into a terrain marked by 'contradiction, complexity, and paradox'.<sup>70</sup> Indeed, bell hooks describes the plurality of meanings ascribed to feminism as being 'a central problem' of the movement.<sup>71</sup> For hooks, feminism can best be described as 'the struggle to end sexist oppression'.<sup>72</sup> Rejecting what she terms 'lifestyle feminism', which endorses the idea 'that there could be as many versions of feminism as there were women',<sup>73</sup> hooks argues that feminism lost its way when '[m]ost women, especially privileged white women, ceased even to consider revolutionary feminist visions, once they began to gain economic power within the existing social structure'.<sup>74</sup> Vanessa Munro also suggests that all feminist thought is 'committed at its most fundamental level to highlighting the historical and contemporary sites of women's exclusion and/or subordination, to exploring the material, structural and ideological conditions that create and perpetuate this condition, and to making demands for their eradication'.<sup>75</sup> These definitions of feminism, therefore, invoke a concern to address gendered power disparities and structural oppression and exclusion. Yet, it is precisely a critique of the structural

<sup>65</sup> Nanette Funk, 'Contra Fraser on Feminism and Neoliberalism' (2013) 28:1 *Hypatia* 179, 188.

<sup>66</sup> Sheryl Sandberg, *Lean In: Women, Work and the Will to Lead* (New York: WH Allen, 2013).

<sup>67</sup> Ivanka Trump, *Women Who Work: Rewriting the Rules for Success* (New York: Portfolio/Penguin, 2017).

<sup>68</sup> Joanne Conaghan, 'Reassessing the Feminist Theoretical Project in Law' (2000) 27:3 *Journal of Law and Society* 351, 357.

<sup>69</sup> Vanessa Munro, *Law and Politics at the Perimeter: Re-Evaluating Key Debates in Feminist Theory* (Oxford: Hart, 2007) 14.

<sup>70</sup> Susan B Boyd and Elizabeth A Sheehy, 'Feminist Perspectives on Law: Canadian Theory and Practice' (1986) 13:3 *Canadian Journal of Women and the Law* 1, 6.

<sup>71</sup> bell hooks, *Feminist Theory: From Margin to Center*, 3rd edn, (Routledge: New York, 2014) 18.

<sup>72</sup> *Ibid.*, 28.

<sup>73</sup> bell hooks, *Feminism Is For Everybody* (Routledge: New York, 2014) 5.

<sup>74</sup> *Ibid.*, 4.

<sup>75</sup> Munro, *note 69*, 1.

nature of inequality that is missing from the 'feminism' of the current corporate-led women's empowerment lobby.

The atomized, individualistic approach to empowerment promoted by business is rooted in self-improvement and therefore more palatable to companies as a form of 'feminism' that does not challenge the *status quo*. Rottenberg has termed this phenomenon 'neoliberal feminism'. Explaining the term, she observes, 'while it very clearly avows gender inequality – thus, I believe, differentiating it from a postfeminist sensibility – it simultaneously disavows the socio-economic and cultural structures shaping our lives.'<sup>76</sup> Rottenberg locates this form of feminism in the rise of 'high-powered women [who] are publicly and unabashedly espousing feminism.'<sup>77</sup> She argues that this new variant of 'feminist' thought is 'part of a conversion process the aim of which is to transform women into neoliberal human capital'.<sup>78</sup> A woman is framed not only as an 'entrepreneurial subject' and 'encouraged to take her own personal initiative in order to improve her career prospects, particularly in the corporate world',<sup>79</sup> but is constituted as an 'individual enterprise'.<sup>80</sup>

Rottenberg's insights help illuminate the rationale behind the expansion of companies into the realm of gender equality initiatives in the apparent pursuit of women's empowerment. Although her thesis is most directly relevant to the corporate work environment and the concerns of middle-class women attempting to reconcile work and family life, it is her observation that this form of feminism has 'also become increasingly compatible with neoliberal ... political and economic agendas'<sup>81</sup> that reveals the pernicious nature of neoliberal feminism. It is difficult to diagnose the point at which neoliberal feminism can be identified as an entirely new epoch in companies' relationships with women, or whether it represents an intensification of the exploitation of women to meet the appeals of liberal feminism. Speaking of neoliberal feminism's close relation, popular feminism,<sup>82</sup> Banet-Weiser has argued that it 'owe[s] a debt to liberal feminism's critique of gendered exclusions in the public and corporate spheres ... this corporate-friendly popular feminism emanates from an increasing visibility of a gendered disparity in dominant economic spheres'.<sup>83</sup> There are certainly similarities between neoliberal and liberal feminism. As with neoliberal feminism, 'feminists have denounced liberalism as a theoretical approach with insufficient radical potential to expose the roots of women's subordination or to articulate principles for a society of gender justice'.<sup>84</sup> Martha Nussbaum, however, offers a defence of liberalism for its focus on the values of independence and autonomy.<sup>85</sup> While few could object to liberalism's premise that individuals are of equal worth, a tension arises in liberal feminism's demand for formal equality without removing the structural barriers that inhibit women's full participation in economic and

<sup>76</sup> Catherine Rottenberg's comments in an interview published as Sarah Banet-Weiser, Rosalind Gill and Catherine Rottenberg, 'Postfeminism, Popular Feminism and Neoliberal Feminism? Sarah Banet-Weiser, Rosalind Gill and Catherine Rottenberg in Conversation' (2020) 21:1 *Feminist Theory* 3, 7; Catherine Rottenberg, *The Rise of Neoliberal Feminism* (New York: Oxford University Press, 2018).

<sup>77</sup> Rottenberg, note 17, 418.

<sup>78</sup> Catherine Rottenberg, 'Neoliberal Feminism and the Future of Human Capital' (2017) 42:2 *Signs* 329, 332.

<sup>79</sup> Rottenberg, note 17, 427. On the women as human capital thesis see also Katie A Cruz and Wendy Brown, 'Feminism, Law and Neoliberalism: An Interview and Discussion With Wendy Brown' (2016) 24:1 *Feminist Legal Studies* 69, 72.

<sup>80</sup> Rottenberg in Banet-Weiser et al, note 76, 8.

<sup>81</sup> *Ibid.*

<sup>82</sup> I understand Rottenberg's neoliberal feminism to be located in the context of economic and political rationality whereas Banet-Weiser's popular feminism is identified more broadly with trends in contemporary culture.

<sup>83</sup> Banet-Weiser in Banet-Weiser et al, note 76, 12.

<sup>84</sup> Martha C Nussbaum, 'The Future of Feminist Liberalism' in Amy R Baehr (ed.), *Varieties of Feminist Liberalism* (Maryland: Rowman & Littlefield, 2004) 87, 88.

<sup>85</sup> *Ibid.*, 95.

democratic life on the same basis as men (such as women's disproportionate role in socially reproductive labour). In demanding formal equality between men and women, liberal feminism is often accused of asking women to assimilate into institutions that were shaped around the male experience.<sup>86</sup> A more positive interpretation of liberalism is that 'it is primarily driven by its commitment to free choice', which does not necessarily entail a focus on the individual, atomized self.<sup>87</sup> Implicit in the freedom to determine one's life is an absence of structural barriers that would deny a woman the ability to exercise genuine choice.

Rottenberg describes the difference between liberalism and neoliberalism in the following terms:

If under liberalism human beings are conceived of as free labourers with labour power to sell, under neoliberalism human beings are engendered as subjects who cultivate a *speculative* relationship to the human capital that they have become. The focus accordingly shifts from selling labour or even human capital in the marketplace to increasing one's value everywhere – and all the time – by altering and diversifying assets or modifying behaviours and social interactions. Every alteration or lack thereof is considered either to appreciate or depreciate the value of the self-as-human-capital.<sup>88</sup>

This 'new variant of feminism' has, argues Rottenberg, 'been unsettlingly unmoored from key liberal political goals such as equality, justice and emancipation.'<sup>89</sup> In contrast to the liberal sphere where there was a conceptual separation of domestic and public life, under neoliberal feminism a woman's networks, friendships and private interests 'are now carefully remade into forms of investment'.<sup>90</sup> Whereas liberal feminism has been characterized as requiring modifications largely from within the established order (advocating for equality laws so that women can participate in the market on the same basis as men, for example) yet ignoring the fact that women continued to perform most socially reproductive labour,<sup>91</sup> neoliberal feminism appears to simultaneously ignore *and* exploit the domestic sphere. Women in the Global South, who are already significant contributors to the economy through under-recognized work (care) and under-valued work (feminized occupations), are labelled as unproductive or an untapped resource that the market can put to gainful use. At the same time, the friendships and connections of these women are recognized as ready-made distribution networks that multinationals can use to expand their consumer pool. Moreover, in the shift from liberal to neoliberal feminism, state responsibilities seem to be further eroded. If liberal feminism demanded legislative reform to ensure equal pay and equal opportunities, neoliberal feminism appears almost to erase the role of the state entirely. Microcredit loans, for example, have replaced the state's responsibility for citizen welfare and have put the onus on women to turn themselves into enterprises 'making [them] responsible for their own economic well-being'.<sup>92</sup> Given the dominance of corporations in public discourse, it is problematic that the language of

<sup>86</sup> Anne Phillips, 'Feminism and Liberalism Revisited: Has Martha Nussbaum Got It Right' (2001) 8:2 *Constellations* 249, 250.

<sup>87</sup> *Ibid.*, 252.

<sup>88</sup> Catherine Rottenberg, 'Women Who Work: The Limits of the Neoliberal Feminist Paradigm' (2019) 26:8 *Gender, Work & Organization* 1073, 1075. Emphasis retained.

<sup>89</sup> *Ibid.*, 1075.

<sup>90</sup> *Ibid.*, 1077.

<sup>91</sup> Funk, *note* 65, 181–2.

<sup>92</sup> *Ibid.*, 189.

feminism has been captured by business and used by it to shape a distinctly individualistic, economic, and private view of women's empowerment.

The interconnected nature of social production and global markets has also served to highlight a further paradox at the heart of the women's empowerment movement.<sup>93</sup> Not only do these projects tend to rely on those with relative privilege speaking 'for their underprivileged sisters on the basis of a deep and unproblematized gender essentialism',<sup>94</sup> it also relies on those 'underprivileged sisters' to perform the affective labour that allows others to 'lean in' to their paid employment. It appears blind to 'the social significance of racism, classism, or (hetero)sexism as institutionalized systems of power'<sup>95</sup> and assumes a homogenous 'feminist' worldview informed by the Global North.<sup>96</sup> The reality is that 'most often, women of colour, poor and immigrant women serve as the unacknowledged care workers who enable professional women to strive towards "balance" in their lives,<sup>97</sup> meaning that care and informal labour, in which women are disproportionately represented, is rendered even less visible and unimportant. The label of neoliberal *feminism* is thus deeply ironic as Calkin considers it 'more like [feminism's] "uncanny double" which endorses a package of neoliberal reforms in the name of women's empowerment.'<sup>98</sup> This concern is echoed by Hester Eisenstein who has argued that business is facilitating 'a form of pseudo-feminism to bolster profitability and to further legitimise the increasingly perilous form of globalised capitalism that we are living under'.<sup>99</sup> For Eisenstein, there is a deep contradiction between 'flashy and highly publicised' women's empowerment initiatives while 'the macroeconomic operations of the global financial institutions ... systematically and cruelly destroy the capacities of nation-states to feed, clothe, house, educate and provide work to all of their citizens.'<sup>100</sup>

#### IV. Corporate Reform

On the surface, corporate-led women's empowerment projects appear to promise action on the part of corporations to respect the human rights of women. A closer analysis, however, reveals that women participants in empowerment projects are instead at risk of being used as 'a form of gender capital' in order to further corporate goals.<sup>101</sup> Drawing on the observation that we cannot continue to offer 'individual solutions to structural problems' in this area,<sup>102</sup> in this part of the paper, I suggest two areas of focus for further work. The first is to challenge the exploitation of women's socially reproductive labour. The second is to challenge the 'shareholder primacy' norm.

<sup>93</sup> Stewart, note 34.

<sup>94</sup> Elias, note 25, 165.

<sup>95</sup> Chandra Talpade Mohanty, 'Transnational Feminist Crossings: On Neoliberalism and Radical Critique' (2013) 38:4 *Signs* 967, 971.

<sup>96</sup> On the lack of a single feminist voice and the contribution of black and lesbian feminists amongst others see Shelley Wright, 'Patriarchal Feminism and The Law of the Father' (1993) 1:2 *Feminist Legal Studies* 115, 119.

<sup>97</sup> Rottenberg, note 88, 1079.

<sup>98</sup> Sydney Calkin, 'Disrupting Disempowerment: Feminism, Co-Optation, and the Privatised Governance of Gender and Development' (2017) 91 *New Formations* 69, 70.

<sup>99</sup> Hester Eisenstein, 'Hegemonic Feminism, Neoliberalism and Womenomics: "Empowerment" Instead of Liberation?' (2017) 91 *New Formations* 35, 42.

<sup>100</sup> *Ibid.*, 48.

<sup>101</sup> Roseanne Russell, 'Gender as a Driver Towards Corporate Sustainability' in Beate Sjøfjell and Christopher Bruner (eds.), *Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (Cambridge: Cambridge University Press, 2019).

<sup>102</sup> Rosalind Gill and Shani Orgad, 'Confidence Culture and the Remaking of Feminism' (2017) 91 *New Formations* 16, 17.

Lauren McCarthy has argued that the ‘gendered CSR’ of which women’s empowerment initiatives are illustrative can never resolve imbalances in gender power relations unless two critical factors are addressed. The first is unpaid care work, which falls disproportionately on women.<sup>103</sup> Care and the relational act of caring are universal experiences.<sup>104</sup> However, they are not typically treated as legal concepts and are often seen as falling within the ‘unregulated’ domestic realm.<sup>105</sup> This results in care being treated as something largely beyond the scope of regulation<sup>106</sup> and often invisible.<sup>107</sup> As Nicole Busby and Grace James contend, ‘the liberal subject, unencumbered by ties of dependency’ is typically assumed to be ‘the correct normative model against which all targets for legal and policy intervention should be judged’.<sup>108</sup> Participants in corporate empowerment projects are therefore framed as currently unproductive and bursting with untapped potential because their contribution of unpaid socially reproductive labour is both assumed and invisible within capitalist systems of production. Economic emancipation through participation in the paid labour market is then promulgated as empowering and synonymous with poverty eradication even though ‘women’s poverty is more than insufficient economic resources because poverty is not a gender-neutral experience. Women’s poverty is the lack of resources coupled with gendered socio-cultural norms that exclude and devalue women.’<sup>109</sup> This more complex definition of poverty shows why encouraging women to borrow in order to fund entrepreneurial activity for example cannot, on its own, lead to sincere empowerment. Even a more expansive vision of empowerment not predicated on paid employment or financial borrowing – such as participation in social and political life, advancing in education, or bodily security free from harassment – is impossible to achieve fully if the labour of care is not made visible and appreciated. The women’s empowerment movement and the neoliberal feminist ideology it represents are examples of how ‘financial capitalism reinvents itself precisely by incorporating its critics’.<sup>110</sup> In this context, the corporate practice of exploiting socially reproductive labour for its own ends is put beyond the scope of enquiry while genuine equality for women remains elusive.

The second factor raised by McCarthy is the ‘gendered macroeconomic context’ in which corporate women’s empowerment initiatives are being played out.<sup>111</sup> This includes how companies behave in the global political economy and the regulatory environment that governs their operations. As Beate Sjøfjell puts it, ‘at the heart of the BHR problem is the failure of company law...[which] has for far too long been left out of the discussion of how to improve the impact business has on society.’<sup>112</sup> For Sjøfjell, ‘reforming company law is key to securing business respect for human rights’.<sup>113</sup> One area of company law which requires

<sup>103</sup> McCarthy, note 32, 337.

<sup>104</sup> Joan C Tronto, ‘Creating Caring Institutions: Politics, Plurality, and Purpose’ (2010) 4:2 *Ethics and Social Welfare* 158, 161.

<sup>105</sup> Eugenia Caracciolo di Torella and Annick Masselot, *Caring Responsibilities in European Law and Policy: Who Cares?* (Abingdon: Routledge, 2020) 3; Virginia Held, *The Ethics of Care: Personal, Political and Global* (Oxford: Oxford University Press, 2006).

<sup>106</sup> Caracciolo di Torella and Masselot, note 105, 27.

<sup>107</sup> *Ibid.*, 30.

<sup>108</sup> Nicole Busby and Grace James, *A History of Regulating Working Families* (Oxford: Hart, 2020) 152–3.

<sup>109</sup> Meghan Campbell, *Women, Poverty, Equality: The Role of CEDAW* (Oxford: Hart, 2018) 249.

<sup>110</sup> Jacqui True, ‘The Global Financial Crisis’s Silver Bullet: Women Leaders and “Leaning In”’ in Aida A Hozić and Jacqui True (eds.), *Scandalous Economics: Gender and the Politics of Financial Crises* (Oxford: Oxford University Press, 2016) 41, 43.

<sup>111</sup> McCarthy, note 32, 337.

<sup>112</sup> Beate Sjøfjell, ‘How Company Law Has Failed Human Rights – and What To Do About It’ (2020) 5:2 *Business and Human Rights Journal* 179, 182.

<sup>113</sup> *Ibid.*, 189.

attention is the privileging of shareholders as it is this focus that has informed the exploitation of women as human capital in the empowerment initiatives discussed above. The conceptualization of companies in law as private bodies run for the purpose of enhancing value for shareholders and with limited interference from the state has significant consequences for the place of other stakeholders in this paradigm.<sup>114</sup>

The prioritization of shareholder interests is supported by economic agency theory, which maintains that privileging shareholder concerns is justified due to their relationship of residual risk with the company. In this economic model, the company is a 'legal fiction which serves as a nexus for contracting relationships'.<sup>115</sup> While other stakeholders such as employees are presumed to have complete contracts, the contract between the directors and shareholders is presumed incomplete given the lack of clarity about what the shareholder might receive in return for their capital contribution. Shareholders are preferred during the life of a company partly to compensate for this residual risk but also because focusing on profit is thought, arguably incorrectly, to benefit other stakeholders whose interests are also served by a profitable company.<sup>116</sup>

The problem with the norm of shareholder primacy is that it has come to define the purpose of companies. Yet, as Lorraine Talbot argues, privileging shareholders over other stakeholders represents a 'political choice' adopted by those promoting a 'neoliberal agenda'.<sup>117</sup> It is not a doctrinally conclusive account of company law, which is clear that directors of a company owe duties to the *company* as a separate legal person and not to investors.<sup>118</sup> This then begs the question of why shareholders are still given primacy. Lynn Stout, similarly to Talbot, argues that the idea of 'shareholder value' that emerged in recent decades is a legal myth yet one that has become pervasive as the focus for boards.<sup>119</sup> The lack of convincing legal arguments for the hegemony of the shareholder primacy norm suggests that a choice has been made to favour the providers of financial capital. Andrew Johnston and Talbot argue that this has led to companies playing a crucial role in bolstering irresponsible capitalism by privileging shareholders' desire for profit maximization over social needs.<sup>120</sup> Similarly, David Bilchitz and Laura Ausserladscheider Jonas contend that the shareholder value approach 'clashes fundamentally with the normative foundations of fundamental rights, which require the fundamental interests of individuals never to be treated purely as instruments for the achievement of the ends of others'.<sup>121</sup>

Shareholder primacy has therefore developed as the presumed, dominant purpose of business because company law is silent on what a company should be for and whose interests should be respected. This has led to a proposal for the company to be given a clear purpose of 'creating "sustainable value within planetary boundaries"'.<sup>122</sup> 'Sustainable

<sup>114</sup> John Parkinson 'Models of the Company and the Employment Relationship' (2003) 41:3 *British Journal of Industrial Relations* 481.

<sup>115</sup> Michael C Jensen and William H Meckling, 'Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure' (1976) 3 *Journal of Financial Economics* 305, 311; and Frank H Easterbook and Daniel R Fischel, *The Economic Structure of Corporate Law* (Cambridge: Harvard University Press, 1991).

<sup>116</sup> Paddy Ireland, 'Shareholder Primacy and the Distribution of Wealth' (2005) 68:1 *Modern Law Review* 49.

<sup>117</sup> Lorraine Talbot, *Progressive Corporate Governance for the 21<sup>st</sup> Century* (London: Routledge, 2013) 191.

<sup>118</sup> For example, Companies Act 2006 (UK) section 170(1).

<sup>119</sup> Lynn Stout, *The Shareholder Value Myth: How Putting Shareholders First Harms Investors, Corporations and the Public* (San Francisco: Berrett-Koehler, 2012) 24.

<sup>120</sup> Andrew Johnston and Lorraine Talbot, 'Why Is Modern Capitalism Irresponsible and What Would Make It More Responsible? A Company Law Perspective' (2018) 29:1 *King's Law Journal* 111.

<sup>121</sup> David Bilchitz and Laura Ausserladscheider Jonas, 'Proportionality, Fundamental Rights and the Duties of Directors' (2016) 36:4 *Oxford Journal of Legal Studies* 828, 835.

<sup>122</sup> Beate Sjäffell et al, 'Securing the Future of European Business: SMART Reform Proposals', Nordic & European Company Law LSN Research Paper Series No. 20-08 (7 May 2020) 37.



value' is then defined in an expansive way to include 'respecting the rights of its members, investors, employees, and other contractual parties, and promoting good governance, decent work and equality, and the *human rights* of its workers and affected communities and peoples.'<sup>123</sup>

Barnali Choudhury and Martin Petrin offer another interpretation of corporate purpose. Their thesis does not stipulate a single objective but argues that the correct corporate purpose 'lies on an axis between purely shareholder wealth maximization, other stakeholders' interests, and public interests'.<sup>124</sup> As such, they consider it 'appropriate for corporate governance policies to include public goals as long as they do not unduly advance one constituency's interests over another's'.<sup>125</sup> Their thesis can provide space for a more radical feminist approach to women's empowerment because, as hooks has argued, feminism is not about privileging one group's interests over another or women's concerns over those of men.<sup>126</sup>

How we get from the *status quo* of shareholder primacy to a model that does not insist on the transformation of women into mini-enterprises for corporate gain is an important future focus for scholars working in BHR. As dispiriting as the corporate-led women's empowerment movement may appear for substantive equality, there are sources of optimism. As Funk reminds us, it is too simplistic to claim that all women's empowerment NGOs have partnered with business to legitimate the turn to neoliberalism; many continue to challenge structures of inequality.<sup>127</sup> Moreover, the scholarship that has emerged in recent years critiquing the latest ruse by neoliberal economics to exploit women for its benefit can serve to energize feminist scholars and activists to find new ways of tackling inequalities of power.

## V. Conclusion

The specific and disproportionate human rights abuses experienced by women have been met with a range of policy responses. One of these has been the development of women's empowerment projects in partnership with leading corporations and global finance actors such as the World Bank. These initiatives vary in scope from extending micro-credit to women to allow them to develop small enterprises, to providing workshops on business education and self-development. Common to all, however, is a belief that women are empowered through their participation in paid market life. The interest of business is not benign. For companies, the framing of women in the Global South as an untapped resource diminishes the significant labour already undertaken in informal or unpaid capacities while simultaneously transforming them into units of human capital for corporate use. Moreover, the dominance of the business voice in discussions of women's empowerment risks pushing other viewpoints to the margins or subduing them completely.

In their current manifestations, such initiatives give rise to several troubling questions. How has the disruptive concept of empowerment been neutralized into a more insipid vision of market participation? Is it possible to reinvigorate the original political conception of empowerment with its shift in power dynamics in a space where global corporate actors are shaping its meaning? Who decides when a woman is empowered?

<sup>123</sup> Ibid, 59. Emphasis added.

<sup>124</sup> Barnali Choudhury and Martin Petrin, 'Corporate Governance That "Works for Everyone": Promoting Public Policies Through Corporate Governance Mechanisms' (2018) 18:2 *Journal of Corporate Law Studies* 381, 383.

<sup>125</sup> Ibid.

<sup>126</sup> bell hooks, note 71, 28.

<sup>127</sup> Funk, note 65, 191.

In this paper, I have argued that business sponsorship of women's empowerment can be explained by reference to Rottenberg's idea of neoliberal feminism. Rottenberg's thesis is more nuanced than arguing that feminism has been co-opted by neoliberalism. Instead, she shows how a variant of feminism has emerged in recent years that is in sync with corporate goals of profit maximization in its commands for women to invest in themselves, develop their networks, and empower themselves within a market paradigm. There is no space in this model of feminism for critique of the disempowering practices of corporations.

I have also argued that business cannot engage sincerely with gender equality until it acknowledges the socially reproductive work done by women. A paradox has emerged within the women's empowerment movement where, on the one hand women in low-income countries are constructed as under-utilized resources who can be put to use in the market; on the other hand, these same women are often relied upon to provide the affective labour that allows women in economically advantaged states to 'lean in' to their careers.

A second inhibitor is the norm of shareholder primacy. This prioritization of investors' concerns is not mandated by law and represents a choice to privilege the interests of financial capital over those of other stakeholders. Such a myopic focus on delivering value for shareholders has resulted in company directors being accused of 'recklessness, hubris and greed.'<sup>128</sup> Informed by a neoliberal feminist ideology that focuses on individual empowerment and self-worth, women's empowerment projects fit neatly within a corporate objective of profit enhancement.

A fruitful agenda for further reform may be for company scholars, human rights activists and women's groups to join in making the claim that shareholder primacy is simply a normative choice and one that can be replaced with other ideals. The body of feminist scholarship and the creativity of feminist activists can invigorate the work of progressive company lawyers and show how it is possible to structure businesses in ways that are truly attentive to the rights of women.

**Conflicts of interest.** The author declares none.

---

<sup>128</sup> This was the view from the UK's House of Commons Inquiry into the collapse of Carillion in January 2018: House of Commons, *Carillion: Second Joint Report from the Business, Energy and Industrial Strategy and Work and Pensions Committees* (London: House of Commons, 9 May 2018) 3.