TRANSFORMING DISCRIMINATORY CORPORATE CULTURES: THIS IS NOT JUST WOMEN'S WORK

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I. "DON'T CHANGE WOMEN, CHANGE CORPORATIONS"

The Symposium on *Women and the "New" Corporate Governance* began with an opening address by Sheila Wellington, the President of Catalyst.[1] "Don't change women," she said, "change corporations." I agree with Ms Wellington, but I would go one step further by observing that companies will change only if men change. The overwhelming majority of the directors and officers who manage and govern large public companies in the United States are white men.[2] Public companies will enjoy healthy relationships with their women employees only to the extent encouraged and facilitated by the men who control these corporations. But how does one inspire men to change?

Here is the problem. Even when men witness discrimination or harassment, they may fail to encourage the kinds of changes in corporate culture that are likely to promote gender equality.[3] Many male managers and employees may support gender equity efforts in the workplace, but because they are concerned with institutional fit and loyalty to the company, they may not be advocates for gender equity even in circumstances that they believe merit such advocacy.[4] Devon

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1. Catalyst is a nonprofit organization that researches and advises businesses on women's issues and concerns. *See* Catalyst Inc., Mission and History, http://www.catalyst.org/about/mission.shtml (last visited Mar. 13, 2006).

2. *See* Janis Sarra, *Class Act: Considering Race and Gender in the Corporate Boardroom*, 79 ST. JOHN'S L. REV. 1121, 1125 (2005) (explaining how the racial, gender, and class composition of corporate boards precludes the advancement of women and people of color in the workplace); Tracy Anbinder Baron, Comment, *Keeping Women out of the Executive Suite: The Courts' Failure to Apply Title VII Scrutiny to Upper-Level Jobs*, 143 U. PA. L. REV. 267, 269-70 (1994) (describing the glass ceiling that prevents women and people of color from climbing to the top of corporate hierarchies).

3. In writing about the behavior of racial minorities in the workplace, Devon Carbado and Mitu Gulati cite to the work of scholars who write "that even white male employees will often feel pressured to avoid pointing out instances of discrimination (even while thinking that it is wrong) so as to avoid being stigmatized as nonteam players." Devon W. Carbado & Mitu Gulati, *Race to the Top of the Corporate Ladder: What Minorities Do When They Get There*, 61 WASH. & LEE L. REV. 1645, 1685 n.75 (2004).

4. *Cf. id.* at 1684-85 (analyzing this dynamic in the context of racial monitoring). Women and minorities at the top of corporate hierarchies are not likely to mentor other women and minorities, nor are they likely to monitor workplace discrimination because they have had to demonstrate institutional fit and loyalty in order to be successful. *See id.*

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Carbado and Mitu Gulati discuss how some workers ignore racial and gender conflict situations in the workplace.[5] Carbado and Gulati explain that white men who deplore sexist conduct may fail to challenge such conduct in order to demonstrate their loyalty to the corporation.[6] Likewise, women may fail to challenge sexist comments and jokes because they want to demonstrate that they fit in at their places of business.[7]

For men to behave more responsibly toward their female colleagues, they must work in a corporate culture that supports and affirms gender equity advocacy. The chief executive officer (CEO) establishes that culture. Male employees and managers will adapt to the corporate culture in order to survive and succeed within that culture. It seems, therefore, that for companies to change, the men who work for them must change. The best way to inspire change among male executives, managers, and employees is to inspire change among America's CEOs.[8]

In Part II of this Article, I explore how CEOs influence corporate culture and suggest that it is possible for them to use their considerable influence on corporate culture to establish workplace race and gender equity. I consider the relationship between the personality, power, and philosophy of a public company's CEO and the establishment of a corporate culture in which race and sex discrimination do not thrive. One commentator defined corporate culture:

> Corporate culture is the deeply felt system of shared values and assumptions, conveyed through stories, myths, and legends, that explains how members of the organization think, feel, and act. These shared values operate both consciously and unconsciously to define an organization's view of itself and its environment. This culture, and the level of conformity it imposes, is willingly accepted by the members, and this bargain between the members and the culture gives the organization its stability, predictability, and continuity. *One must understand this culture to know how to behave within it.*[9]

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5. *Id.* at 1684 n.73, 1684-87.

6. *See id.* at 1685 n.75 (discussing this problem in the context of all discrimination).

7. *Id.* at 1684 n.73.

8. *Cf.* Steven A. Ramirez, *Rethinking the Corporation (and Race) in America: Can Law (and Professionalization) Fix "Minor" Problems of Externalization, Internalization, and Governance?*, 79 St. John's L. Rev. 977 (2005) (describing emerging trends of "CEO primacy" in corporate governance structures and their impact on race in the corporate context).

9. Price M. Cobbs & Judith L. Turnock, Cracking the Corporate Code, at xi-xii (2003) (emphasis added).

How does a CEO contribute to a company's "system of shared values and assumptions"?[10] To what extent do CEOs control how senior executives, managers, and employees "think, feel, and act"?[11] I grapple with these issues by exploring the success of three corporate leaders—Sam Walton, Jack Welch, and Henry Ford—in establishing the corporate cultures at the companies they ran. These three examples offer important insights relating to the development of corporate cultures that do not allow race and sex discrimination to thrive. The discussion demonstrates how CEOs successfully established or transformed corporate cultures to achieve goals about which they cared.

This discussion, however, is not qualitative. I do not suggest that Ford, Welch, and Walton were good leaders or bad leaders. Ford was disgracefully anti-Semitic.[12] Walton inspired a culture that seemed to place profit-maximization above the best interests of workers and the communities in which the company did business. Some commentators claim that this controversial way of doing business persists today, to the detriment of the entire nation.[13] Welch became famous for massive layoffs that harmed workers and communities.[14] These three controversial leaders have inspired spirited debate about the merits of their leadership. The discussion in this Article, however, is limited to an examination of the remarkable power these leaders exerted over their subordinates. This resulted in an almost blind adherence to each leader's business philosophy that shaped their companies' cultures. The iconic CEO discussion is about how it is possible for chief executives to incorporate racial and gender equity into a company's culture. It can happen, but only if CEOs think it is important.

In Part III, I examine how the nature of corporate culture[15] in general precludes cultural transformation that moves beyond the superficial, meaningless, and merely cosmetic corporate rhetoric con-

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10. *Id.* at xi.

11. *Id.* at xii.

12. *See* NEIL BALDWIN, HENRY FORD AND THE JEWS: THE MASS PRODUCTION OF HATE (2001).

13. *See, e.g.*, GREG PALAST, THE BEST DEMOCRACY MONEY CAN BUY 208-13 (2003) (discussing Walton's profit-maximization techniques).

14. *See, e.g.*, THOMAS F. O'BOYLE, AT ANY COST: JACK WELCH, GENERAL ELECTRIC, AND THE PURSUIT OF PROFIT 15-16 (1998).

15. Lynne Dallas distinguishes corporate culture from corporate climate. "The corporation's ethical climate refers to the ethical meaning attached by employees to organizational policies, practices, and procedures." Lynne L. Dallas, *A Preliminary Inquiry into the Responsibility of Corporations and Their Officers and Directors for Corporate Climate: The Psychology of Enron's Demise*, 35 RUTGERS L.J. 1, 3 (2003). Dallas discusses the responsibility of directors and officers in creating a "corporate climate that encourages and supports unethical and illegal behavior." *Id.*

cerning race and gender equity and diversity. I do this by exploring how American culture influences the cultures of companies operating within it. Superficial discussions of race and gender in American society inspire explicit diversity discussions within corporate culture that are equally superficial. These corporate diversity discussions are misleading because they imply that companies work hard to ensure race and gender equity. The explicit message within corporate cultures is that hiring, promotion, and pay decisions are based on merit. When men and whites are promoted more frequently and earn more than women and people of color who do the same work, the implied contextual message is misleading. The implication is that even with diversity training, diversity officers, and codes of conduct that prohibit discrimination, whites and males climb to the top of the corporate hierarchy anyway. It is an implied message of white male superiority.

Understanding that the men who manage companies have the power to transform corporate culture, and that in matters of race and gender equity they fail to do so, I offer an explanation for their inertia in Part IV. I focus on the issues faced by women of color. This focus is not intended to suggest that the problems that white women face in the workplace are less significant or deleterious. It is simply that the problems are different. The formation of coalitions among all women regardless of race is essential, but the problems women of color face in attempting to move into the ranks of senior management, finding a place on corporate boards, and enjoying equal pay and promotion rates are significantly distinguishable from the issues faced by white women. Racial stereotypes coupled with sex discrimination and harassment place women of color in a uniquely troubled position within the corporate hierarchy.[16]

Specifically relevant to the thesis of this Article is the fact that workplace equity for women of color depends on the commitment of CEOs, almost all of whom are white and male. The advancement of women of color as corporate employees, and equitable treatment for them in their roles as suppliers to the corporation and consumers of a company's services and goods, require the understanding and commitment of white male CEOs. The advancement of women of color in the corporate context requires that white male CEOs understand the status and experience of women of color within the corporation—

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16. For an excellent discussion of the barriers faced by women of color in joining corporate boards, see Lisa M. Fairfax, *Some Reflections on the Diversity of Corporate Boards: Women, People of Color, and the Unique Issues Associated with Women of Color*, 79 ST. JOHN'S L. REV. 1105 (2005).

even though their experiences and background are antithetical to the corporate norm.

Carbado and Gulati make a related observation. "The shape that diversity takes" in the corporate workplace "will be a function of what . . . white men want."[17] My observations in this Article are not limited to the problem of diversity, but include the continuing problem of discrimination against women. Without attending to the discrimination that women continue to face, an increase in the number of women in the workplace will only increase the number of problems they encounter. Increased diversity in the absence of anti-discrimination efforts will only increase instances of sexual harassment, and situations where women receive fewer promotions and less pay than their male counterparts for the same work. More diverse and equitable corporate workplaces for women are only possible if *men* change the way they run public companies. In a groundbreaking article, Trina Grillo and Stephanie Wildman make the point that in the race discrimination context, it is important for whites to talk about white supremacy, rather than "asking people of color to do all the work."[18] Similarly, women should not be expected to do all the work toward achieving gender equality.

Perhaps, in an attempt at coalition building, diversity discussions have become more and more inclusive, and almost unmanageably broad. Sometimes diversity discussions become unmanageably broad because of a tacit and perhaps unconscious unwillingness to understand and tackle the difficult problem of race and sex discrimination. For example, one organization includes personality, thinking style, and an employee's proximity to work as three areas in which the company attempts to achieve diversity.[19] When too broad, diversity and

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17. Carbado & Gulati, *supra* note 3, at 1658 n.20.

18. Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other -isms)*, 1991 DUKE L.J. 397, 407.

19. The website of IKON Office Solutions, Inc. includes a "Diversity @ IKON" section in which it presents the company's "broad definition of diversity . . . encompass[ing] multiple dimensions of similarity and difference." IKON, Diversity@IKON, http://www.ikon. com/about/careers/diversity.asp (last visited Mar. 13, 2006). The company's broad definition of diversity goals includes the following: job level/function, *personality*, national origin, religion, disability, education, job classification, socioeconomic status, management/non-management status, *thinking style, proximity to work*, sexual orientation, gender, race, field of work, age, and parental status. *Id.*

I chose to examine IKON's website for three reasons. First, IKON appeared on *DiversityInc* magazine's list of the Top 50 Companies for Diversity. Press Release, IKON Office Solutions West, Inc., DiversityInc Names IKON As a Top 50 Diversity Company; List Ranks IKON No. 30; Recognizes the Company's Commitment to Diversity (Apr. 11, 2005), *available at* http://www.shareholder.com/ikon/releaseDetail.cfm?ReleaseID=159895. IKON was

anti-discrimination efforts lose focus and meaning.[20] Grillo and Wildman suggest that comparisons and analogies among types of discrimination potentially impede understanding if no "time [is] devoted exclusively to examining one oppression."[21] In this Article, I devote Part IV exclusively to the discussion of the relationship between women of color who are corporate professionals and employees and the white men who run America's corporations in an effort to enhance understanding in this context.

II. A Chief Executive's Personality, Philosophy, and Power and Their Potential Impact on Discriminatory Corporate Cultures

Why do few women and people of color climb to the top of corporate hierarchies?[22] Why are women sometimes paid less than men for the same or similar work[23] and promoted less frequently than men whose qualifications are similar or inferior?[24] Tom Tyler's interdisciplinary research on what motivates corporate employees to follow corporate policy and rules is relevant to my inquiry.[25] Acknowledging

ranked 30 out of 200 responding companies based on its diversity commitment and initiatives. *Id.* Second, in spite of IKON's inclusion on this diversity list, at least three African-American IKON employees filed complaints with the Equal Employment Opportunity Commission (EEOC) containing serious allegations of racial discrimination and retaliation. Interview with James Vagnini, Partner, Leeds, Morelli & Brown, PC, in New York, New York (June 4, 2005). James Vagnini represents the three employees who were also interviewed on this date. Third, out of the eleven corporate officers featured on the company's website, only two were women. IKON, Corporate Officers, http://www.ikon.com/about/corporate_info/corpofficers.asp (last visited Mar. 13, 2006).

20. Grillo & Wildman, *supra* note 18, at 410.

21. *Id.*

22. *See, e.g., Helping Women Get to the Top*, Economist, July 23, 2005, at 11. "[T]he world's biggest companies are still almost exclusively run by men." *Id.* In 2005, "women account for 46.5% of America's workforce and for less than 8% of its top managers . . . ." *The Conundrum of the Glass Ceiling*, Economist, July 23, 2005, at 63.

23. Telephone Interview with James Vagnini, Partner, Leeds, Morelli & Brown, PC, (Sept. 9, 2005) [hereinafter Vagnini Telephone Interview]. "Women's annual earnings, relative to men's, have moved up more slowly since the early 1990s than previously, and still remain substantially below parity. Women who work full-time throughout the year . . . earned 76.5 percent as much as men in 2004." Fact Sheet, Inst. for Women's Policy Research, The Gender Wage Ratio: Women's and Men's Earnings (Aug. 2005), *available at* http://www.iwpr.org/pdf/C350.pdf. In 2005, "[f]emale managers' earnings . . . average 72% of their male colleagues'." *The Conundrum of the Glass Ceiling*, *supra* note 22, at 63.

24. Vagnini Telephone Interview, *supra* note 23.

25. Tom R. Tyler & Steven L. Blader, *Can Businesses Effectively Regulate Employee Conduct? The Antecedents of Rule Following in Work Settings*, 48 Acad. Mgmt. J. 1143 (2005); *see also* Tom R. Tyler et al., *Cultural Values and Authority Relations*, 6 Psychol. Pub. Pol'y & L. 1138 (2000); Tom R. Tyler, *Multiculturalism and the Willingness of Citizens to Defer to Law and to Legal Authorities*, 25 Law & Soc. Inquiry 983 (2000); Tom R. Tyler, *Trust and Law Abidingness: A Proactive Model of Social Regulation*, 81 B.U. L. Rev. 361 (2001).

that failure to comply with corporate policy is a pervasive problem, Tyler explores how compliance may be encouraged. He compares two approaches—a command-and-control approach and an approach that uses employees' own preferences and desires to motivate adherence to corporate policy.[26]

Tyler explains that there are several reasons why corporate employees adhere to corporate policy. First, some are more conscientious than others about following rules.[27] Second, employees are likely to follow corporate policy if they share the moral values and goals articulated by corporate leaders.[28] Tyler explains that one way to inspire adherence to corporate ethical codes is to encourage employees to follow their own moral compass.[29] Obviously, the next relevant question is what happens when an employee's moral beliefs differ from those enumerated as part of the company's moral fabric? Tyler writes about the possibility of aligning corporate practices with the moral values of employees.[30] He also observes that the converse—changing employee values so that they are consistent with the stated corporate morality—is difficult to accomplish.[31]

Tyler's observations are troubling when one considers the possibility of inspiring employee and executive adherence to corporate policies regarding the equitable treatment of women and minority employees. First, it is obvious that when employees' moral values do not include race and gender equity goals, companies will not align corporate practices with their employees' sense of morality—at least not explicitly. Companies, however, implicitly conform to their employees' lack of concern regarding fairness for women and minority employees when senior managers fail to actively and affirmatively confront pay and promotion rate disparities between men and women and whites and nonwhites. Moreover, according to Tyler's research, even when companies are committed to race and gender equity, they will not easily convert employees who do not share that commitment.[32]

Second, take Tyler's suggestion that companies encourage employees to follow their own moral compass.[33] Male employees and

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26. Tyler & Blader, *supra* note 25, at 1143-45.
27. *Id.* at 1143-44.
28. *Id.* at 1145.
29. *Id.* at 1153.
30. *Id.*
31. *Id.* at 1154.
32. *See id.* (discussing the difficulty organizations face when attempting to change employee values).
33. *Id.* at 1153.

white employees are not likely to understand the nature of the discrimination faced by women and minorities in the corporate context.[34] Whites and males rarely recognize the privilege that whiteness and maleness carry in American society.[35] They are likely to conclude that men and whites climb to the top of corporate hierarchies because decisions are based on merit alone and are not the result of the privilege that benefits whites and males in American society. Whites and men are not likely to understand the nature of the race and sex discrimination and white and male privilege that result in pay and promotion rate disparities. Discrimination against women and people of color will not be part of their moral consciousness.

Tyler also explains that employees who view the firm's procedures and practices as fair and legitimate are motivated to follow corporate policy.[36] Employees will conclude that rules and policy are legitimate if they view them as "desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions."[37] And, employees are more likely to adhere to corporate policy if their perception is that corporate processes and procedures are fair.[38] The employee's judgment regarding the firm's procedural fairness is based in part on the employee's perception of the extent of the firm's efforts to reduce biased treatment.[39]

Again, Tyler's research is cause for concern when considering workplace race and sex discrimination. Corporate policy that is perceived as benefiting women and minorities is likely to be viewed as biased, undesirable, and improper and, therefore, unfair and illegitimate. Employees, according to Tyler's research, will not respect or adhere to such policies.[40] The nature of the relationship between a strong CEO and corporate culture, however, offers hope for inspiring workplace race and gender equity. A CEO's sincere commitment to workplace race and gender equity is a prerequisite to achieving fair-

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34. *See* Peggy McIntosh, *White Privilege and Male Privilege: A Personal Account of Coming to See Correspondences Through Work in Women's Studies* (Wellesley Coll. Ctr. for Research on Women, Working Paper No. 189, 1988), *reprinted in* LESLIE BENDER & DAAN BRAVEMEN, POWER, PRIVILEGE AND LAW: A CIVIL RIGHTS READER at 22, 23 (1995) ("[W]hites are carefully taught not to recognize white privilege, as males are taught not to recognize male privilege.").

35. *Id.*

36. Tom R. Tyler, *Promoting Employee Policy Adherence and Rule Following in Work Settings,* 70 BROOK. L. REV. 1287, 1299 (2005).

37. *Id.*

38. *Id.* at 1303-04.

39. *Id.* at 1310.

40. *See id.* at 1302 (arguing that employees are less likely to support policies they consider illegitimate).

ness for women and minority employees. Once such commitment is in place, the power and influence of a strong CEO makes cultural transformation possible. My discussion of iconic CEOs and their success in transforming corporate cultures demonstrates this possibility. For example, when Welch was CEO of General Electric Co., he commanded unrestrained devotion from managers and employees.[41] He shaped the thoughts, ideas, and goals of the company's managers, insisting that they conform to his philosophy. If they did not, they were encouraged to leave the company. Welch expected his corporate vision and that of his executives to be identical.

A. Wal-Mart

In June 2004, a United States District Court judge ruled that a sex discrimination lawsuit against Wal-Mart Stores, Inc. could proceed as a class action.[42] The plaintiffs provided enough evidence to justify the certification of a class of current and former female employees of Wal-Mart.[43] The plaintiffs alleged discriminatory company-wide compensation and promotion policies and practices.[44] They provided statistical and anecdotal evidence that included allegations of gender stereotyping and a corporate culture detrimental to the interests of Wal-Mart's female employees.[45] Approximately 1.6 million women were eligible to join the class of plaintiffs, making this the largest workplace-bias suit in the history of the United States.[46]

Days before the plaintiff class was certified, Wal-Mart "announced . . . that it would make several changes . . . to improve conditions for its workers."[47] "The changes, outlined at the annual shareholders' meeting . . . by the chief executive . . . include the establishment of a compliance group that will oversee workers' pay . . . ."[48]

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41. *See infra* notes 75-92 and accompanying text.
42. Dukes v. Wal-Mart Stores, Inc., 222 F.R.D. 137 (N.D. Cal. 2004).
43. *Id.* at 143.
44. *Id.* at 141.
45. *Id.* at 145. Wal-Mart moved to strike the plaintiffs' evidence that was provided by expert witnesses on various grounds, but the company's motion was denied. *See* Dukes v. Wal-Mart, Inc., 222 F.R.D. 189, 191-95, 200 (N.D. Cal. 2004).
46. *See* Steven Greenhouse & Constance L. Hays, *Wal-Mart Sex-Bias Suit Given Class-Action Status*, N.Y. TIMES, June 23, 2004, at A1.
47. Constance L. Hays, *Wal-Mart Plans Changes to Some Labor Practices*, N.Y. TIMES, June 5, 2004, at C2.
48. *Id.* It was not clear from the company's announcement as described in Constance Hays's *New York Times* article whether the company's plan to reform labor practices included the alleged discrimination against women. When it comes to labor practices, there is much to reform at Wal-Mart. Wal-Mart managers allegedly denied workers their meal breaks. *Id.* Also, "Wal-Mart's critics claim that when it enters towns, it forces competing retailers out of business . . . replaces the jobs lost with fewer, lower-paid jobs with shorter

Most impressively, Wal-Mart's CEO announced "that he would cut executive bonuses if the company fails to meet diversity goals."[49] In spite of the company's announcement that it would reform some of its labor practices, one of Wal-Mart's initial responses to the class certification was a vow to appeal the certification to the Ninth Circuit Court of Appeals.[50]

In certifying the plaintiff class, the court was careful to note that it was not deciding that the plaintiffs' claims were true.[51] The order was not based on the merits of the plaintiffs' claims. The question I raise in this Article, however, does not depend on the truth or accuracy of the plaintiffs' allegations. The question in this Part involves an exploration of possibilities. How could Wal-Mart have avoided the filing of the sex discrimination suit in the first place? The suit may cost Wal-Mart a great deal of money. "Should Wal-Mart lose the case or agree to settle it, the cost could run into billions of dollars, based on the sheer size of the class . . . ."[52] The suit may significantly affect the company's reputation.[53] In any event, whether it is settled, litigated or eventually dropped, the suit will cost Wal-Mart a great deal in legal fees. Even if the plaintiffs' allegations are never proven, the most important question for the company is whether managers could have taken steps that may have avoided the allegations and the attendant

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hours and fewer benefits; creates more traffic; and destroys the character of the community." Neil Buckley, *Showdown in the Big-Box Shopping Aisles*, FINANCIAL TIMES, July 6, 2004, at 12. Some have criticized Wal-Mart for paying workers inadequate salaries and providing little to no job security. "Most workers' salaries are near or below the official U.S. poverty line, so those without second jobs qualify for government food stamps." PALAST, *supra* note 13, at 211. "About a third of the workers are temporary and hours expand, shift, contract at whim." *Id.*

49. Michael Barbaro, *Wal-Mart Promises to Do Better; Retailer Ties Bonuses to Diversity Goals*, WASH. POST, June 5, 2004, at E01.

50. Jonathan D. Glater, *Attention Wal-Mart Plaintiffs: Hurdles Ahead*, N.Y. TIMES, June 27, 2004, § 3, at 5; *see also* Constance L. Hays, *Wal-Mart Seeking Review of Class-Action Suit Status*, N.Y. TIMES, July 7, 2004, at C7. "Lawyers for Wal-Mart Stores asked a federal appeals court yesterday to review a judge's ruling that granted class-action status to a sex discrimination case, arguing that it was unfairly expanded to include as many as 1.6 million employees." *Id.*

51. Dukes v. Wal-Mart Stores, Inc., 222 F.R.D. 137, 144 (N.D. Cal. 2004).

52. Hays, *supra* note 50, at C7.

53. Commentators observed that the discrimination suit could "hurt the company's image and bottom line." Greenhouse & Hays, *supra* note 46, at A1. "Shares of Wal-Mart fell 1.6 percent . . . in trading on the New York Stock Exchange" the day after the class was certified. *Id.* "Aside from any settlement costs, the case could have implications for the company's image." Lauren Foster, *Women Hit Wal-Mart with 'Microsoft Phenomenon,'* FINANCIAL TIMES, June 24, 2004, at 8. "Wal-Mart's ability to brand itself positively in densely populated urban areas could be unfavourably affected" by the sex discrimination litigation. *Id.* "Wal-Mart's brand could suffer some degree of impairment." *Id.*

controversy by making gender equity an integral and apparent priority in establishing corporate culture.

The company's announcement that it would link executive bonuses to diversity goals applied not only to women employees, but also to minority employees.[54] The Wal-Mart sex discrimination suit offers important guidance for all large public companies seeking to establish corporate cultures in which discriminatory employment practices will not thrive. Clearly, the lessons that apply regarding sex discrimination are equally relevant, and perhaps inextricably linked to the achievement of racial justice in the workplaces that are governed by public companies.[55] The question explored in this Part is the extent

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54. *See* Barbaro, *supra* note 49, at E01. "The company will reduce executive bonuses by up to 7.5 percent this year and 15 percent next year if [Wal-Mart] fails to promote women *and minorities* in proportion to the number that apply for management positions." *Id.* (emphasis added).

Further illustrating the inextricable connections between race and gender in the workplace discrimination context is the fact that at least one of the named plaintiffs in the Wal-Mart sex discrimination suit, the one who is most visible, is an African-American woman. Reed Abelson, *Suing Wal-Mart but Still Hoping to Move Up*, N.Y. TIMES, June 23, 2004, at C1. The named plaintiff in the race discrimination class action against Texaco was also an African-American woman. BARI-ELLEN ROBERTS & JACK E. WHITE, *Roberts v. Texaco: A True Story of Race and Corporate America* 2 (1998).

Ironically, Wal-Mart has recently become very aggressive about encouraging efforts to enhance racial diversity within the law firms that represent the company. *See* Heather Smith, *Hue and Cry: Firms Have Begun to Respond to Wal-Mart's Urgent Call for Diversity Action*, AM. LAW., Sept. 2005, at 18.

55. Even though race and sex discrimination are frequently analogized in legal discourse, it is important to acknowledge the important distinctions between the two. For example, sex discrimination law has developed in the context of discourse concerning the source of sex equality. Some commentators argue that equality between men and women will exist if women are treated the same as men under the law. CATHARINE A. MACKINNON, FEMINISM UNMODIFIED 32-33 (1987). The countervailing view is that differences between men and women must be acknowledged and embraced in order to achieve equality for women under the law. *Id.* at 33. Pregnancy, for example, requires different treatment for women. *Id.* Both approaches have been criticized by Catharine MacKinnon. "Under the sameness standard, women are measured according to our correspondence with man, our equality judged by our proximity to his measure. Under the difference standard, we are measured according to our lack of correspondence with him, our womanhood judged by our distance from his measure." *Id.* at 34.

This sameness/difference debate arises differently in the context of race discrimination. It is likely that all advocates of racial equality will argue that it is achieved only if people of color are treated the same as whites. Discussions about genetic differences among different racial groups take place only among those who believe that racial equality is impossible because of the inherent inferiority of certain minorities, or superiority of whites. *See generally* RICHARD J. HERRNSTEIN & CHARLES MURRAY, THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE (1994). One example of this discussion is found in a book that claims that the intellectual acuity of Asians is superior to whites, and that both groups are intellectually superior to people of African descent. *Id.* at 269. Proponents of racial equality acknowledge differences among races only to the extent that minorities experience the world differently from whites. *Id.* at 270.

to which the power, personality, and business philosophy of a company's chief executive can contribute to a corporate culture in which racial and gender equity thrive.

B. Sam Walton

There is a theory of leadership that emphasizes the connection between a leader's personality and particular circumstances within an organization.[56] Walton was the founder and chief executive of Wal-Mart which for the past three years has topped the list of *Fortune Magazine*'s most successful companies. To understand Wal-Mart culture one must understand Walton's personality. Walton was the product of small-town American life "and though he became the wealthiest man in America he clung tenaciously to his country roots, preferring to live more like a commoner than a king."[57] Perhaps because of his small-town upbringing, Walton "was used to direct personal contact with store managers and employees."[58]

Walton's hands-on approach to running the company he founded was essential in imbuing his retail philosophy of consumer primacy. Walton's goal was consumer satisfaction and he knew that was best achieved by communicating with his employees and inspiring them to place the customer first. Through his employees, Walton transformed the chore of shopping into a cheerful and gratifying adventure.[59] He encouraged employees and managers to smile at customers and to be helpful, emphasizing that congenial employee/consumer relations were to be an integral part of Wal-Mart's culture.[60] Walton was clear and direct in his communications with managers and employees about the company's culture. He made the establishment of a consumer-friendly Wal-Mart culture his personal mission.

> *[S]omeone at the top* had to establish guidelines that would provide everyone with a road map. If the guidelines were indeed established and disseminated properly, they would form the backbone of the company's *culture*. They would have to be communicated to every manager, every employee, time and again. It was no good writing them in memo form and distributing them. People would simply read them and toss the memo aside.

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56. *See, e.g.,* EDGAR H. SCHEIN, ORGANIZATIONAL PSYCHOLOGY 79 (2d ed. 1970).

57. ROBERT SLATER, THE WAL-MART DECADE 39 (2003).

58. *Id.* at 40.

59. *Id.* at 45.

60. *Id.* at 44-45.

> For the corporate culture to catch on, the messages had to be communicated personally. Sam Walton got that point. That was one reason why he spent so much time in the stores. He wanted to build and then spread a culture, because only if the messages were transmitted consistently and with great clarity would the organization function effectively.[61]

Wal-Mart's consumer-friendly culture is an essential factor in the company's success. It is a culture that is established because Walton frequently and personally communicated with his managers about his vision. One question worth considering is whether Walton's personal approach to establishing a Wal-Mart culture could have precluded the filing of litigation alleging gender discrimination? What would have happened if Walton attempted to inspire a culture that was vigilant about detecting gender stereotyping and other forms of conscious and unconscious discrimination? If Walton worked to establish a culture where women's issues and concerns were taken seriously, would the company have avoided the negative publicity and expenses associated with claims of pervasive workplace bias?

The same question is relevant with respect to companies that face race discrimination class action suits. What would have happened if "someone at the top" at Texaco Inc. or Coca-Cola Co. had established guidelines or a road map that structured the company's culture? What if leaders at companies that face race discrimination suits personally "communicated to every manager, every employee, time and again" the importance of race and gender equity in employment practices?[62] If corporate leaders personally communicated with managers and employees about clear corporate values relating to nondiscriminatory employment practices, how far would this go in establishing a corporate culture where discrimination would be detected and not tolerated?

Another aspect of Walton's personality had an effect on corporate governance at Wal-Mart. Walton was a charismatic leader who was able "to get people to do things for him. . . . Using his immense communication skills, he was able to get managers and employees to go the extra step, to act creatively and innovatively."[63] This personality trait has potentially positive import in the discrimination context. What would happen if CEOs were to use their "communication skills"

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61. *Id.* (emphasis added).
62. *Id.* at 44.
63. *Id.* at 83.

to inspire managers and employees to value racial and gender diversity and equity?

Walton's business philosophy included basic rules for success. Walton thought it was important that communication be reciprocal.[64] Walton communicated to employees about corporate policy and values, but he also thought it was important for him to "[l]isten to everyone in [the] company," particularly his employees.[65] If this aspect of Walton's philosophy were put into practice in the context of race and sex discrimination, Walton and other Wal-Mart leaders may have understood and dealt with the concerns of their female employees before they became a litigation problem. And, this observation is relevant in the race discrimination context where listening to the concerns of employees of color may have prevented the filing of discrimination litigation. For example, years before Texaco settled a race discrimination class action that cost the company $176 million, several of the company's African-American employees talked with the vice president in charge of human resources about the firm's employment practices.[66] The discussion ended quickly with the vice president abruptly and unceremoniously dismissing the employees from his office.[67] No one listened to employees of color at Texaco.

In addition to the CEO's personality and business philosophy, his power over the corporate enterprise is an essential factor in establishing corporate culture. Walton's power and influence over the culture of the business he founded endures years after his death in 1992. "[A]lthough many aspects of Wal-Mart changed . . . the essence of the place, the *culture* and the business philosophy that Sam Walton had devised, remained."[68] Illustrating the power a CEO wields, Lee Scott, Wal-Mart's CEO since January 2000, described a change in the reception of his Wal-Mart colleagues to his ideas and suggestions. His ideas were taken "much more seriously" after he became CEO.[69] "[O]ffering what was previously a[n] . . . opinion can be perceived, if you're not careful, as a command. . . . [As CEO] you have more power. So I've been very careful . . . [to] say . . . what I'm about to say is not a directive, it's only for discussion."[70]

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64. *Id.* at 50-52.

65. *Id.* at 51.

66. ROBERTS & WHITE, *supra* note 54, at 146-48.

67. *Id.* at 147-48.

68. SLATER, *supra* note 57, at 6 (emphasis added).

69. *Id.* at 164.

70. *Id.* (internal quotation marks omitted).

"The CEO has to be careful, ran an old joke at General Electric; if he asks for a cup of coffee, somebody might run out and buy Brazil."[71] CEOs who use their power and influence to issue readily followed directives regarding racial and gender equity may successfully transform discriminatory corporate cultures.

There are, however, aspects of Walton's personality that may have negatively affected Wal-Mart's culture as it related to female employees. Walton was a frugal man who continued to live modestly even after he became a wealthy corporate titan.[72] Walton felt that "[e]ach time Wal-Mart saved a dollar, it put the company one step ahead of the competition."[73] One is left to wonder whether Walton's frugality would discourage him from directing managers to invest an adequate amount of corporate resources into monitoring compliance with anti-discrimination law and diversity efforts and training. For example, Walton was concerned about bureaucratic corporate layers that he considered wasteful. This concern caused him to question the need for human resources personnel.[74]

C. Jack Welch, Henry Ford, and the Racial Climate at General Electric and Ford Motor Company

Welch was appointed CEO and chairman of General Electric in December 1980.[75] "Welch wanted full-scale cultural change at GE, and that meant shaking up the entire workforce."[76] Welch transformed General Electric, an already successful company and raised its value, in part, by laying off over 100,000 employees, thereby achieving his goal of making the company "as lean and responsive as the smallest startup."[77]

In four important ways the leadership styles of Walton and Welch were similar. First, Welch's tenure at the company he ran was remarkably successful in terms of the firm's growth in earnings.[78] Second, Welch was rewarded with unrestrained devotion from his managers

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71. Thomas A. Stewart, *The King Is Dead*, FORTUNE, Jan. 11, 1993, at 34.
72. SLATER, *supra* note 57, at 53.
73. *Id.*
74. *Id.* at 59.
75. ROBERT A.G. MONKS & NELL MINOW, CORPORATE GOVERNANCE 219 (2d ed. 2001).
76. *Id.*
77. *Id.* One observer criticized Welch's strategy. "[C]ompanies, like GE, that regard layoffs as a course of first resort have jettisoned more than people. They've also abandoned the old-fashioned business values that made this the American century—loyalty, trust, respect, teamwork, hard work, compassion—in a feverish pursuit of the quick buck." O'BOYLE, *supra* note 14, at 16.
78. Mary Williams Walsh, *Where G.E. Falls Short: Diversity at the Top*, N.Y. TIMES, Sept. 3, 2000, § 3, at 1.

and employees.[79] Third, Welch's strong personality dominated corporate culture and executives.[80] And, like Walton, Welch failed to use his power to instill in his senior executives, managers, and employees a commitment to establish a corporate culture in which racial and gender equity thrived.[81] Welch exercised considerable power in shaping the thoughts, ideas, and goals of General Electric's managers. "Welch insisted that his subordinates conform to his way of thinking. If they didn't, they would have to leave. The people placed in positions of authority were devoted disciples of Jack Welch . . . who shared his philosophy of how business ought to be conducted."[82]

> Welch had very definite ideas about how he wanted his senior managers to behave and think and act. Welch wanted more than mere allegiance to his orders. He wanted the GE executive corps to execute them with enthusiasm and gusto, to carry them out as if they were their own . . . .[83]

Unfortunately, none of Welch's power over his executives and managers was used to develop a business philosophy that included the distinct interests of women and minority employees and managers. Welch's lack of attention to the interests of GE's female employees yielded a corporate culture hostile to women.[84] "Sexual harassment was a common event. The culture was a macho one that condoned lewd comments from male coworkers . . . ."[85]

Welch was a corporate visionary, but he failed to provide adequate leadership in establishing a corporate culture that promoted gender equity and racial diversity at all levels within the company. One example of a lost opportunity to positively influence General Electric's climate for women and minorities occurred when Welch failed to make the monitoring of compliance with anti-discrimination law and the attainment of diversity throughout the organization a part of his effort to bring "full-scale cultural change at GE."[86] While women and nonwhites represented approximately forty percent of the company's U.S. workers, they were underrepresented among the ranks of senior officers.[87] Only 6.4% of General Electric's officers

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79. *Id.*
80. One commentator speculated that future generations "will wonder . . . how . . . GE ever became so dependent on the personality of one man." O'BOYLE, *supra* note 14, at 375.
81. Walsh, *supra* note 78, at 1.
82. O'BOYLE, *supra* note 14, at 72.
83. *Id.* at 73.
84. *Id.* at 107-09.
85. *Id.* at 109.
86. MONKS & MINOW, *supra* note 75, at 219.
87. Walsh, *supra* note 78, at 1.

were women, and only one person of color served as a senior executive.[88] Welch focused on earnings and market share rather than diversity efforts,[89] ignoring the possibility that discrimination accounted for the dearth of women and people of color among the ranks of General Electric's senior officers.

There is a theory of leadership based on the premise that successful leaders must be able to diagnose circumstances within an organization and then choose appropriate strategies that address problems, concerns, and goals.[90] Clearly, Welch possessed this leadership quality, but he failed to apply it in a way that would promote a more racially diverse management group within his company. For example, when a group of African-American managers discussed their concerns about diversity at General Electric with Welch, "he asked them what they had in mind. They had no answer."[91] The employees should have had an answer, but Welch should have provided some guidance and leadership as he successfully did with respect to other issues and problems the company faced.[92]

Like Walton and Welch, Ford's staggering power, mythic personality, and unique business philosophy shaped the culture of the company he ran.[93] Like Welch's General Electric, "Henry Ford's Ford Motor . . . [became] an extension of his personality, a kind of cult where even people who weren't told what to do would infer what they thought their leader wanted and act accordingly."[94] The same is true for Walton's Wal-Mart where employees and managers engage in almost cult-like behavior that includes frequent recitations of a Wal-Mart cheer.[95] One author compared Ford and Welch, calling them "great business titans."[96] With respect to their philosophies on "how a CEO ought to manage" a company, "Welch . . . was cut from the same cloth as Ford."[97]

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88. *Id.*

89. *Id.*

90. *See generally* EDWIN P. HOLLANDER, LEADERSHIP DYNAMICS: A PRACTICAL GUIDE TO EFFECTIVE RELATIONSHIPS 30-33 (1978).

91. Walsh, *supra* note 78, § 3, at 1.

92. After their meeting with Welch, the African-American employees formed a group that, among other things, organized gatherings where managers of color informally met with General Electric's senior executives, including Welch himself. *Id.*

93. There are some interesting similarities among the three men that may or may not have affected the cultures of their companies. For example, like Walton, Ford continued to live modestly even after he became significantly wealthy. DOUGLAS BRINKLEY, WHEELS *for the* World 110 (2003).

94. O'BOYLE, *supra* note 14, at 72.

95. SLATER, *supra* note 57, at 47-49.

96. O'BOYLE, *supra* note 14, at 106.

97. *Id.*

On the other hand, Ford is not comparable with Welch and Walton in one vital respect. Unlike Welch and Walton, and perhaps because he lived in a different era, Ford was an overtly raging bigot. Ford was openly and vociferously anti-Semitic, and his public campaign against Jews in his private life had longstanding negative repercussions for Ford Motor Company.[98] Paradoxically, however, Ford was considered a friend and benefactor of the African-American community at a time when it was most unpopular. Ford befriended George Washington Carver, an African-American scientist and head of the Tuskegee Institute, a historically black college.[99] Ford donated money to Tuskegee and for Carver's laboratory work and opened a trade school in Georgia, "specifically to help poor African American children [naming the school] the George Washington Carver School."[100]

Ford's personal relationships with the African-American community influenced the relationship between Ford Motor Company and its African-American employees. Henry's Ford Motor Company was the first to pay white and African-American workers equal wages.[101] Ford, however, was not free of racial bias. "[T]he realities of the factory floor and the limits of Ford's largesse dictated that blacks had a clear shot at only the most basic jobs."[102] "Ford Motor Company discriminated to a lesser extent against African Americans than any other automaking company, yet it's clear that some segregation still occurred" at the company's workplace.[103]

The personalities, power, and business philosophies of Walton, Welch, and Ford shaped the cultures of the companies they ran, and all three companies became powerful and influential citizens in their own right. Ford's example illustrates how a strong CEO affects corporate culture as it relates to people of color and religious minorities and how the CEO's impact on a company's culture can have longstanding ramifications. For example, "[l]ong after [Ford and Carver] died, the relationship between Ford Motor and Tuskegee Institute continued. From 1997 to 1999 . . . Ford awarded Carver's school

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98. *See generally* BALDWIN, *supra* note 12; *see also* BRINKLEY, *supra* note 93, at 9-10.

99. BRINKLEY, *supra* note 93, at 444.

100. *Id.* Ford contributed money to African-American churches and "even when an issue of racial tension flared up at [Ford Motor Company factories], Ford instinctively took the side of the African Americans." *Id.* at 484.

101. *See id.* at 171 (describing the excitement of many African Americans in the South upon hearing that Ford paid equal wages).

102. *Id.* at 384.

103. *Id.* at 390.

grants worth $4 million."[104] Conversely, there are long lasting nega-
tive ramifications for Ford Motor Company as a result of Ford's viru-
lent anti-Semitism.[105]

D. Distinguishing the Roles of Chief Executive, Senior Executives, and Other Managers

Walton was able to command cooperation throughout all the
levels of Wal-Mart's hierarchy. Walton's focus on consumer primacy
created a culture of customer satisfaction that endures more than a
decade after his death. There is no reason to doubt, that if he had
tried, Walton could have inspired a corporate culture in which gen-
eral equity prevailed. Workplace equity for women could have been
an important part of his enduring legacy.

Walton's success in establishing Wal-Mart's consumer-friendly cul-
ture may have been attributable, in part, to Wal-Mart's small size dur-
ing the early part of Walton's tenure.[106] It is relatively difficult for the
chief executives of large public companies to do as Walton did and
make frequent personal appearances in order to establish company
policy and culture. The CEO will need help from senior executives in
communicating and establishing corporate culture. Walton had such
help. "Sam Walton and . . . *other senior executives* . . . hammered away at
the *ingredients of the culture.* . . . [T]he rival store had similar ingredi-
ents in some memo locked in a drawer. At Wal-Mart, *the people at the
top* made sure that those messages filtered down to the employees
clearly and frequently."[107] Because Wal-Mart's senior executives were
clear and consistent in communicating corporate policy, the Wal-Mart
culture remained firmly established and entrenched even after the
company grew into a multinational behemoth. Even Wal-Mart em-
ployees who worked in stores as far away as China were clear about the
essentials of the Wal-Mart culture.[108]

The responsibility of senior executives and other corporate man-
agers in establishing a healthy corporate culture becomes apparent
upon exploring the fiduciary duty of care that these corporate actors
owe to their firms. Corporate officers owe a duty of care to the corpo-
ration.[109] Directors owe a duty of care that includes a duty to monitor

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104. *Id.* at 445.
105. *See generally* BALDWIN, *supra* note 12, at 328-29 (discussing the backlash against
Ford's views).
106. SLATER, *supra* note 57, at 45.
107. *Id.* at 46 (emphasis added).
108. *Id.* at 48.
109. STEPHEN M. BAINBRIDGE, CORPORATION LAW AND ECONOMICS 285 (2002).

corporate compliance with the law, including the laws prohibiting discrimination.[110] Directors begin to satisfy their duty to monitor corporate compliance with the law by requiring managers to install reporting and information-gathering systems that enable them to oversee compliance.[111] For them to work, the reporting and information-gathering systems that managers design should include clear and frequent communication from officers to managers and from managers to employees about how to comply with law.

Compliance is an integral part of establishing corporate culture. Reporting systems should be reciprocal. Officers and managers should receive information, but they must provide information also. Employees will be more clear about the information they should and may report if their supervisors clearly and adamantly convey corporate policy and emphasize the importance of compliance with law and reporting instances of noncompliance. Executives will gather compliance information from managers, and managers will gather compliance information from employees. This information is most likely to be accurate and complete if executives and managers do as Walton and his senior executives did. They must clearly and frequently transmit the corporate values, policies, and beliefs that will become the company's culture. And, clear and consistent directives about the imperatives of complying with anti-discrimination law must be included in these communications about corporate policy and culture in order to avoid the types of discriminatory corporate cultures that led to the large settlements paid by Coca-Cola, Texaco, Mitsubishi Motor Corp., and other public companies.

Understanding the role of corporate officers beyond the CEO in establishing a firm's culture, particularly a culture of racial and gender equity, requires a consideration of the levels and types of corporate management.[112] Understanding differences among corporate managers is essential to understanding management's responsibility in establishing the information-gathering systems that monitor compliance with law, including the law prohibiting discrimination. Discerning the various levels of managerial hierarchy within the public corporation is an essential prerequisite to grasping how officers and

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110. *See, e.g., In re* Caremark Int'l Inc. Derivative Litig., 698 A.2d 959, 970 (Del. Ch. 1996).

111. *See, e.g., id.*

112. *See, e.g.,* Thomas W. Joo, *Corporate Hierarchy and Racial Justice,* 79 ST. JOHN'S L. REV. 955 (2005) (observing that, instead of shareholders, the board of directors and high-level executive officers hold the real power in a corporation).

managers can help to establish corporate cultures where racial and gender equity thrive.

The first step in understanding differing roles among corporate actors involves distinguishing managers from leaders.[113] A manager implements corporate beliefs, policies, and values.[114] The manager breathes life into a company's culture and is responsible for achieving corporate goals.[115] A leader influences managers by steering the course of action they undertake and by guiding their opinions.[116] The leader articulates corporate beliefs, policies, values, and culture. One theory of leadership describes the traditional manager as the person involved with an organization's day-to-day operations. This theory distinguishes the traditional manager from the transformational leader who conveys his vision for the corporation, inspiring followers/managers to implement the vision.[117]

At Wal-Mart, Walton as CEO was the quintessential transformational leader who effectively conveyed his vision for the company, articulating and establishing corporate beliefs, policies, values, and culture. It is likely that if he included in his vision the interests of his women employees, Walton may have avoided much of the controversy that now plagues subsequent Wal-Mart leaders concerning the class of female plaintiffs alleging pervasive discriminatory employment practices at Wal-Mart. Walton's failure to articulate corporate beliefs, policies, and values that included the interests of Wal-Mart's female employees was a missed opportunity to do what is best for shareholders and the company and avoid the negative publicity and costs of discrimination litigation. Of course, Walton could not have done this alone. He needed the help of all Wal-Mart managers and executives.

A close look at Wal-Mart's hierarchy may help to understand the role to be played by each level of leadership and management in creating and achieving a corporate culture intolerant of discrimination. A decade after Walton's death, there were 4000 store managers who reported to 350 district managers at Wal-Mart.[118] Each district man-

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113. *Compare* JAMES MACGREGOR BURNS, LEADERSHIP (1978), MAX DE PREE, LEADERSHIP IS AN ART (1989), *and* JOHN W. GARDNER, ON LEADERSHIP (1993), *with* JAMES CHAMPY, RE-ENGINEERING MANAGEMENT (1995) (discussing the necessity of reform), PETER F. DRUCKER, MANAGING FOR THE FUTURE (1992) (analyzing the role of management in the modern economy), *and* MICHAEL HAMMER & JAMES CHAMPY, REENGINEERING THE CORPORATION (1993) (discussing the role of corporate management in proposed corporate reform).

114. CHAMPY, *supra* note 113, at 129.

115. *Id.*

116. *See generally* GARDNER, *supra* note 113, at 15-17 (describing how leaders set agendas and promote shared goals).

117. *Id.* at 3-4.

118. SLATER, *supra* note 57, at 90, 108.

ager supervised six to eight stores and reported to Wal-Mart's thirty-five regional vice presidents.[119] The regional vice presidents managed thirty to forty stores and oversaw the work of eight to ten district managers.[120] The regional vice presidents reported to six division heads, and these division heads reported to the CEO of Wal-Mart and Sam's Club.[121] There were also fifty senior vice presidents who reported to twenty executive vice presidents, some of whom reported to Lee Scott, Wal-Mart's CEO.[122] Each level of management was in "close and constant touch."[123] "In a world of cell phones, high-speed computers, and video-conferencing, Wal-Mart still wants senior executives to stay in personal touch every week."[124]

The potential to transform Wal-Mart's culture in a way that includes the interests of female employees is in the hands of the company's leaders—the CEO and senior executives. As the company's leaders, it is up to them to state corporate beliefs, values, and policies concerning gender equity. By staying in "close and constant touch" with the company's division heads and regional vice presidents, senior officers, after receiving the CEO's vision regarding gender equity, may clearly and effectively convey the vision to their managers. It would be the job of the division heads and regional vice presidents to convey the vision to the district managers who report to them. And the district managers must articulate the vision to the store managers who report to them. Transmitting the vision is not enough. Each level of management should be accountable to the next highest level, reporting the extent to which managers have accomplished the vision of gender equity. In effect the managers in the middle of the hierarchy—the district managers, regional vice presidents, and division heads—serve the company both as managers and leaders. They help to create and articulate a corporate vision and policy of gender equity and they are also responsible for its implementation by supervising the managers who report to them. It is the ultimate responsibility of each store manager to carry out the corporate policy of gender equity by training and monitoring employees.

This model of leadership and management has worked for Wal-Mart in establishing a corporate culture that values consumers and resulted in impressive growth in corporate earnings. The same model

119. *Id.* at 108.
120. *Id.*
121. *Id.*
122. *Id.* at 109.
123. *Id.*
124. *Id.*

would work to establish a corporate culture that values the interests of female employees. And, the model could be used at any public company to transform discriminatory corporate cultures such as the ones that existed at Texaco, Coca-Cola, and other companies that settled race and sex discrimination class actions in recent years.

Wal-Mart's current CEO said, "You have to be less tolerant of people who don't get the culture. You cannot let . . . issues simmer. It's not healthy . . . . So the district manager and the regional vice presidents have to step in aggressively and resolve these issues."[125] Even though he was not, he could have been talking of racial and gender equity as an integral part of the Wal-Mart culture. How much litigation would be avoided if large public companies established a culture of racial and gender equity and refused to tolerate the "people who don't get the culture" by resolving discrimination issues in a timely and aggressive manner?

Unfortunately, senior officers and managers have a conflict. It is in their best interest to say that "all is well," even when it is not. All officers and managers should be recruited in the fight for race and gender equity in the workplace. When they say that all is well, managers should be challenged by corporate leaders whenever there are disparities in pay and promotion rates for female and minority employees. This is everyone's task and not work that should be delegated to diversity officers and human resources professionals alone. The CEOs must get involved. Men, not just women, must get involved. Whites, not just people of color, must get involved.[126]

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125. *Id.* at 109-10.

126. Shareholders may attempt to transform racially troubled corporate cultures by submitting proposals concerning alleged gender inequities for consideration at the company's annual meetings, but theirs is also a limited, and somewhat impotent role. The shareholders' contribution in transforming corporate culture depends in great part on their interaction with corporate managers who may attempt to exclude shareholder proposals from proxy materials. Again, Wal-Mart provides illustrative examples. Wal-Mart shareholders submitted various proposals requesting reports on the company's affirmative action and discrimination policies. *See* Wal-Mart Stores, Inc., Proxy Statement (Form DEF 14A), at 21-23 (Apr. 15, 2003), *available at* http://www.walmartstores.com/Files/AR_2003_Proxy.pdf (including proposals regarding the company's employment policies relating to race and gender); Wal-Mart Stores, Inc., Proxy Statement (Form DEF 14A), at 15-17 (Apr. 12, 2002), *available at* http://www.walmartstores.com/Files/2002_proxy.pdf (same). Wal-Mart managers sought to exclude the shareholder proposals from its proxy materials. *See, e.g.,* Wal-Mart Stores, Inc., SEC No-Action Letter, 2004 SEC No-Act. LEXIS 298, at *5-*12 (Feb. 17, 2004); Wal-Mart Stores, Inc., SEC No-Action Letter, 2003 SEC No-Act. LEXIS 448, at *2-*9 (Mar. 17, 2003); Wal-Mart Stores, Inc., SEC No-Action Letter, 2002 SEC No-Act. LEXIS 517, at *14-*30 (Apr. 3, 2002); Wal-Mart Stores, Inc., SEC No-Action Letter, 2002 SEC No-Act. LEXIS 522, at *34-*51 (Apr. 3, 2002).

Community activists may attempt to influence corporate culture, but they too are dependent on the willingness of corporate managers to listen and take the activists' advice.

III. Corporate Culture and the Potential for Conflict Resolution Between Men and Women; Whites and People of Color

A great deal has been written about culture generally and corporate culture in particular.[127] One interesting approach to the general discussion is found in *The Conflict and Culture Reader*.[128] Many of the essays in this book describe the relationship between conflict resolution and the cultures of various countries.[129] The issues presented are relevant to the discussion of conflict resolution within the corporate culture—specifically the resolution of conflicts between men and women, and whites and nonwhites. Examining the relationship between conflict resolution and corporate culture may explain, in part, why it has been so difficult to establish corporate cultures in which discrimination against women and nonwhites will not thrive.

In an essay that discusses how culture shapes communication in a way that can create or resolve conflict, one author describes two types of cultures:

> Although no one culture exists exclusively at one extreme, in general, low-context cultures (LCC) refer to . . . cultures that value individual orientation, overt communication codes (or "elaborated codes"), and maintain a heterogeneous normative structure with low cultural demand/low cultural constraint characteristics. Conversely, high-context cultures (HCC) refer to . . . cultures that value group-identity orientation, covert communication codes (or "restricted codes"), and maintain a homogenous normative structure with high cultural demand/high cultural constraint characteristics. . . .

For example, Sister Barbara Aires, director of corporate responsibility for the Sisters of Charity of Saint Elizabeth, has met with Wal-Mart executives concerning gender equity at the company. Constance L. Hays, *Social Issues Tug Wal-Mart in Differing Directions*, N.Y. Times, June 30, 2004, at C1. According to Aires, Wal-Mart managers "have made massive efforts in their minds to attend to issues they believe they now have to address . . . . Part of it came because of the discussions we were having, and part of it because they knew there was going to be litigation." *Id.* (internal quotation marks omitted). Equal Rights Advocates, a San Francisco nonprofit organization, is also involved with Wal-Mart in connection with the sex discrimination suit. Dave Ford, *No Equal Rights Amendment, but Group Keeps Its Spirit Alive; Wal-Mart Is Just the Latest Among Giants That Group Takes On*, S.F. Chron., July 9, 2004, at F7.

127. *See, e.g.*, Terrence E. Deal & Allan A. Kennedy, Corporate Cultures: The Rites and Rituals of Corporate Life (2000); John P. Kotter & James L. Heskett, Corporate Culture and Performance (1992); Stephany Watson, *Fostering Positive Corporate Culture in the Post-Enron Era*, 6 Transactions: Tenn. J. Bus. L. 7 (2004).

128. The Conflict and Culture Reader (Pat K. Chew ed., 2001).

129. *See, e.g.*, Marc Howard Ross, *The Relevance of Culture for the Study of Political Psychology and Ethnic Conflict, in* The Conflict and Culture Reader, *supra* note 128, at 236, 236.

Whereas meanings and interpretations of a message are vested mainly in the explicit communication codes in the LCC system, meanings and interpretations of a message are vested primarily in the implicitly shared social and cultural knowledge of the context in the HCC system . . . . In short, in the HCC system *what is not said is sometimes more important than what is said.* In contrast, in the LCC system words represent truth and power.[130]

The United States is essentially a low-context culture.[131] In a low-context culture, individuality reigns and messages and information are communicated explicitly.[132] The roles that cultural context and cultural norms play in transmitting information are less significant than the role of direct and unambiguous discourse.[133] Norms are heterogeneous in a low-context culture.[134]

Norms are homogenous in high-context cultures.[135] Individuals in high-context cultures tend to identify with a group.[136] In high-context cultures, messages, and information are implicitly communicated. "[M]eanings and interpretations of a message are vested primarily in the implicitly shared social and cultural knowledge of the context in the HCC system."[137] China, Japan, Korea, and Vietnam are essentially high-context cultures.[138]

Even though the scholarship describing high- and low-context cultures relates to the cultures of countries, it makes sense to apply the analysis to corporate culture. In fact, describing a country's culture as high or low context may be overly broad and general and essentializes a nation's culture. This is less of a problem when a corporation's culture is described as high or low context. Unlike the culture of a large nation which may vary from state to state or region to region, a corporation's culture is far less likely to modulate.[139]

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130. Stella Ting-Toomey, *Toward a Theory of Conflict and Culture, in* THE CONFLICT AND CULTURE READER, *supra* note 128, at 46, 46-47 (emphasis added).

131. *Id.* at 47.

132. *Id.* at 46-47.

133. *Id.*

134. *Id.* at 46.

135. *Id.* at 46-47.

136. *Id.* at 46.

137. *Id.* at 47.

138. *Id.*

139. Again, Wal-Mart provides an interesting example. The cult-like performance of the Wal-Mart cheer transcends national boundaries. The culture of consumer primacy and the employee's unrestrained demonstration of loyalty to Wal-Mart are the same in the United States as they are in China. *See supra* note 108 and accompanying text.

With that said, it would seem that U.S. corporations essentially operate as high-context cultures.

The relevance of these insights about high- and low-context cultures to the thesis of this Article becomes evident upon understanding that corporations operate as high-context cultures within a low-context culture—the United States. In the United States, a low-context culture where communication systems are explicit, the overt information and messages about racism and sexism, to the extent they exist, decry the subordination of women and people of color. The explicit message in the United States regarding anti-discrimination is misleadingly benign. The explicit message is that racism and sexism are wrong, and because the discussion is limited and superficial, many whites and men believe that the problems of racism and sexism are no longer significant. Many believe the issues are resolved.

What is communicated about racism and sexism within corporate culture? Corporate cultures are high context. Messages are communicated implicitly, and the corporate culture and corporate norms which are largely homogenous constrain the behavior of individuals within these cultures. Because corporations operate as high-context cultures, most of the communication about race and gender equity is implicit. In other words, the context provides most of the information about race and gender within the corporate culture. There are, however, explicit messages about race and gender diversity within the corporate culture, but like the discourse in U.S. society in general on this subject, the messages are superficial. Even worse, the messages transmitted in corporate cultures about equal employment opportunity are misleading. Websites proclaiming the value of diversity, diversity training programs, and communications with shareholders and employees portray corporate cultures that are intolerant to racism and sexism.[140]

The explicit discourse about racism and sexism in U.S. society and the explicit but misleading communication within corporate culture on these issues combine dangerously with the implicit communication systems of the high-context corporate culture. The implicit messages about race and gender within the high-context corporate culture emerge from circumstances where whites and men may earn more and are promoted more frequently than people of color and women who are similarly situated.[141] The superficial discussion of

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140. *See* Cheryl L. Wade, *"We Are an Equal Opportunity Employer": Diversity Doublespeak*, 61 WASH. & LEE L. REV. 1541, 1547-50 (2004).

141. *Id.* at 1543-44.

race and gender in U.S. society inspires explicit diversity discussions within corporate culture that are equally superficial. These corporate diversity discussions are misleading because they imply that companies work hard to ensure race and gender equity. The *implied contextual message*, however, is that it may be true that many men and whites are promoted more frequently and earn more, but these decisions are based on merit. The implication is that even with diversity training, diversity officers, and codes of conduct that prohibit discrimination, whites and males climb to the top of the corporate hierarchy anyway. It is an implied message of white male supremacy.

Consider the implied contextual messages transmitted by the culture at General Electric under Welch as an example. Women and nonwhites represented approximately 40% of the company's U.S. workforce, but only 6.4% of General Electric's officers were women.[142] Additionally, only one of the company's senior executives was a person of color.[143] In high-context cultures, "what is not said is sometimes more important than what is said."[144] What is said at all public companies such as General Electric is that the company is an equal opportunity employer. But what is more important in the high-context corporate culture is what is not said. The communication that matters most are the implicit messages transmitted by context. The General Electric culture and context, where women and people of color are underrepresented at the top of the corporate ladder, send the message that the company is best managed by white men.

Individuals in high-context cultures are likely to avoid or ignore conflicts.[145] This means that in high-context corporate cultures, men and women, whites and people of color are likely to ignore and avoid the conflict situations that arise between them. This is especially unfortunate because the corporate workplace is the one place in American society where people of different races come together. Carbado and Gulati describe how racial and gender conflict situations are ignored and avoided in the workplace.[146] Women may allow sexist comments and jokes to go unchallenged in an effort to demonstrate that they fit in at their places of business.[147] Carbado and Gulati also explain that white men who would ordinarily resist sexist conduct, and challenge it in others, may not do so in order to demonstrate their

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142. Walsh, *supra* note 78, § 3, at 1.
143. *Id.*
144. Ting-Toomey, *supra* note 130, at 47.
145. *Id.* at 50.
146. Carbado & Gulati, *supra* note 3, at 1678.
147. *Id.* at 1684 n.73.

loyalty to the corporation.[148] They also describe this phenomenon as it relates to racial minorities who engage in the kind of conduct that will make whites comfortable and demonstrate cooperation and institutional loyalty.[149] This conduct makes their success in the workplace more likely,[150] but it also results in missed opportunities to resolve racial and gender conflict.

In high-context cultures, "[a] calculated degree of vagueness and circumlocution are typically employed when tensions and anxieties mount."[151] This means that even if individuals in a high-context corporate culture do not avoid or ignore conflict, any attempt at conflict resolution is likely to be plagued with "vagueness and circumlocution."[152] In another article, I provide an example of this kind of vagueness and circumlocution in response to a shareholder's attempt to resolve ongoing conflicts between African-American employees at Texaco who alleged pervasive, systemic corporate discrimination and the company's managers.[153] In its proxy statement to shareholders, Texaco recommended that its investors vote against a shareholder proposal that suggested the company review its diversity and anti-discrimination policies.[154] Texaco's recommendation in its proxy statement to shareholders was certainly vague and circumlocutory. Without any reference to the company's dismal equal employment record, the company referred only to its affirmative action policies and human resources guidelines.[155] The company engaged in what I call "diversity doublespeak."[156] Doublespeak is "language that pretends to communicate but really doesn't. . . . Doublespeak is language that *avoids* or shifts responsibility . . . . Basic to doublespeak is incongruity . . . between what is said or left unsaid, and what really is."[157] Doublespeak is the vague and circumlocutory language that is typical in high-context cultures when conflict arises.

Conflict resolution is more likely in low-context cultures because "conflict players are probably more likely to assume a direct, confrontational stance when differences of opinion occur."[158] This com-

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148. *Id.* at 1685 n.75.
149. *Id.* at 1684-85.
150. *Id.* at 1685-86.
151. Ting-Toomey, *supra* note 130, at 49.
152. Vagnini Telephone Interview, *supra* note 23.
153. Wade, *supra* note 140, at 1550-56.
154. *Id.* at 1555-56.
155. *Id.* at 1556.
156. *Id.* at 1555.
157. WILLIAM LUTZ, DOUBLESPEAK 1-2 (1989) (emphasis added).
158. Ting-Toomey, *supra* note 130, at 49.

munication style inspires parties in a conflict to "press for resolution and early closure."[159] This means that the resolution of differences between men and women, and whites and people of color, would be more likely in the American low-context culture, but because American society remains racially segregated to a large extent, the resolution of racial conflict is less likely to occur.

IV. WOMEN OF COLOR

Companies will change only if the men who run them change. Obviously, this change is not easily achievable. The character traits that allow men to succeed and climb to the top of corporate hierarchies do not include an inclination to adhere to regulatory mandates such as the laws that prohibit discrimination.[160]

Corporate managers, officers, and senior executives may not readily adhere to regulatory mandates, but they certainly adhere to the clearly articulated mandates of their CEO. Why do most chief executives fail to mandate cultural change regarding race and gender equity in a way that is potentially transformative? I do not believe that their inertia is motivated by any personal animus towards women or people of color. Instead, the inertia of the average CEO is most likely caused by a lack of understanding of the complexity of race and sex discrimination on the one hand and the privileging of whites and men on the other. In this Part, I examine aspects of the relationship between women of color and the white men who manage public companies in order to reveal potential insight into the lack of leadership in matters of race and gender equity on the part of this nation's chief executives.

Chief executives are not likely to understand that much of the discrimination that occurs against women and minority employees, consumers, and suppliers is rooted in unconscious bias.[161] One aspect of this unconscious bias is what I will call the "corporate expectation bias." This unconscious bias affects the expectations that white male managers have for the potential corporate success of women and men of color. The bias, however, is most vividly illustrated by explor-

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159. *Id.*

160. *See* Carbado & Gulati, *supra* note 3, at 1655-56. Describing the work of Donald Langevoort, the authors write that "Langevoort suggests that to the extent that the people at the top of the corporation—mostly white men—got there by exhibiting advancement traits, they are less likely to comply with a variety of regulatory mandates, including those relating to racial diversity." *Id.*

161. In a groundbreaking article, Charles Lawrence develops the idea that some racism is unconscious. *See* Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

ing the expectations that white male corporate managers have for wo-
men of color[162] within the corporation. The corporate expectation
bias is an unconscious expectation that women of color are best suited
for certain kinds of work that require skills and characteristics that are
not valued in the corporate context.

The corporate expectation bias should be distinguished from
stereotyping. Stereotyping is a different phenomenon that infects the
status of white female workers, but the impact of stereotyping on
white women is significantly different from racial stereotyping.[163] Be-
cause they enjoy close personal relationships with white women who
are their sisters, daughters, wives, and mothers, stereotypes about
white women are less likely to influence the thinking of the white men
who manage public companies.[164] Close personal relationships with
people of color are rarer in American society because of patterns of
de facto segregation in housing, schools, and social circles.[165] Racial
stereotypes present a unique threat to the careers of people of color.
Racial stereotypes burden minority employees who invest time, en-
ergy, and effort in negating negative stereotypes.[166] Racial stereotypes
also prevent managers who rely on them from having better relation-

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162. Scholars have written eloquently about the problems women of color face under
legal rules and interpretations. *See, e.g.,* Kimberle Crenshaw, *Demarginalizing the Intersection
of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and
Antiracist Politics,* 1989 U. CHI. LEGAL F. 139 (describing interpretations of Title VII that
ignore the unique experiences of women of color); Judy Scales-Trent, *Black Women and the
Constitution: Finding Our Place, Asserting Our Rights,* 24 HARV. C.R.-C.L. L. REV. 9 (1989)
(recommending the use of "sub-categories" in constitutional law in order to fully confront
the issues women of color face).

163. A telephone interview with a white female litigation associate who has spent more
than eight years at a large firm with approximately 350 attorneys in offices around the
world illuminates the problem of racial stereotyping. Another woman at her firm, edu-
cated at a northeastern Ivy League school, moved from the corporate department into
human resources. This human resources "professional," who is involved in the firm's di-
versity efforts, made "off-colored comments" about minority groups in the firm, according
to my interviewee. Her comments reflected racist *stereotypical* thinking about people of
African descent. She told the interviewee that black people are lazy, not as smart as whites,
and are welfare recipients or affirmative action beneficiaries. The senior associate requires
anonymity because she is involved in her own sexual discrimination suit against her law
firm. Telephone Interview with Senior Associate at Large Firm (July 20, 2005).

164. Cheryl L. Wade, *Corporate Governance as Corporate Social Responsibility: Empathy and
Race Discrimination,* 76 TUL. L. REV. 1461, 1478 (2002).

165. *See, e.g.,* JONATHAN KOZOL, SHAME OF THE NATION: THE RESTORATION OF APARTHEID
SCHOOLING IN AMERICA 32 (2005) (describing racially segregated schools that result from
segregated housing patterns).

166. Devon W. Carbado & Mitu Gulati, *Working Identity,* 85 CORNELL L. REV. 1259, 1279
(2000). Negating negative stereotypes "consumes resources in the form of time and effort,
which is one of the costs of discrimination." *Id.* (footnote omitted).

ships with and expecting good work and results from employees of color.

Negative stereotypes may adversely affect the success of women of color in the workplace.[167] It is possible, however, for stereotypes to be negated. Carbado and Gulati write eloquently about the work performed by employees of color to convince white colleagues and managers that certain stereotypes do not apply to them.[168] The corporate expectation bias is more difficult to negate. It is rooted in the complex historical role women of color have played as workers in the United States. Like racial stereotypes, the expectation bias most adversely affects the people about whom chief executives and corporate managers know the least. Like racial stereotypes, the expectation bias provides white male corporate managers with incomplete information about people of color.

The expectation bias is not easily negated by women of color because it is rooted in social reality. "[I]mmigrant women, Black women, and women of color generally continue to occupy disproportionately the most degraded positions on the economic ladder . . . ."[169] Most of the low-skilled and cheap labor in the garment industry is provided by women of color.[170] The overwhelming majority of nannies and maids in the United States are immigrant women of

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167. *See, e.g.,* Regina Austin, *Sapphire Bound!,* 1989 WIS. L. REV. 539. Austin describes the "Sapphire" stereotype of black women as "tough, domineering, emasculating, strident, and shrill." *Id.* at 540. Austin also describes the "Mammy" stereotype of black women as one "who always knew her place." *Id.* at 570. Neither the "Sapphire" nor "Mammy" stereotype attach to black women the kinds of character traits that would inspire an expectation of corporate success.

Carbado & Gulati explain the complexity of racial stereotypes. "Because racial stereotypes often have gender specificity, [a black man's] success would not necessarily send a strong signal about the capacity for black women to succeed in [the] corporate environment." Carbado & Gulati, *supra* note 3, at 1661 n.27.

Even though women of color are "the fastest growing segment of the work force," corporate diversity efforts "have failed to recruit and retain" women of color. JENNIFER TUCKER ET AL., NO MORE "BUSINESS AS USUAL": WOMEN OF COLOR IN CORPORATE AMERICA— REPORT OF THE NATIONAL WOMEN OF COLOR WORK/LIFE SURVEY 12 (1999). Only two percent of senior management or executive positions are held by women of color. *Id.* A large number of women of color "report that they have limited opportunities for advancement within their respective companies and that they doubt top management's commitment to diversity," and that they work in corporate cultures that are "uncomfortable, hostile and unsupportive." *Id.*

168. Carbado & Gulati, *supra* note 166, at 1262.

169. Laura Ho et al., *(Dis)Assembling Rights of Women Workers Along the Global Assembly Line: Human Rights and the Garment Industry, in* GLOBAL CRITICAL RACE FEMINISM 377, 377 (Adrien Katherine Wing ed., 2000).

170. *Id.* at 378-79.

color.[171] "In the United States, African-American women, who accounted for 60 percent of domestics in the 1940s, have been largely replaced by Latinas, many of them recent migrants from Mexico and Central America."[172] Most caretakers for the elderly and infirm are women of color—some are African American, American-born racial minorities, or immigrants of color.[173] Some women of color from impoverished developing nations fall prey to criminals who bring them to the United States, steal their passports, and force them to become sex workers.[174]

To the extent there is any interaction between white male corporate managers and women of color, it is likely to occur when she cares for his children, his elderly parents, or cleans his home. The women who perform these services for his friends and neighbors are also women of color. De facto racial segregation in American society, coupled with employment realities for women of color create expectations on the part of the whites who employ them. At least on some unconscious level, some will expect women of color to be able caretakers, good cleaners, and willing sex workers. These expectations, as they relate to women of color, will not inspire confidence in them as corporate workers who belong near or at the top of corporate hierarchies.

V. CONCLUSION: THE "NEW" CORPORATE GOVERNANCE AND CORPORATE WOMEN

Lawyers, academics, politicians, legislators, reporters, and members of the business community considered corporate governance matters with unprecedented urgency in the years following the accounting scandals that bankrupted Enron Corp. and WorldCom Inc. Corporate governance is defined as "the relationship among various participants in determining the direction and performance of corporations. The primary participants are (1) the shareholders, (2) the management (led by the chief executive officer), and (3) the board of directors. . . . Other participants include the *employees*, customers, suppliers, creditors, and the community."[175]

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171. Barbara Ehrenreich & Arlie Russell Hochschild, *Introduction* to GLOBAL *Woman*: Nannies, Maids, and Sex Workers in the New Economy 1, 6-7 (Barbara Ehrenreich & Arlie Russell Hochschild eds., 2003).

172. *Id.* at 6.

173. *See* Lynn May Rivas, *Invisible Labors: Caring for the Independent Person, in* GLOBAL *Woman*, *supra* note 171, at 71-72.

174. *See* Ehrenreich & Hochschild, *supra* note 171, at 9-10 (describing the problem of illegal immigrant sex workers).

175. MONKS & MINOW, *supra* note 75, at 1 (emphasis added).

Even though many corporate governance scholars see employees as participants in corporate governance,[176] the problem of race and sex discrimination in the workplaces managed by large public companies is rarely included in corporate governance discussions. This is a mistake. The relationship between corporate managers and workers can have a powerful effect on a company's reputation and profitability. Managers who fail to adequately confront the problem of workplace discrimination risk public relations debacles, dissatisfied workers who may underperform, and litigation or some other potentially costly form of alternative dispute resolution. Obviously these risks reduce shareholder profits and fail to maximize shareholder wealth as is required under state common law. Because the relationship between management and workers can affect a firm's profitability, the relationship is acutely relevant to management's relationship with shareholders. This means that the company's relationship with workers should be one of the central considerations in corporate governance. Consideration of this relationship must include the problem of workplace discrimination that disadvantages female employees and employees of color while at the same time privileging white male workers and managers.

Sheila Wellington's insight that women do not need to change is an important one because many see the solution to the problem of gender inequity in the contexts governed by public companies only in light of the changes that women must make.[177] One focus in this Article is on CEOs, especially male CEOs. There are not enough women CEOs and senior managers to make a meaningful difference in American corporate culture at this point. Men *and* women must concern themselves with equitable corporate governance and decision making. I describe iconic CEOs who successfully established strong corporate cultures that reflected the CEO's philosophy and personality. The CEOs described in this Article did not work to establish corporate cultures of gender equity. I discuss their tenure at their respective corporations in order to clarify the CEO's ability to transform corporate

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176. *See, e.g.*, MARGARET M. BLAIR, OWNERSHIP AND CONTROL 16 (1995); Kent Greenfield, *The Place of Workers in Corporate Law*, 39 B.C. L. REV. 283, 287 (1998); Marleen A. O'Connor, *The Human Capital Era: Reconceptualizing Corporate Law to Facilitate Labor-Management Cooperation*, 78 CORNELL L. REV. 899, 902 (1993); Katherine Van Wezel Stone, *Employees as Stakeholders Under State Nonshareholder Constituency Statutes*, 21 STETSON L. REV. 45, 48 (1991).

177. *See, e.g.*, WARREN FARRELL, WHY MEN EARN MORE: THE STARTLING TRUTH BEHIND THE PAY GAP—AND WHAT WOMEN CAN DO ABOUT IT (2005). Warren Farrell offers women twenty-five ways to close the pay gap between men and women. *Id.* at xxix. The advice includes working more hours, being absent less often, taking on different and bigger responsibilities, and getting better training. *Id.* at 78, 90, 105, 108.

culture by inspiring almost blind loyalty on the part of managers and employees to the CEO's vision. The hope is that CEOs will incorporate meaningful anti-discrimination efforts as part of their governance agenda.

I recognize the limits of this discussion about creating corporate cultures in which race and gender equity thrive. I demonstrate that cultural transformation in this regard can take place, how it can be accomplished, and explore some of the reasons why it has not occurred. I leave the work of determining how to motivate CEOs to engage in this type of cultural transformation for subsequent articles.