

# SHAFTED:

WHY WOMEN LOSE IN A WINNER-TAKE-ALL WORLD

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## **INTRODUCTION**

### **THE MYSTERY**

What is happening to women in the American workplace?

The popular consensus is that women are making slow but steady progress toward equality. Cracks are starting to show in the proverbial glass ceiling, and if we just knock hard enough, it's only a short matter of time before it finally shatters. That was the story the authors of this book were told as young women; it's the story that, until very recently, we were telling our daughters. All three of us came of age at the height of the women's movement in the 1970s. Doors seemed to fling themselves open as we approached. Two of us attended a university that our parents could never have afforded and that had not admitted women just a few short years before we got there. When we decided to go to law school, we each found support and encouragement—as did many others, because our generation quadrupled the number of women in professional and graduate programs. At the time that we graduated, there were positions opening up to women at top law firms, government offices, and exciting public interest clinics and, despite our considerable insecurities about moving into what we perceived as a male legal universe, we ultimately landed the jobs of our dreams.

Around us, we saw women thriving and, while there were the inevitable gender-related road bumps—especially when it came to combining work and family—we saw progress. The number of women in leadership positions increased, with the next woman supervisor more successful than her predecessor. We found positions at law firms, in the government, and ultimately, in law schools, without being told “women need not apply,” or turning to the female-targeted Help Wanted ads of our mothers’ era.

While we had to plan to make sure that giving birth to our children did not interfere with our jobs, today our employers offer generous family leave policies, and we see both women *and* men taking it. Our daughters didn’t take the home economics classes that we were forced to take in high school (girls weren’t supposed to take shop), nor did they face national rules precluding girls from joining Little League baseball teams. Now, our daughters and sons play the same sports, take the same classes, and use social media in equally self-revelatory and embarrassing ways. And, overall, the number of women who work outside of the home is rising, and the amount of time that men spend in caring for their children is also going up.

The numbers and splashy headlines seem to bear this out. Since 1990, women have earned more bachelors and master’s degrees than men, and since 2006 more doctorate degrees. By 2010, women made up 47% of the U.S. workforce—up from 18% in 1974. In 2013, Lieutenant General Michelle Johnson assumed command of the Air Force Academy, becoming the first woman to lead one of the premiere military academies. This was the same year that the Joint Chiefs of Staff lifted the combat exclusion for women in the military—which opened about 80% of positions to women. A record number of women are in Congress today and serve as Supreme Court Justices. We even have a woman vice president in the White House.

Thanks to advances like these, the conventional narrative goes that women are gaining ground, that women's fight for equality is a happy (if still incomplete) and steadily progressing one, and that leaning in can lead to success. We began the research into this book when we realized that this conventional narrative might not be entirely accurate. Today, we work as academics, all with different but overlapping specialties, who decided to get together to look at the most recent and comprehensive data on women in America.

What we found floored us. As we put all the pieces together, we were shocked by the analysis that quickly unfolded before us. What we saw was far from the triumphal story of women's progress we had been told and that we had been telling our own kids. We discovered that women weren't just falling behind in only a few places, they were falling behind almost everywhere, even before the coronavirus pushed so many women out of their careers. The painful truth behind the splashy headlines is that women in the workplace are steadily losing ground and have been for decades.

We started our research with the gender wage gap, looking at the difference between the earnings of men and women. Women made big gains in education in the 1960s and 70s, catching up to men in college graduation rates by 1982, and beginning to substantially shrink the wage gap as a result in the ensuing decade. After 1990, women surged ahead of men educationally; they got higher grades, became more likely to graduate, and earned more higher-level degrees. By all indications, women seemed to be closing in on parity.

But something happened in the 1990s to throw women off course. In 1990, the year the world-wide web was created (and, coincidentally enough, the year before the U.S. Department of Labor created the Glass Ceiling Commission), the gendered wage gap was about the same for women across all strata.

No matter how much education they had, women all made about the same percentage of the male wage, even if they worked full time. While we held out hope for the future, we didn't yet see many women becoming factory foremen, plumbers or mechanics—the good-paying jobs that had sustained blue collar families in our youth. We were convinced, though, that that day was coming soon. And when, in the 90s, June's daughter wanted to replace the Star Wars wallpaper in her bedroom, June was delighted to find a female crew to do it. All the signs seemed to point to significant, unstoppable progress for women.

But that's not the whole story. In the 1990s, progress on closing the gender wage gap began to slow, and then stop. As we continued to dig into the statistics, we found that nowhere was this inequality between men and women starker than at the top of the pay scale. Numbers for women working in finance and tech were dismal. The number of women in those fields, peaked in the 1980s and 90s, then declined precipitously in the 2000s, and for those women who stuck it out, the gender gaps in wages stayed high. We saw problems in the top corporate and professional ranks too. For example, the number of women law grads increased, but the percentage of top equity partners (those who are paid the most) in law firms did not—all this during a time when the top salaries were increasing substantially.

We learned that although women *have* been moving into the executive ranks over the past two decades, as of December 2020, women's representation in the very lucrative, high-powered CEO positions remains at a miniscule 7.8%, a devastating statistic given that women make up 51% of the population. Although women were earning 25% of MBAs by 2000, women's representation on Wall Street *fell* after that date, the very period when financial sector salaries were soaring, and women should have been swooping into lucrative positions with their fancy degrees. And here's another perplexing fact: even when women do break the

glass, they are more likely to be appointed to troubled or failing companies and to be targeted by activist investors. Instead, women have been most successful in smaller companies and nonprofits that still pay standard salaries. Where salaries skyrocket, women tend to be scarce.

So the wage gap war has not been kind to women at “the top.” But what about those women in lower-earning positions? With those stats in mind, we assumed that women in that sector must have made progress in the 1990s and beyond. Guess again. While the wage gap for women with the least education did narrow in the 1990s and women were earning more than they had in 1980, the primary reason for some movement toward wage equality wasn’t that women were doing better, it was that men with the least education were making a lot less. Pretty bleak stuff.

Next, we considered America’s newest endangered species: the middle class. This was an area where all research seemed to suggest that women were succeeding. Men had lost the high paying blue-collar jobs that once sustained the American middle, but women were still there: schoolteachers, nurses, government workers, occupational therapists, college professors (mostly at community colleges and less prestigious universities, and outside of the STEM fields), social workers, and assistants—people who take care of others and support large parts of the American economy. Indeed, employment projections showed that education and health care would be the two biggest growth areas. Factories could be automated, but physical therapy and middle school could not. Women were perfectly positioned for boom time across these industries. Or so we thought. Looking at the numbers from the 1990s onwards, it was clear that teachers and health care workers were being hit by the same forces as everyone else.

When the coronavirus hit, things got dramatically worse for women. Even before COVID-19, women with children paid a “motherhood penalty” in terms of their wage gaps: As the *New York Times* reported in October 2020, “Substantial research has shown that most professional gender gaps are in fact motherhood gaps: women without children are much closer to parity with men when it comes to salaries and promotions, but mothers pay a large career penalty.” COVID-19 showed just how fragile women’s progress in the workplace had been all along. According to the U.S. Bureau of Labor Statistics, there were 2.2 million fewer women in the labor force in October 2020 than there were in October 2019. Whenever the economy contracts, people lose jobs and some workers, discouraged by the difficult labor market, sit it out for a while. But women aren’t sitting it out so much as being shoved out by disproportionate job loss, shuttered schools, lack of childcare, pay disparities and lack of public policy to support working women. At time of writing, Equal Pay Day, the date that shows how far into the year women must work to earn what men earned in the previous year, is in late March. That means women must work almost 15 months to earn what men earn in 12 months.

The question we began asking ourselves since laying out these grim statistics is a simple one: why?

The conventional answer is that women have dropped out by choice; they stay home with their children and this explains everything. The time-honored answer to why gender inequality exists is “women’s family responsibilities.” The “reason” for women’s drop out rates due to COVID-19 or failure to achieve pay-parity with men is because we just need to try harder while fighting our “natural” instincts to stay home with our babies. This conventional answer explains today’s disparities in the same terms as yore: women, by nature,

simply make different choices than men. They care more about being home with their children than men do. They derive more pleasure from helping others than stepping over them in a rise to the top.

And certain facts and figures do seem to support these suppositions, which fuel the musings of those who, like the “Google guy,” see women’s claims for equality entirely as a matter of special pleading. Women, after all, are in the workplace rather than outside of it, they just choose the staff attorney position that allows them to leave at 6PM rather than the partnership track job that demands long hours. Women comprise 93% of nurses, as they respond to calls to help the sick, while they opt out of the high paying financial sector jobs that pay far more and the emergency services with irregular hours that allow male nurses to earn more than the women. These choices, we are told, explain the continuing wage gap. The only hope for progress involves persuading women to be greedier and men to mop more floors. Women’s futures depend on their abilities to “lean in” and to find the right househusbands to care for their children—or (as many of the most successful professional women are doing) not to have children at all. It is true that fathers and mothers cannot both work sixty hours weeks, and women are still the more likely parent to call it quits on the partnership track.

The problem with this line of thinking is that it leaves one vital area unexamined: the modern American workplace. It doesn’t explain why the gap between all male corporate executives of the 1950s and their female secretaries rarely exceeded twenty to one while the gap between today’s CEOs and their gender-integrated workforces is over 300 to 1. It provides no tools for untwisting the double bind that refuses to promote women who are unwilling to bend the rules, but then punishes—more severely than men—those women who

are caught breaking them. Nor does it explain how women, who were once thought unfit for participation in the market, now model what business consultants see as the most productive management techniques—yet still lose out to the men in wages and opportunities for promotion.

Most importantly, it doesn't explain why things got worse for women in terms of pay since the 1990s.

Why the 1990s? Why did the number of women *decline* on Wall Street after 1999? Why are there fewer women in computer science today than in the mid-eighties? And why do 50% of female tech engineers quit the profession without mentioning family obligations as a significant reason? It's not that women are incapable of meeting demands for high performance. In most fields, women do as well or better than the men on objective measures; their companies do better with more gender and racial diversity in their executive ranks.

What we learned in the course of our research is that the conventional answer to why this is happening—that women prefer to spend time with their families than work long hours, i.e. the old “homemaking and corporate-ladder climbing just aren't compatible” excuse—has nothing to do with it. Instead, we came to realize that something very different was going on. It's what led us to look elsewhere, namely, at the widespread and destructive changes in the American economic system that happened in the 1990s and that have roots as far back as the post-war era.

Previously—from the 1940s to the mid-1980s—bankers' salaries tended to go up at about the same rate as other people's wages. But between 1982 and 2007, average annual compensation in the financial sector doubled, exceeding \$100,000 a year; in contrast, compensation in the rest of the economy plodded along, increasing from roughly \$50,000 to

\$58,666 in the same period. Since then, CEO pay has grown at an absurd rate. By 2005, executive pay in the financial industry averaged \$3.5 million a year—the highest of any industry. In fact, since the 1970’s, CEO pay in the United States has grown by almost 1,000%. Meanwhile, ordinary worker salaries during this period increased by a measly 11 percent (adjusted for inflation). And—wouldn’t you know it—it was within the financial sector with the greatest pay increases that women saw the greatest gender gap pay differences.

And it was there that we reached a startling conclusion. The new “winner-take-all” or WTA approach to business, politics, and even raising children that gained ground in the 1990s that has transformed our workplaces, schools and homes is also to blame for fundamentally harming women and our prospects for equality in our lifetimes. What do we mean by WTA?

The classic economic meaning of the term “winner-take-all” is a system that provides a disproportionately high pay-off for a single dominant player. Michael Jordan in his prime, for example, could single handedly determine the outcome of a game to a greater degree than the number two basketball player of his era. It should not therefore be surprising that he was also the first NBA player to sign a contract for more than \$20 million. In business, “winning” may similarly mean dominating an entire economic sector. When Microsoft, for example, beat out Apple, making Windows the dominant desktop operating system of its time, the payoff for the company in 2000 was a market valuation of \$500 billion compared to \$4.8 billion for Apple.

We are using the term “WTA economy” in a different way. We see the critical shift in the new economy as the ability of those at the top to allocate a much larger share of institutional resources for themselves. In the first chapter of this book, we’ll discuss the success of Sam Walton, the founder of Walmart, who became one of the richest men in America (although Walton died in 1992, his family remains one of the richest families in the world). Walton, in turn, handsomely

paid his overwhelmingly male store managers, who made several times the salaries of line employees. In the meantime, his overwhelmingly female hourly labor force needed food stamps or partners contributing a second income to survive. What was the key to store manager bonuses? Keeping the wages of the hourly employees low -- by any means necessary. Some herald Walmart as the winner in the competition to dominate the low-price retail sector. But we see it as a WTA enterprise because it succeeded in becoming the number one company in the country in wage theft, all though a system that guaranteed that none of the well-paid executives who designed the system would ever go to jail.

Everywhere we looked, we saw more evidence of the WTA ethos and its valorization of winning at all costs. In business, we saw companies such as General Electric. Jack Welch, who would no doubt be embarrassed by a comparison with Walmart, championed the adoption of an executive compensation system that had a lot in common with the one Walton devised. GE's reported earnings soared and so did its stock price, boosting top executive bonuses. But after Welch left, the Securities and Exchange Commission showed that much of GE's apparent gains in earnings were the result of accounting fraud. The true legacy of the Welch era may be GE's bankruptcy; yet none of the executives will have to return their bonuses. On television, talent competitions like *American Idol* and gladiator battles like *American Ninja warrior* pit people against each other for entertainment. On *Survivor* and *Big Brother*, the person who is the most socially conniving wins—and everyone else loses. Even romance has been overtaken by the WTA ethos, with Bachelors and Bachelorettes competing to make the “perfect” match. It's no coincidence that the trend for reality TV shows began in the 1990s, just as the WTA economy began to really take off.

But perhaps the biggest impact of WTA has been on the workplace—and by extension, women. Despite years of steady gains and the fact that women are still thriving, and often beating men in both basic and higher-level education, today's WTA workplaces have successfully blocked women's progress. The sexual harassment women face isn't new. What is new is the nature of competition itself. Today's world has become a place that hosts a series of competitions in which every successful man needs to be out for himself. Gender theorists describe some workplaces as having a "masculinity contest culture." This is a "zero-sum game," the scholars explain, in which "men compete at work for dominance by showing no weakness, demonstrating a single-minded focus on professional success, displaying physical endurance and strength, and engaging in cut-throat competition."<sup>1</sup> What this really means is that generating revenues, while ignoring risks, becomes "showing no weakness." Being in the office until ten p.m., after a two-hour dinner at company expense, demonstrates "a single-minded focus on professional success." Belittling a colleague on maternity leave in order to undermine her standing in the company is engaging in "cut-throat competition." As a result, a small group of alpha males appropriates an ever-larger share of society's benefits to the disadvantage of everyone else. In today's competitive workplaces, those men rule, and everyone else loses. Zero-sum (if one person wins another must inevitably lose) become negative sum (we are all worse off).

To make matters worse, this increasing male dominance validates the conclusion that women don't have what it takes to make it into the most exclusive "bros' clubs," and that the men do deserve the power, wealth, and glory that comes with the territory. In this sense, sexual

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<sup>1</sup> *This is a "zero-sum game":* Jennifer L. Berdahl, et al., *Work as a Masculinity Contest*, 74 J. Soc. ISSUES 422, 430. (2018).

harasser Roger Ailes's multimillion-dollar salary and personal domination of Fox News' editorial views is as much a sign of this new era as Harvey Weinstein's casting couch.

The irony is that Ailes's and Weinstein's management practices did not just work to women's disadvantage; the two men violated every management rulebook in existence. Which brings us to another key component of the WTA workplace: the disregard for best practices, simple morality, and often the rule of law itself. Virtually every study of business performance shows that the bottom line improves with the inclusion of a more diverse group in top management. That doesn't happen when those at the top care more about their individual perks—whether the perks are multimillion dollar bonuses or sexual exploitation—than the long-term health of their companies. The end result when Wall Street wolves blow up the economy and get bailed out, or a CEO destroys a company but leaves with a golden parachute, is that everyone else suffers. Women are simply the canaries in the coal mine for an economy set on a course to societal destruction.

In this book, we'll use the newest hard data and we'll tell you what few others are willing to admit: The nature of workplace competition itself is still stacked against women. We'll take you inside this "game of thrones" economy, which places women in what we call a reinforcing Triple Bind:

- 1. If women don't compete on the same terms as the men, they lose.*
- 2. If women do compete on the same terms as the men, they become the first to be stabbed in the back.*
- 3. When women see the women ahead of them fail, they take themselves out of the game.*

While we used to think that women would eventually catch up with men, we've learned that the truth is that maids may catch up with janitors in a hundred years, but if current conditions remain the same, women at the top will *never* catch up with the men at the top. The gap is becoming larger not smaller. Leaning in or telling stories about sexual harassment won't narrow this gap. Equally sex discrimination cases aren't enough. It's true that before the Equal Pay Act of 1963, it was perfectly legal for companies to pay women less than men and that after Title VII came into effect the following year, women could sue their employers for other types of discrimination too. But it took decades of litigation and court interpretations before judges began to respond to individual instances of pay and promotion disparities. Although Title VII prohibited sex discrimination, it wasn't until the mid-1970s that most major newspapers finally stopped publishing sex-segregated want ads and sexual harassment wasn't even recognized until the 1986 Supreme Court case of *Meritor Bank v. Vinson*. What's more, the protections of Title VII against discrimination based on race, sex, religious, color, and national origin only apply to employees who work for employers with 15 or more employees. A large portion of the population is simply not covered by Title VII. To make matters worse, women who do sue are often driven out of companies for doing so, and their unscrupulous employers get to continue where they left off, unabashed and unimpeded.

*Shafted* will tell the real story of what's happening to women in the American workplace. That story, to be fully understood, must be told in two interwoven strands. The first explains how and why women's workplace gains have stalled, why they are consistently losing ground everywhere that the economy is booming. The second strand involves what has happened to men as the economy has moved toward even more unbridled winner take all rules.

Bringing these two strands together makes the changing workplace story about a clash of values, not simply about a contest between men and women, but between competition and collaboration, individualism and community, and self-interest and concern for others.

In every chapter of this book, you'll meet a woman in the workplace who bravely decided to take legal recourse against her employer to fight discrimination. As workplace scholars, we collect legal cases like these in the same way other people collect stamps, baseball cards or recipes. Lawsuits give us rich details about the individuals who bring them and provide information (like pay scales) that we might otherwise never learn. When we were young lawyers and worked on sex discrimination cases, we saw these cases as a way of opening up workplaces that had once been entirely white and entirely male. Today, we see things differently. Although more than 20,000 sex discrimination cases per year are filed with the U.S. Equal Employment Opportunity Commission, we no longer view such cases as a means of transformation. The individual lawsuits help the individual who is bringing the case, but they do not address the way that winner-take all competition intersects with traditional gender dynamics to limit women's advancement. The Supreme Court has undercut the class actions that once helped transform large companies, and arbitration agreements mean that many cases will be settled without any lawsuit ever being filed. What the cases do offer us, however, is a detailed picture of dysfunctional workplaces—the ones where the lawyers failed to settle, where the plaintiffs felt they had no choice left but to sue. The complaints in these cases, which involve detailed facts submitted under penalty of perjury, thus give us a fascinating insight to the women who lose out in today's workplaces.

You'll also meet the influential bosses and CEOs, many of them men, who have remade the American workplace to suit themselves and their shareholders, without any care

for the lives of their workers or, in many cases, the long-term health of their companies. But the book doesn't stop with the bad news. It also features fresh, actionable ideas for moving towards economic equality for all genders. It turns out that leadership qualities associated with women (and lots of non-narcissistic men) are the very traits that can improve the workplace. The secret to real progress for women—as well as the economy and by extension for all of us—is within our grasp.