

WOMEN IN THE *SHARK TANK*: ENTREPRENEURSHIP AND FEMINISM IN A NEOLIBERAL AGE

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INTRODUCTION

Shark Tank is the American version of a reality television format featuring entrepreneurs pitching their business ideas in order to secure investment from a panel of venture capitalists.¹

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1 The format originated in Japan under the name *Money Tigers* and since then has been tried around the world under a variety of names, including *Dragons' Den* (in the United Kingdom). In the United States, the series is produced by United Artists Media Group in association with Sony Pictures Television. It is broadcast

Every episode of the show consists of several pitches. In each pitch, an entrepreneur or a team of entrepreneurs (“pitchers”) presents an innovative business, seeking investment by one or more investors (“sharks”) out of a panel of five, in exchange for equity in the presented business. All sharks are investing their own money, and successful pitches lead to deals that bring the entrepreneurs not only capital, but also the help of the investing shark(s) with business connections and mentorship. Currently on its seventh season, the show enjoys remarkable popularity. It has *millions* of viewers,² and in both 2014 and 2015 it won the Emmy Award for Outstanding Structured Reality Program. Numerous avid fans who not only follow the show but also write about it in a variety of mediums, including social media, further enhance its impact.³

My sons are devoted viewers of *Shark Tank*. Since spending time with them is one of my biggest pleasures, I have joined the ride. However, being a female law professor who teaches and writes about contracts and business associations for a living, what started as a family pastime has presented me with an intellectual puzzle that eventually became a scholarly endeavor. I found myself intrigued by the show’s idealization of entrepreneurship and perplexed with regard to the role of women in this ideally portrayed world. In this Article, I treat episodes of *Shark Tank* as a social lab that produces an important cultural discourse. Of utmost importance to the way I use the show is the fact that *Shark Tank*’s makers have made clear that their aspiration is to promote the idea of entrepreneurship by influencing the culture surrounding it. As the show’s website announces: “the critically-acclaimed reality show that has reinvigorated entrepreneurship in America, has also become a culturally defining series.”⁴ These deliberate efforts to influence culture combined with the immense actual impact of *Shark Tank* allow a rare glimpse into the construction of the myth of entrepreneurship and the myth’s interplay with reality.

The intentional idealization of entrepreneurship via the medium of a television show and the remarkable concrete success of *Shark Tank* can both be better understood, I argue, as part of a broader process: the dissemination of neoliberalism. The goals of such a dissemination process go far beyond our economic world and the belief in market

by ABC. *About Shark Tank*, ABC: SHARK TANK, <http://abc.go.com/shows/shark-tank/about-the-show> [<https://perma.cc/F7XG-RUP9>] (last visited July 19, 2016).

2 Original shows are later shown on NBC under a syndication agreement which adds to the show’s viewership.

3 See, e.g., SHARK TANK BLOG, <http://sharktankblog.com> [<https://perma.cc/T9H2-CBLF>] (last visited July 5, 2016); *Shark Tank Entrepreneurs*, FACEBOOK, <https://www.facebook.com/groups/SharkTankEntrepreneurs> [<https://perma.cc/DV74-Y6JP>] (last visited July 5, 2016).

4 *About Shark Tank*, *supra* note 1.

economy. Rather, as Margaret Thatcher once said: “[e]conomics are the method . . . but the object is to change the soul.”⁵ But how can such changing of souls be achieved? As Wendy Brown has argued, the neoliberal project utilizes many mediums through which it disseminates its logic beyond the economy;⁶ and, as I will argue next, *Shark Tank* is one such medium. With its focus on entrepreneurship, which is a key component of neoliberalism, the show exposes masses of people to entrepreneurial logic in a simplified and enjoyable format. It is thus valuable to recognize that in doing so, *Shark Tank* operates as a mechanism through which neoliberalism gains access to people’s souls and becomes the common sense, thereby achieving hegemony. The effectiveness of the mechanism is proved by *Shark Tank*’s exceptional popularity, which demonstrates that the neoliberal project has gone so deep that it has changed even the way we are being entertained. As part of a symposium that focuses on women, this Article reveals, traces, and documents this intricate dissemination process with particular interest in the state of female entrepreneurs. It uses the social experiment of *Shark Tank*—taken as both a reality show and a show of reality—as an opportunity to critically examine the good, the bad, and some of the ugly that comes as women increasingly “do entrepreneurship” in a neoliberal age.

Methodologically, this Article treats *Shark Tank* as a *discourse*. Inspired by Foucault,⁷ I use the term hereinafter to mean the acts of communication through which, in a complex social process, ideas get widely circulated, turn into “truths,” and become the “common sense.” As Foucault and his many followers have argued, dominant discourses have *constitutive* power: they can make some things “normal” and mark others as a deviation in a way that seems natural and therefore defeats questioning. Or, in Wendy Brown’s words, discourses have the ability to “constitute a particular field and subjects within it.”⁸ In a nutshell, this Article follows Brown’s articulation in exploring how *Shark Tank* participates in constituting one such field—the entrepreneurial field—and one group of subjects within it—female subjects. To do that, I offer a discourse analysis of the special *multidimensional* discourse presented by television. Accordingly, in what follows I mainly, but not merely, track spoken and written language. I also pay attention to other meaning-producing resources such as visual images and even musical sounds. At moments, I even note the effect of clothes and shoes on verbal communications and their meaning. Due

5 DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM 23 (2005).

6 WENDY BROWN, UNDOING THE DEMOS: NEOLIBERALISM’S STEALTH REVOLUTION 153 (2015).

7 MICHEL FOUCAULT, *The Discourse on Language (L’ordre du Discourse)*, in THE ARCHAEOLOGY OF KNOWLEDGE & THE DISCOURSE ON LANGUAGE 215 (1972).

8 BROWN, *supra* note 6, at 117.

to all these components and their accumulation, the richness of the message offered by *Shark Tank* is, I argue, particularly strong and thus especially influential. For that reason, watching *Shark Tank* closely can add much to the very few works that have so far explored female entrepreneurship by carefully listening to female interviewees,⁹ and closely reading public policy texts.¹⁰ Following those works, I explore how the discourse on women's entrepreneurship produced by a show like *Shark Tank* positions women and their entrepreneurship, and how this positioning may impact the general status of women today. In engaging with this question *with the law in mind*, I seek to contribute to the recently emerging non-legal body of critical work relating to women's entrepreneurship.¹¹

Beyond its entertaining qualities, a reality show such as *Shark Tank* is worth careful examination because it affects our *cultural imagination*, and in that way configures what makes sense to us. As others have noted before, "modern Americans learn to be proper citizens not only from each other, but also from reality television, self-help books, talk shows, novels, magazines, and films."¹² Moreover, paying attention to discourse is especially productive as it allows us to "move something from the field of the objective to the field of the political, from the silent and obvious to something one can be for or against, opening up for discussion, critique, and therefore change."¹³ This is particularly true with regard to discourse produced by *Shark Tank* because the creators of the show are not only self-aware of their power to influence others but also use it intentionally and explicitly to

9 CHRISTINA SCHARFF, GENDER AND NEOLIBERALISM: YOUNG WOMEN AS IDEAL NEOLIBERAL SUBJECTS (forthcoming) (on file with author) [hereinafter SCHARFF, GENDER]; Silvia Gherardi, *Authoring the Female Entrepreneur while Talking the Discourse of Work-Family Life Balance*, 33 INT'L SMALL BUS. J. 649 (2015).

10 Helene Ahl & Theresa Nelson, *How Policy Positions Women Entrepreneurs: A Comparative Analysis of State Discourse in Sweden and the United States*, 30 J. BUS. VENTURING 273 (2015) [hereinafter Ahl & Nelson, *Policy Positions*].

11 See, e.g., Gherardi, *supra* note 9, at 650 (stating that a "movement from 'gender in entrepreneurship' to 'gendering of entrepreneurship' is underway"). See also Colette Henry et al., *Gender and Entrepreneurship Research: A Review of Methodological Approaches*, 34 INT'L SMALL BUS. J. 235 (2016) (reviewing decades of studies of gender and entrepreneurship, suggesting that "the time has come to take a more critical view of how methodology in gender research needs to expand in the future," and concluding that "in order to move the field forward and harness an increased interest in feminist theory, entrepreneurship researchers need to ground their methodology in feminist epistemology.").

12 ALICE E. MARWICK, STATUS UPDATE: CELEBRITY, PUBLICITY, AND BRANDING IN THE SOCIAL MEDIA AGE 278 (2013).

13 Ahl & Nelson, *Policy Positions*, *supra* note 10, at 288 (quoting JØRGENSEN WINTHER & L. PHILLIPS, DISKURSANALYSE SOM TEORI OG METODE (DISCOURSE ANALYSIS AS THEORY AND METHOD) 165 (1999) (author's translation)).

sway their audiences. Offering several alternative readings of the configuration of female entrepreneurship by the show, my “interpretative”¹⁴ project critically explores—from a feminist perspective—the impact different understandings of this discourse may have on the problem of gender inequality and its regulation.

This Article unfolds in three Parts. Part I is dedicated to describing how *Shark Tank*'s discourse is structured to circulate the story of defeating gender inequality in the market via entrepreneurial activity. This story comes in two versions: one that celebrates the accomplishment of equality while rendering feminism unnecessary and another that recognizes (some) inequality while suggesting that entrepreneurship is the way to cope with it. Part II digs deeper. It treats the discourse critically and uncovers many troubling moments in which the show actually works not to defeat but rather to perpetuate gender inequality. It defines three ways in which the process occurs in the entrepreneurial setting presented by *Shark Tank*: underrepresentation of women, sexism, and a gendered division of businesses along the traditionalist lines that associate women with the domestic sphere. Part III analyzes the conflicting messages presented in the preceding Parts from a feminist perspective, with an emphasis on their impact on current legal feminist battles for economic gender equality. I argue that given the dominance of entrepreneurialism in our neoliberal age, the status of women in the entrepreneurial world—as reflected and produced by *Shark Tank*—severely challenges feminist epistemology. I also suggest ways by which feminists can begin to respond to the challenge and propose that such response should include recognition of, and *legal* care for, female entrepreneurs. However, I conclude that to advance gender equality for all women—at home, in the workplace, and in the business arena—feminism ought to *reject* the neoliberal framing promoted by *Shark Tank* and the framing of entrepreneurship (and everything else) as individual issues. Accordingly, feminism should keep insisting that social structures matter and it must remain a political project. But to do all that we must first “sit back and enjoy the show.”

I. Defeating Gender Inequality

More than anything else, *Shark Tank* portrays a world of triumphant people. The real heroes are, of course, the sharks. Every episode opens with dramatic music, presenting the sharks as a group of powerful people, followed by a celebration of the legendary individual success each shark has achieved. Visually and rhetorically, the message is loud and cohesive, telling a victorious story of rapid ascension to the top. From this introduction,

14 Angela McRobbie on the Illusion of Equality for Women, SOC. SCI. BITES (June 3, 2013), <http://www.socialsciencespace.com/wp-content/uploads/Angela-McRobbie.pdf> [<https://perma.cc/65BP-ZWRG>].

viewers learn, and are reminded every week, that each of the sharks has “made it,” not by luck, inheritance, or accident, but by choosing and resolutely following the path of *entrepreneurship*: a trajectory that the program tirelessly depicts in detail as the main, if not the only, way to a bigger-than-life success. Moreover, the show establishes and emphasizes the high status of the shark-entrepreneurs in a variety of ways. They sit in luxurious leather armchairs, wear expensive formal clothes, are approached from a distance by admiring pitchers, are often showered with gifts, and easily dismiss pitchers they do not find impressive. With such godly treatment, it is little wonder that by and large the sharks maintain calm, confident, and content postures. Further, and no doubt thanks to the exceptional popularity of the show, the sharks have become celebrities, interviewing and publishing books about their unbelievable success.¹⁵

Overall, *Shark Tank* is a celebration of entrepreneurship. The show both reflects and participates in creating the “mythological” role entrepreneurs play in a neoliberal world that worships the market.¹⁶ The idealization of entrepreneurship as a form of desired contemporary being includes several powerful messages. First, entrepreneurial people are creative, resourceful, and filled with energy. Without exception, the sharks and the pitchers on the show have charisma and agency at levels that put to shame the ordinary person who sometimes finds it difficult to get out of bed in the morning. Second, no one can identify problems and solve them better than entrepreneurs in the marketplace. Accordingly, problems are not setbacks but rather are reconfigured as opportunities for making profits. For example, when the health system with all its doctors fails to heal back pain or eczema, the solutions are best-selling products, discovered and beautifully executed by very young entrepreneurs supported by experienced sharks.¹⁷ Third, success is merit-based and

15 The sharks’ books are LORI GREINER, *INVENT IT, SELL IT, BANK IT!: MAKE YOUR MILLION-DOLLAR IDEA INTO A REALITY* (2014); KEVIN O’LEARY, *COLD HARD TRUTH ON MEN, WOMEN & MONEY: 50 COMMON MONEY MISTAKES AND HOW TO FIX THEM* (2014); MARK CUBAN, *HOW TO WIN AT THE SPORT OF BUSINESS: IF I CAN DO IT, YOU CAN DO IT* (2013); BARBARA CORCORAN, *SHARK TALES: HOW I TURNED \$1000 INTO A BILLION DOLLAR BUSINESS* (2011); ROBERT HERJAVEC, *DRIVEN: HOW TO SUCCEED IN BUSINESS AND IN LIFE* (2011); DAYMOND JOHN, *DISPLAY OF POWER: HOW FUBU CHANGED A WORLD OF FASHION, BRANDING AND LIFESTYLE* (2011). Some of the sharks published more than one book.

16 MARNIE HOLBOROW, *LANGUAGE AND NEOLIBERALISM* 73 (2015) (describing how “*entrepreneurship* received its badge of respect in the early days of neoliberalism” and how “Reagan saw entrepreneurs as ‘a special breed,’ the real leaders of American Society”); Darian M. Ibrahim & Gordon Smith, *Entrepreneurs on Horseback: Reflections on the Organization of Law*, 50 ARIZ. L. REV. 71, 81 (2008) (describing the “mythological” importance of entrepreneurship).

17 *Shark Tank: Season 6, Episode 12* (ABC television broadcast Dec. 12, 2014) (presenting Q Flex as a solution for back pain); *Shark Tank: Season 4, Episode 20* (ABC television broadcast Mar. 28, 2013) (presenting Simple Sugars as a remedy for eczema).

everyone stands a chance in the business world. Even one of the admirable sharks, Robert Herjavec, embodies this message. At the beginning of every episode of the first few seasons he was introduced as the son of immigrants, and although the word “immigrants” was later edited out, the network’s official website of the show still introduces Robert as someone who “has lived the classic “rags to riches” story,” adding that as “[t]he son of Croatian immigrants, he earned his incredible wealth by overcoming the odds with pure hard work and intuition.”¹⁸ Fourth, merit is to be measured in numbers. Pitchers appearing on the show are as good as the amount of money they have made in recent sells and the sharks are using this data point to estimate whether the pitchers’ requested investment is proportionate to the “real” value of their business. In fact, *Shark Tank* has taught many lay viewers how to do the math—how to calculate what a pitcher’s self-valuation is, based on the amount of money requested in exchange for a given percentage of the business. Taken together, these four messages portray the world of entrepreneurship as highly promising not only to its participants, but also to the legions of consumers who—by spending money—enjoy the better reality created by the entrepreneurs’ products. All in all, viewers who have watched enough episodes of *Shark Tank* are pressed to believe in the endless power of market activity directed by grand entrepreneurs. The question is, then, how do women fit into this heroic story?

A. Post-Feminism

In *Shark Tank*’s celebration of entrepreneurs as winners, leaders, and a source of hope for the many, women take active part. Female shark Barbara Corcoran has been in the tank since the very first season in 2009, and female shark Lori Greiner first joined the panel as a guest shark in Season 4, and since Season 5 has assumed a permanent role. Similar to the male sharks, Barbara and Lori are highly accomplished, which in the world presented via *Shark Tank* means wealthy by their own *entrepreneurial* doing. The introduction to each show describes Barbara as someone who “went from waiting tables in Manhattan to building the city’s premier \$2 billion real estate empire.”¹⁹ Similarly, Lori is presented as “the queen of QVC, [who] holds over 100 patents, and has launched more than 400 products, grossing over a half a billion dollars in sales.”²⁰ Moreover, like the male sharks, Barbara and Lori are smart, talented, confident, opinionated, ambitious, and daring. On the

18 Robert Herjavec, ABC: SHARK TANK, <http://abc.go.com/shows/shark-tank/cast/robert-herjavec> [<https://perma.cc/V2KU-8TAZ>] (last visited July 5, 2016).

19 See, e.g., *Shark Tank: Season 4, Episode 1* (ABC television broadcast Sept. 14, 2012). *Shark Tank*’s introduction has been consistent for Seasons 4 through 7.

20 *Id.*

show they fiercely compete with the male sharks, frequently winning the battle over good investments, and are unapologetically successful. For example, in Season 4 Lori defeated other sharks, and with her investment in a sponge called Scrub Daddy, helped create the biggest success story of the show thus far: a product that made over \$50 million in sales in less than three years.²¹ The female sharks' strong presence on the show portrays feminism as unnecessary. Gender equality never seemed more available, natural, and glamorous.

Many female pitchers on *Shark Tank* further support the impression of unlimited possibilities for men and women alike. In the first six seasons of the show, women enjoyed both visibility and success. A total of 256 women took part as pitchers on the show, whether alone or with other partners. In terms of landing investments from the sharks, women have been even more effective than men, closing a deal following 53% of their pitches while men were able to do the same only 48% of the time.²² Beyond numbers, the women on *Shark Tank* exhibit an impressive array of fine qualities, right at the core of the competitive commercial world. They are motivated, talented, skilled, confident, focused, creative, and communicative. They also earned the ability to appear on the show and win the sharks' trust based on their past accomplishments and their proven ability to develop a profitable business.

One of the best examples of remarkable performance by women pitchers aired in Season 6 when two graduates of the Columbia School of Architecture, Andrea Sreshta and Anna Stork, co-founders of LuminAID, presented their solar powered inflatable light invention, seeking an investment of \$200,000. Andrea and Anna walked into the tank wearing black business suits over red t-shirts with the name of their brand. They proudly demonstrated how their innovation turns sunlight into LED light, explained its many uses, from emergencies to camping, and highlighted the fact that their product "shines brightest for those who are left devastated after disaster" and is "the perfect tool for first responders . . . in areas without electricity."²³ They also shared with the sharks data regarding their commercial success: a small initial investment of \$7,500 each followed by successful

21 Richard Feloni, *How a Sponge Company Became the Biggest 'Shark Tank' Success Story*, BUS. INSIDER (Apr. 17, 2015), <http://www.businessinsider.com/scrub-daddy-is-shark-tank-biggest-success-2015-4> [https://perma.cc/XFG7-N8NH].

22 Laura Rosenfeld, *How Does 'Shark Tank' Treat Female Entrepreneurs? From Investments to Off-Hand Comments, The Answer Is Complicated*, BUSTLE (Mar. 6, 2015), <http://www.bustle.com/articles/66456-how-does-shark-tank-treat-female-entrepreneurs-from-investments-to-off-hand-comments-the-answer-is-complicated> [https://perma.cc/MJ5Q-PKYD].

23 *Shark Tank: Season 6, Episode 20* (ABC television broadcast Mar. 6, 2015).

crowdfunding of \$50,000 that led to over \$1,000,000 in sales. The sharks were deeply impressed. Daymond declared, “You are brilliant,” and Lori echoed with, “I think you are amazing and brilliant.” A competition among the sharks ensued, resulting in a rare situation on the show in which *all* sharks made proposals to invest in the pitchers’ business. After a swift consultation with each other, Sreshta and Stork chose Mark as their investor, exchanged hugs with him, and after thanking everybody, marched out with satisfied smiles. A year later, a *Shark Tank* update²⁴ reported an even greater success following the appearance on the show: with Mark’s help, sales doubled and Sreshta and Stork traveled to bring light to those who became homeless after a severe flood in Malawi, reporting that “as young women in business it is an incredibly humbling feeling to be able to do what you do and inspire others in the process.”²⁵

Episodes such as *LuminAID* portray the business world and the entrepreneurial domain as the land of unlimited opportunities for all, suggesting that everybody is being judged on the merits and stands a chance to become rich. In this world, smart, creative, and determined people are rewarded handsomely by selling others what they need or desire. And, within this ideal world, gender is not an issue. As the example of *LuminAID* demonstrates, the game appears neutral and fair. The fact that the pitchers happen to be—as the sharks commented—“smart girls” or “great ladies”²⁶ does not seem to play a role; the same result would have been achieved were the pitchers “great guys.” It is the brilliance and hard work of Andrea and Anna, viewers understand, that got them proposals from all sharks. Nothing in their presentation—from their appearance, to their type of product, to their way of speaking, to the sharks’ questions and responses—has to do with gender. Watching these two exceptionally gifted and accomplished women win over the hearts and pockets of all the sharks, and learning later how they kept developing their business while benefitting the world, one can only admire them while concluding that to the extent that gender inequality ever existed it is now gone, replaced by market meritocracy.

The spectacular success of sharks like Barbara and Lori, and pitchers such as Andrea and Anna, reflect, support, and foster the idea of post-feminism in its simplest form: the view that feminism is a matter of the past. That ours are the days “after” feminism is a

24 Updates are included in later episodes and are shown between pitches.

25 *LuminAID Shark Tank Update*, LUMINAID (Jan. 4, 2016), <https://luminaid.com/pages/luminaid-shark-tank-update> [<https://perma.cc/BZ82-5BVC>].

26 *Shark Tank: Season 4, Episode 1*, *supra* note 19.

belief shared by many women, and particularly by younger women.²⁷ Several implications follow. First, implying the “pastness” of feminism in the context of a market-based reality show suggests that the days of gender inequality in the commercial sphere are over. Second, it suggests that women, and particularly young women who have become adults post feminism’s heyday, are liberated or emancipated from restraints that limited earlier generations of women. As a result, women are no longer different from men, and, similar to their male counterparts, are free to independently make their business choices in order to climb up the socio-economic ladder. Third, the term “post-feminism” portrays feminism as aged, out-of-date, and no longer necessary. In this sense the view of feminism promoted by the glamorous success of women on *Shark Tank* is akin to our view of dial phones or tape recorders: we know they existed, but with cellular phones at our disposal, we simply cannot imagine a contemporary use for them. Finally, “post-feminism” also depicts a past occupied by only one feminism, thereby erasing the rich variety of feminist voices that included not only the most-known liberal and radical feminisms, but also the important work of anti-essentialist feminists.²⁸ Accordingly, it makes it seem that young women have only one choice: between “old-school” feminism and no feminism at all. Given the fact that many women do not know much about “old-school” feminism and at the same time tend to wrongly imagine it as necessitating a particularly unattractive appearance and a concrete set of extreme beliefs and behaviors,²⁹ the choice disappears and turns post-feminism into the default.

But at times, *Shark Tank*’s post-feminism goes beyond simply “rendering feminism aged and redundant.”³⁰ At those times, post-feminism presents a stronger rejection of fundamental feminist ideas; it entails what scholars have titled “repudiation,”³¹

27 ANGELA McROBBIE, *THE AFTERMATH OF FEMINISM: GENDER, CULTURE AND SOCIAL CHANGE* (2008); CHRISTINA SCHARFE, *REPUDIATING FEMINISM: YOUNG WOMEN IN A NEOLIBERAL WORLD* (2012) [hereinafter SCHARFE, *REPUDIATING FEMINISM*].

28 See, e.g., DIANA FUSS, *ESSENTIALLY SPEAKING: FEMINISM, NATURE AND DIFFERENCE* (1989).

29 See, e.g., SCHARFE, ‘*Unfeminine, Man-Hating, and Lesbian*’: *Situating Feminist Stereotypes in the Heterosexual Matrix*, in *REPUDIATING FEMINISM*, *supra* note 27, at 69–88 (interviewing young women and noting that while they tend to associate feminism with unfemininity, man-hating, lesbianism, and other negative images, they cannot offer any experiences that support such association).

30 *Id.* at 52.

31 *Id.*

“disarticulation,”³² or “undoing”³³ of feminism. Many important feminist works criticized the objectification of the female body and theorized it as a mark of masculine domination.³⁴ And yet, some *Shark Tank* female pitchers actively put their bodies up for sale, exposed and intentionally sexualized, creating what Angela McRobbie has called “provocation to feminism.”³⁵

In one pitch, for example, entrepreneur Meghan Tarmey presented and sought investment in her business titled “The Caddy Girls,”³⁶ “a service that provides golfers with beautiful women to caddy for them on the links.”³⁷ The pitch presented the girls wearing very short skirts and tight hot pink tops, making it clear that the girls’ bodies are there to please the receivers of the service and play an important role in differentiating this “product” from others available in the market. Indeed, Meghan herself clarified this point when, in response to a question regarding the future of her business, she underscored that “golf isn’t going anywhere and *the use of attractive people isn’t going anywhere.*”³⁸ In another pitch, *Cashmere Hair*,³⁹ the pitchers, Melissa Barone and Rachel Bernstein, used a highly sexualized appearance to promote their product, high-end hair extensions. Instead of business attire, they wore short and snug black dresses and very high black heeled shoes. In describing these two episodes, my point is not to criticize the female entrepreneurs involved. Rather, the goal is to illuminate a distinct feature of the type of post-feminism projected by the show. Episodes such as *The Caddy Girls* and *Cashmere Hair* suggest that younger women not only see feminism as no longer necessary, but also insist that “old feminism” was wrong to criticize sexualized use of the female body. Indeed, several recent studies of post-feminism have demonstrated that younger women resent older feminism partially because they understand (or imagine) feminism as demanding a denial of “girly”

32 Catherine Rottenberg, *The Rise of Neoliberal Feminism*, 28 CULTURAL STUD. 418 (2014).

33 Angela McRobbie, *Post-feminism and Popular Culture*, 4 FEMINIST MEDIA STUD. 225 (2004).

34 See, e.g., NAOMI WOLF, THE BEAUTY MYTH (1990).

35 McROBBIE, *supra* note 27, at 85.

36 *Shark Tank: Season 6, Episode 5* (ABC television broadcast Oct. 17, 2014).

37 Laura Rosenfeld, *You Can Hire Shark Tank’s Caddy Girls, Who Have Some Other Businesses, Too*, BUSTLE (Oct. 17, 2014), <http://www.bustle.com/articles/44482-you-can-hire-shark-tanks-caddy-girls-who-have-some-other-businesses-too> [https://perma.cc/Y2JP-2FLF].

38 *Shark Tank: Season 6, Episode 5*, *supra* note 36.

39 *Shark Tank: Season 5, Episode 12* (ABC television broadcast Dec. 13, 2013).

and/or sexual expressions of femininity.⁴⁰ At least for some of the pitchers on *Shark Tank*, the beauty and attractiveness of women is an important commercial tool on which younger female entrepreneurs seem happy to capitalize, despite previous feminist messages.

Both treating feminism as outdated and resisting its perceived demands from women render as natural women's presence in the entrepreneurial sphere. Apparently, by entering the "shark tank" women are liberated from the constraints feminism identified and combatted. Like anyone else operating in the business domain, women too are free to innovate, impress, and be judged on their merits. On these views, problems related to gender inequality are denied by the apparent egalitarian nature of market activity. As Lori explained, "I never think about myself as a female in business . . . I'm a *person* in business."⁴¹ And yet, the place of gender in *Shark Tank*, as in life, is more complex than is suggested by the strong post-feminist overtones of the show. As a powerful female shark, Lori herself does not always adhere to her statement, nor does she consistently deny the problem of gender inequality. Sometimes Lori and others in the tank do express a special recognition of gender issues in the business world, both demonstrating and creating what can be understood as a special genre of feminism recently emerging at the core of a neoliberal world.

B. Neoliberal Feminism

Different from the post-feminist façade of *Shark Tank* are moments in which gender inequality is openly admitted and dealt with. Those, I argue, are feminist moments that carry a novel feminist message: eradicating gender inequalities should be dealt with via the market and in an *entrepreneurial* way. Following others, I will call this new kind of feminism "*neoliberal feminism*."⁴² Similar to more veteran feminisms, this new one too is concerned with limitations imposed by gender stereotypes and with lack of equal access to opportunities for girls. Unlike other feminisms, however, neoliberal feminism seems to disagree with the idea that "the personal is political,"⁴³ or that the problem of a gendered

40 See, e.g., Jennifer Baumgardner & Amy Richards, *Feminism and Femininity: Or How We Learned to Stop Worrying and Love the Thong*, in ALL ABOUT THE GIRL: CULTURE, POWER, AND IDENTITY 59 (Anita Harris & Michele Fine eds., 2004).

41 Kim Lachance Shandrow, *Shark Tank Star Lori Greiner: I Never Think of Myself as a Female in Business*, ENTREPRENEUR (Oct. 13, 2014), <https://www.entrepreneur.com/article/238372> [<https://perma.cc/P4EG-MVNC>].

42 See, e.g., Rottenberg, *supra* note 32.

43 The phrase appeared as the title of a 1969 essay by Carol Hanisch in which the author wrote: "One of

society is a public issue that calls for joint efforts to change the infrastructure of society. Rather, this new feminism—as its name suggests—is embedded in the neoliberal world and is *not* critical of it.

One such powerful moment of neoliberal feminism aired in Season 6, when Alice Brooks and Bettina Chen presented *Roominate*.⁴⁴ The two entered the tank as the narrator declared that they were going to pitch “a product designed to inspire young girls to expand their horizons.” Right after greeting the sharks, on the second sentence of their pitch, the team positioned gender at the forefront of their product, stating, “Our mission is to empower the next generation of female engineers and innovators.” To explain their focus on toys as a way to expand the horizons of girls, the next stage of the pitch particularly addressed the *female* sharks. Alice asked Barbara to imagine her life if in her childhood she could have actually built her own high-rise, and she invited Lori to picture herself as a child constructing and not only drawing prototypes of her inventions. Barbara and Lori responded with sympathetic nods and smiles.

Next, Lori asked Alice and Bettina how they came up with the idea. After sharing that they met and became friends in the Master of Engineering program at Stanford—signaling to viewers that they are high-achieving and highly educated female entrepreneurs—the two found it important to further explain that it was gender inequality that had put them together in Stanford because they were “two of the only women there.” Then Alice shared a childhood story: one Christmas, when she asked her dad for a Barbie doll, he emphatically said, “No!” Instead, Alice explained, he got her a saw and she found herself constructing wooden doll houses, which afterward got her into building projects. Curious, Lori raised an old feminist debate regarding the source of gender differences. She asked Alice if she thought that she was naturally attracted to building projects or had to be pushed by her dad at this direction. Lori’s question opened the door for a true feminist speech to appear on the popular stage of *Shark Tank*. Alice answered, “The problem right now for girls is [that] we are not exposing them to more options so we are missing out on half of the potential . . . and

the first things we discover in these groups is that personal problems are political problems. There are no personal solutions at this time. There is only collective action for a collective solution.” Carol Hanisch, *The Personal is Political*, in NOTES FROM THE SECOND YEAR: WOMEN’S LIBERATION 76 (1970). The essay was published under the title, *The Personal Is Political*, but Hanisch herself denied the authorship of the phrase and joined other suggested feminist authors who instead preferred to “cite millions of women in public and private conversations as the phrase’s collective authors.” KERRY T. BURCH, DEMOCRATIC TRANSFORMATIONS: EIGHT CONFLICTS IN THE NEGOTIATION OF AMERICAN IDENTITY 139 (2012).

44 *Shark Tank: Season 6, Episode 2* (ABC television broadcast Sept. 26, 2014).

it is important for all of us that we can get girls doing these sort of things.”⁴⁵ Interestingly, as the sharks started to bid on the project, Barbara left the competition without making an offer, expressing her initial excitement about the feminist uniqueness of the Roominate product, but also her deep disappointment that the focus on girls *was not highlighted enough*.

Eventually, Mark made Alice and Bettina the exact investment offer they were seeking.⁴⁶ Here too, gender inequality played a major role. Sharing with pitchers and viewers alike his search for good role models for his young daughters, Mark emphasized that his willingness to invest in Roominate was motivated less by the product and more by the example set by its female creators. “I am investing in *you*,” he clarified, on the condition that “my daughters . . . can come out and spend time with you guys, be part of it.” And just when viewers may have thought that the pitch was successfully ending, Lori pulled the gender card and used it to join Mark as a co-investor, in direct conflict with her previously cited statement regarding the irrelevancy of gender to her business career. At this moment, Roominate brought to the screen a different Lori. This Lori shared with everyone that her female entrepreneurs sometimes call her “chick-starter” because she has started “so many female-based businesses,” and further stressed gender by adding that “it is so important today that young women” will “think they can do and be anything.”⁴⁷

I suggest that pitches like *Roominate* indicate—and actively participate in—the creation of neoliberal feminism that encompasses several features. The most important feature is the way this feminism is interwoven into the discourse of entrepreneurship and is constructed as an effort “to address women’s subordination *through enterprise creation*.”⁴⁸ The young women who created Roominate, for example, chose to become entrepreneurs and not, say, teachers or social workers, in order to pursue their goal of releasing girls from gender limitations. Their choice of an entrepreneurial form of agency to achieve their feminist goals fits perfectly with the neoliberal idealization of entrepreneurship as the preferred mode of contemporary subjectivity. Indeed, “the casting of every human endeavor and activity in entrepreneurial terms” is one of the signature moves of the neoliberal project.⁴⁹

45 *Id.*

46 Lori joined Mark later on.

47 *Shark Tank: Season 6, Episode 2, supra* note 44.

48 BARBARA ORSER & CATHERINE ELLIOTT, FEMININE CAPITAL: UNLOCKING THE POWER OF WOMEN ENTREPRENEURS 19 (2015) (emphasis added).

49 Rottenberg, *supra* note 32, at 421.

In fact, hoping to achieve feminist goals via entrepreneurship may not even be a necessary component of neoliberal feminism. Many seem to believe that feminism is being served merely by the successful participation of women in entrepreneurialism—once a masculine domain.⁵⁰ On this view, the increasing existence and visibility of female entrepreneurs is in and of itself a form of feminism and a major and necessary step towards gender equality. In this respect, *any* successful female pitch, or even an impressive female pitch that did not end in investment, constitutes part of the show's neoliberal feminist message. Via their entrepreneurial activity, women give contemporary content to the old feminist mantra—originally used in the context of employment—“we can do it!”⁵¹

It is also noteworthy that neoliberal feminism, as part of the general neoliberal logic, is market-based. Feminists seeking to effect gender equality, it is proposed, should turn to the market. For example, if young girls are not getting sufficient early exposure to the world of technology and therefore end up with inferior access to opportunities as adults, the market is the key to a cure. As a starting point, the market is best structured to incentivize the recognition of the problem. From a market perspective, the problematic state of affairs is reconfigured and turns from an obstacle to a business opportunity. In other words, feminist entrepreneurs are more likely than others to define a gender problem and expose it. However, they no longer need to burn bras to get attention; they are better off identifying a commercial “need” and letting money speak. Then, having identified the problem, it is the market that is best designed to solve it. By generating and selling lines of products such as Roominate, feminist entrepreneurs are using the power of the market and processes of supply, demand, and competition to reach countless young girls and empower them.

Another feature of neoliberal feminism is the insistence on the individualization of the female subject. Whatever the gender problem is, its solution under neoliberal feminism is individual rather than collective, “one woman at a time,”⁵² or—as *Shark Tank* demonstrates—“one pitch at a time.” Older ideas such as the consciousness-raising groups that were so important to radical feminists in the 1960s are loudly repudiated. An interview with Lori made that point clearly. The female shark advised women:

50 Vishal K. Gupta et al., *The Role of Gender Stereotypes in Perceptions of Entrepreneurs and Intentions to Become an Entrepreneur*, 33 *ENTREPRENEURSHIP THEORY & PRAC.* 397 (2009).

51 James J. Kimble & Lester C. Olson, *Visual Rhetoric Representing Rosie the Riveter: Myth and Misconception in J. Howard Miller's "We Can Do It!" Poster*, 9 *RHETORIC & PUB. AFF.* 533 (2006) (describing how the original poster was aimed at encouraging Westinghouse's employees to work harder and only later was transformed into a feminist icon and a symbol of female empowerment).

52 Rottenberg, *supra* note 32, at 426.

Don't think of it at all It can be a pitfall if you think, "I'm a woman and I'm walking in the room and I'm going to be treated different." Or "This is going to be harder because I'm a woman." Don't think like that. You're an expert at what you do. You're on a mission and you are a *person* in business. Not a woman in business. Ever.⁵³

Importantly, such an individualized outlook does not mean that society (or the state) needs to empower each woman separately. Rather, and in line with the general neoliberal project, it suggests that each woman is *personally responsible* for her own fate. The feminist subject is the one who should bring herself to the position that would allow her to compete in the market, whether it is the market for jobs or the market for products. She then needs to carefully manage herself in a manner that will keep her in the competition and allow her to progress. Such self-care, or self-empowerment, entails more than getting the right formal education. It requires continuous self-investments in developing and maintaining the kind of selfhood that has what it takes to be successful in a neoliberal world.

In her best-seller *Lean In*,⁵⁴ Facebook's CEO, Sheryl Sandberg, recommends as part of her "feminist manifesto"⁵⁵ (among other things) that to succeed, each woman must work on herself to remove what Sandberg calls *internal* barriers. She opens by arguing that "[w]e hold ourselves back in ways both big and small, by lacking self-confidence, by not raising our hands, and by pulling back when we should be leaning in."⁵⁶ She then explains that "[t]hese internal obstacles deserve a lot more attention, in part because they are under our own control."⁵⁷ And she finishes by recommending a solution that is both individualizing and "responsibilizing"⁵⁸ when she argues that "[w]e can dismantle the hurdles in ourselves today."⁵⁹ In other words, the neoliberal feminist project requires each woman to cope with gender inequalities by working on herself and pushing through gender-related obstacles

53 Shandrow, *supra* note 41.

54 SHERYL SANDBERG, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* (2013).

55 *Id.* at 9.

56 *Id.* at 8.

57 *Id.* at 9.

58 BROWN, *supra* note 6, at 133 (explaining that "neoliberal 'responsibilization'" is an imposed process that occurs when neoliberalism, for its own political goals, "solicits the individual as the only relevant and wholly accountable actor").

59 SANDBERG, *supra* note 54, at 9.

with confidence and determination. Barbara and Lori, the strong female sharks in the tank, and the many ambitious female pitchers on the show, offer viewers a chance to witness the process in action by watching one talented woman after another “lean in.”

Relatedly, as a result of its privatized and individualized framing, neoliberal feminism follows the general neoliberal rationality in posing minimal demands on the public state. Neoliberal feminists do not seek budgets for their projects; they go to *Shark Tank* and pitch their innovative ideas with graceful passion until they raise the millions they need. They don’t call upon public schools to change the curriculum in order to expose girls to technology or upon Stanford, for example, to admit more female engineers so young women like the creators of *Roominate* can feel a stronger sense of belonging. Rather, as *Roominate* demonstrates, neoliberal feminists like Alice and Bettina invest in themselves and their careers until they can get into schools such as Stanford and then graduate from them to create and sell toys that empower girls. The state, it is important to notice, is completely out of the picture, rendered insignificant and unnecessary in this privatized feminist journey.

All in all, it is worth noticing that the combination of entrepreneurialism, reliance on the market, individualization, and minimized expectations from the state can explain much of the success of neoliberal feminism with women, and especially with younger women who were born in the last few decades into a neoliberal world, thereby absorbing its logic all their lives. This new way of being a feminist simply “makes sense” because neoliberalism *is* the current common sense.⁶⁰ Moreover, a feminist reliance on the self and on the market rather than on politicians, legislators, judges, agencies, and educators can also explain the greater sense of liberation and empowerment reported by (mainly young) female entrepreneurs who care about gender inequality. Such “do it yourself” feminism can be done with pride and can be very satisfying (and profitable!). Moreover, since there is no need to convince anyone but investors and consumers, it can also be done without constantly having to collect and engage with evidence that would prove to others how gloomy things can get or be for women as a group. Old gender-related frustration can thus be replaced by energizing ambition. What a relief, or, as neoliberal feminists would have probably put it—what a win-win situation.

Before concluding this Part, it is worth discussing the question of whether neoliberal feminism is even a form of feminism or rather an approach that is indistinguishable from

60 Rottenberg, *supra* note 32, at 432 (linking the rise of neoliberal feminism to “the ability of neoliberal rationality, as the dominant or hegemonic mode of governance, to colonize more and more domains”).

post-feminism by virtue of their shared conflict with fundamental feminist ideas. Although I certainly have my share of criticism towards neoliberal feminism, which I am about to express below, I believe that there is an important difference between post-feminism and neoliberal feminism that watching *Shark Tank* closely helps bring to light. I think that portraying the business world as already egalitarian (post-feminism) is fundamentally different from portraying it as a useful vehicle to cope with gender inequalities that still exist (neoliberal feminism). Phrased more dramatically, while post-feminism renders feminism unnecessary, neoliberal feminism amplifies the need for feminist action.

People who care about gender inequality and are committed to defeating it may disagree with the strategy deployed by neoliberal feminism. They may even caution that the combination of neoliberalism and feminism entails some significant risks, as I will later argue myself. And yet, sharks like Lori and Barbara, pitchers like Alice and Bettina, and, most importantly, viewers at home craving change and finding hope in women's commercial success, should not be dismissed as non-feminists. Nor should we ignore women's reports of liberation, freedom, independence, and empowerment that they have found in the market as entrepreneurs.⁶¹ For "all those reasons" (as the sharks always say on the show), I believe that it is important and valuable to recognize that the presence and success of women in *Shark Tank* carries two different messages: one that repudiates feminism and one that adopts feminism even if it does it differently.

Having described two *Shark Tank* messages that suggest a process of defeating gender inequality, I now turn to re-viewing and reviewing the show with a critical eye. As the coming Part shows, the female entrepreneurship presented by the show is at times neither a mark that all feminist battles were won nor a new form of feminism. Rather, many *Shark Tank* moments both reflect and perpetuate significant gender inequality in the entrepreneurial setting.

II. Perpetuating Gender Inequality

A. Underrepresentation and Underinvestment

As impressive as the female sharks and female pitchers on *Shark Tank* are, their performance should not conceal the fact that men appear much more frequently on the show, and women are still a minority. For the first three seasons of the show, Barbara was the token female shark out of a panel of five sharks. Even when a male shark left the show

61 *Shark Tank* updates are filled with such reports from both female sharks and female pitchers.

another male shark took his position, keeping the female representation at 20%. In Season 4, Lori joined the show but only in episodes from which Barbara was missing, maintaining the representation of female sharks at only 20%. Barbara and Lori took turns occupying one seat reserved for women in most of the episodes of Season 5 (sixteen out of twenty-nine). During that season, for the first time, the two appeared together on the same panel in thirteen episodes, improving female representation without ever bringing it to a point of equality or dominance.⁶² On average, female sharks' representation in Season 5 came to 29%. The exact same pattern of underrepresentation repeated itself in Season 6. This underrepresentation at the sharks' level correlates with a similar problem in reality.⁶³

Female pitchers were similarly underrepresented, with no significant difference between the seasons. On average, men pitched alone or with other men 60% of the time and women pitched alone or with other women 26% of the time. The remaining 14% were co-ed teams, often heterosexual married couples. Additionally, as mentioned earlier, female pitchers on *Shark Tank* were slightly more successful than male pitchers in closing a deal with the sharks. However, in terms of the valuation of businesses as reflected by the size of the investment of the sharks, the results were far less impressive. For that reason, a 2016 article relying on data collected by *Shark Tank* superfan and successful female entrepreneur Halle Tecco reported that “companies fronted by women receive dramatically lower valuations than their male counterparts.”⁶⁴

Importantly, as a reality show, *Shark Tank* fairly accurately reflects the gender gaps in the world of enterprises and how, when it comes to seeking investments, the odds are stacked against women. According to *The 2015 State of Women Owned Businesses Report*, only 30% of enterprises are owned by women⁶⁵—comparable to the representation of

62 Problematically, in terms of equal representation, each time both female sharks participated it was at the expense of the one and only African American male shark (Daymond). This pattern of exchange has continued throughout Season 6 as well.

63 Adam G. Panopoulos, *Barriers to Financing: Is European Union Indirect Discrimination Law the Answer for Female Entrepreneurs?*, 16 *CARDOZO J.L. & GENDER* 549, 562 (2010) (“In the United States, only a few venture capitalist investors are women, compounding the problem that female entrepreneurs ‘lack access to the relatively closed world of venture capital fund managers.’”).

64 Samantha Cooney, *Shark Tank Funds Fewer Women than Men, with Less Money*, MASHABLE (Jan. 15, 2016), <http://mashable.com/2016/01/15/shark-tank-women-entrepreneurs> [<https://perma.cc/VA7M-BP69>] (“Companies founded by men received an average valuation of nearly \$1.7 million, while companies founded by women received an average valuation of just over \$781,000.”).

65 WOMENABLE, *THE 2015 STATE OF WOMEN OWNED BUSINESSES REPORT 2* (2015), http://www.womenable.com/content/userfiles/Amex_OPEN_State_of_WOBs_2015_Executive_Report_finalsm.pdf [<https://perma.cc/>]

women on the show (maximum of 29% for sharks and 26% for pitchers). Similarly, the difficulty of financing female-owned businesses, or the gender-bias of venture capitalists, is well-studied and documented.⁶⁶ Even though this is not the place for a full presentation of the data and its analysis, some leading reasons that are mentioned in the literature as tending to make female-owned businesses less investable,⁶⁷ or not investable at all, are worth mentioning here because they seem to appear on *Shark Tank* as well. One is the idea that women's businesses are too small to show significant growth and a timely return of investment.⁶⁸ Another is the reluctance of male investors to invest in ventures that are premised on a "feminine" idea. Yet another is that investors often assign less credibility to female entrepreneurs under the assumption that these entrepreneurs will likely demonstrate less focus on and dedication to their businesses due to their familial duties as wives and mothers.

B. Sexism

From time to time, the atmosphere in the shark tank becomes sexist and amounts to a hostile environment for women. Examples are numerous, and many can be difficult to describe in full by words alone, without watching the show. Some are classical cases of sexism—objectifying the sexualized female body and using it to sell another product, unrelated to the woman who is used in order to sell it. In one pitch, a male pitcher entered the tank followed by a beautiful blond woman wearing a tiny black bikini. He introduced himself and his product, Tower Paddle Board,⁶⁹ without saying a word about the woman who stood quietly behind him. Despite her anonymity and silence, some of the male sharks did not remain indifferent to her presence, further increasing the sexism in the room. At one

Q27D-R6N4] ("Women-owned firms now account for 30% of all enterprises").

66 Jennifer E. Jennings & Candida G. Brush, *Research on Women Entrepreneurs: Challenges to (and from) the Broader Entrepreneurship Literature?*, 7 ACAD. MGMT. ANNALS 661 (2013); Alison Wood Brooks et al., *Investors Prefer Entrepreneurial Ventures Pitched by Attractive Men*, 111 PROC. NAT'L ACAD. SCI. 4427 (2014); Sarah Thébaud & Amanda J. Sharkey, *Unequal Hard Times: The Influence of the Great Recession on Gender Bias in Entrepreneurial Financing*, 3 SOC. SCI. 1 (2016); Panopoulos, *supra* note 63, at 561 ("women receive a very small percentage of American venture capital investment.").

67 The word "investable" is often used on *Shark Tank* and in practice to describe the attractiveness of a given business to investment as seen from the perspective of potential investors.

68 Panopoulos, *supra* note 63, at 562 ("[F]emale-owned businesses do not immediately appeal to venture capitalists because they tend to be smaller and service-oriented, and therefore lack the growth potential of larger businesses.").

69 *Shark Tank: Season 3, Episode 9* (ABC television broadcast Mar. 16, 2012).

point, for example, Robert requested a demonstration by the woman, referring to her as the pitcher's "lovely assistant." And, as the assistant started paddling in front of the panel of sharks, the pitcher commented that—as they witnessed by watching her paddle—"there's a health benefit" to using his product. Kevin immediately and suggestively responded "I noticed" Almost needless to say, even by the end of the pitch—which yielded two offers and an investment—no one learned or cared about the identity of the woman. She also didn't get to say a word.

Sometimes, the show's sexist message is less blunt but, I argue, just as disturbing. I have already mentioned earlier the short skirts of *The Caddy Girls* and the very high black heels of the pitchers of *Cashmere Hair*. Surely, it may be the pitchers' choice to sexualize their own bodies in order to attract the sharks and tempt them to invest in the pitchers and their products.⁷⁰ However, by broadcasting those scenes, the show itself amplifies the sexualized message and actively participates in selling to its millions of viewers "old sexual stereotypes wrapped in a new, glossy postfeminist guise."⁷¹ Moreover, the sexualization of the female body is further enhanced by the reactions and interpretations of some of the male sharks. For example, in a pitch titled *Stella Valle*, two female veterans started their pitch wearing military uniform and then undressed and exposed highly feminine dresses to emphasize their transition from the military to the private sector and to market the products of their post-military career.⁷² In response, Robert sighed, "I want to join the army," making the provocation more sexualized than it was to begin with. The other sharks laughed. I laughed as well; it was funny, and feminists better not be bitter "killjoys."⁷³ However, a similar mode of joking—in worse forms—repeats itself through the presentations of female pitchers at other times—enough times, I argue, to justify calling it an undertone of the show.

Recall the pitch of *Cashmere Hair*. As one of the pitchers demonstrated the easy removal of her many previously unnoticeable hair extensions, Kevin presented a challenge. Instead of seeing the product as something that women buy for themselves, he assumed women

70 Although also true for all choices, the choice to sexualize oneself in order to improve sales is influenced by the general structure of society that in a gendered way attributes value to and pays a premium for an exposed and sexualized presentation of the female body.

71 Laura Harvey & Rosalind Gill, *Spicing It Up: Sexual Entrepreneurs and the Sex Inspectors*, in *NEW FEMININITIES: POSTFEMINISM, NEOLIBERALISM AND SUBJECTIVITY* 52 (Rosalind Gill & Christina Scharff eds., 2011).

72 *Shark Tank: Season 4, Episode 22* (ABC television broadcast Apr. 25, 2013).

73 SARA AHMEND, *THE PROMISE OF HAPPINESS* (2010).

would buy hair extensions to appeal to him and other men. “Let’s talk guy meets a girl . . . [and later] ‘the special evening arrives,’” he suggested. At such moment, Kevin argued in protest, “you find out it’s just all false advertising.” Kevin’s protest suggests that women buy products in order to better market themselves to men by use of their bodies. Under this unfortunate framing, if a woman does not really “own” the body with which she attracted the man, then she has engaged in defrauding him. Disappointingly, the female pitchers themselves accepted Kevin’s “false advertising” argument and only said in response, “Isn’t it with a lot of things women do? *We cheat a little bit.*”⁷⁴

A similar scenario occurred in two other pitches: *Instant Lifts*, in which a husband and wife pitched clear adhesives designed to improve the look of sagging skin,⁷⁵ and *Hold Your Haunches*, in which two female friends pitched leggings with a built-in shaper.⁷⁶ It was Daymond in *Instant Lifts* and Kevin (again) in *Hold Your Haunches* who reinterpreted the scene to add sexist meaning to female products. Each of them repeated the “false advertising” argument, suggesting that women buy products relating to their appearance in order to please men and as part of an effort to market themselves to men, through their bodies. Based on those assumptions they both condemned products that work to *conceal* female bodily imperfections,⁷⁷ arguing that women using such products are somehow defrauding men. It should be noted that in *Hold Your Haunches* the “false advertising” argument led to a true gender war in the tank. Lori challenged Kevin by asking “for the whole world to know” the following question: “If you met a woman who you thought was dynamite and later she took [the leggings] off, are you telling me you wouldn’t like her?” And yet, it is noteworthy that Lori didn’t challenge the fundamental premise of the argument—that women buy appearance enhancing products to market themselves to men.

Similarly noteworthy is the fact that in *Hold Your Haunches*, Barbara and Lori blamed the male sharks not only for the fallacy of the fraud argument but also for not taking “feminine products” seriously enough. They highlighted the fact that the male sharks gave up the deal without even asking the pitchers for the basic business data they gather at all other times before making up their minds. Importantly, this last point regarding the reluctance of male investors to invest in highly feminine products is frequently made

74 *Shark Tank: Season 5, Episode 12, supra* note 39 (emphasis added).

75 *Shark Tank: Season 3, Episode 9, supra* note 69.

76 *Shark Tank: Season 5, Episode 23* (ABC television broadcast Apr. 10, 2014).

77 The market for such products raises, of course, another feminist problem—the need of women to invest money in “makeovers” to fit a standard of beauty set by society mostly on women.

outside of the show and is documented in the literature dedicated to struggles of women's businesses.⁷⁸ In this pitch, however, the war had a happy feminist ending when Lori and Barbara joined forces and invested *together*—as an act of business sisterhood—in the leggings.⁷⁹ As an investment of money by female investors who purposefully wanted to support female entrepreneurs struggling with machoism, this was a strong demonstration of neoliberal feminism of the sort discussed in the previous Part. And Lori, who on other occasions said she never sees herself as a *woman* in business found it important to stress, “I would like to make a deal with [Barbara] just so that down the road we can show our male sharks how they missed out on something that could be one of the biggest sellers of this season.”

To conclude the discussion of sexism, it should be recognized that, sadly, behind the show's egalitarian façade, there are many moments in which women are still being depicted as objects or as sexual beings existing only to satisfy men by virtue of their bodies.

C. Second Class (Again)

At first glance, the women on *Shark Tank* appear to have crossed or even erased the “gender line,”⁸⁰ the traditional divider between the stereotypical lives of male breadwinners and their wives (and the mothers of their kids) who are much more invested in the domestic life of the family. Many of them indeed have overcome traditional gender roles and have developed successful careers by leading the life of an entrepreneur. The female sharks offer one clear example of this gender role/line/boundary erasure, and some female pitchers, such as the inventors and founders of LuminAID, offer another. However, a significant number of the female entrepreneurs who have appeared on the show literally have not left the home or are engaged in entrepreneurial tasks disturbingly similar to women's traditional and stereotypical gender roles. Many, if not most, of the talented and hardworking women who made it on the show have made it *within* the constraint of a gendered society, and, in that sense, broadcasting their stories perpetuates rather than eradicates gender inequality.

78 Gupta et al., *supra* note 50, at 398 (describing the general difficulty of female entrepreneurs to “engage the interest of loan officers, angel investors, and venture capitalists.”).

79 An update later on the show reported that the investment yielded a great success. *Shark Tank: Season 6, Episode 15* (ABC television broadcast Jan. 16, 2015).

80 For an explanation of the term “gender line,” see NANCY LEVIT, *THE GENDER LINE: MEN, WOMEN, AND THE LAW* (1998).

Male pitchers on the show are engaged in a wide range of entrepreneurship. They deal with apps,⁸¹ wine,⁸² smartphones,⁸³ trucks,⁸⁴ websites,⁸⁵ bicycles,⁸⁶ coffee,⁸⁷ spying,⁸⁸ and many other types of businesses. Even when male entrepreneurs base their business on cooking, it is not the traditional domestic kind of cooking, but a masculine version of it that follows the traditional gender line and reaffirms it. One male pitcher, for example, established a ribs-making business because, as he explained to the sharks, his wife just wouldn't prepare ribs for him because they took too long and were "too messy."⁸⁹

When it comes to female entrepreneurs, however, *Shark Tank* presents a far less diverse range of options. In addition to businesses based on three generations of female home baking,⁹⁰ or businesses catering to the constant need of women to beautify themselves to appeal to men (as discussed above), the show gives significant exposure to businesses created by mothers, based on their motherly experiences, often operated from home, and aimed at other mothers as consumers. The list is very long and includes, for example, cloth diapers,⁹¹ a diaper changing pad that doubles as a baby seat cover,⁹² kids' bibs,⁹³

81 *Shark Tank: Season 4, Episode 2* (ABC television broadcast Sept. 20, 2012) (*CATEapp*); *Shark Tank: Season 5, Episode 16* (ABC television broadcast Jan. 31, 2014) (*Cycloramic*); *Shark Tank: Season 6, Episode 20*, *supra* note 23 (*Scholly*).

82 *Shark Tank: Season 2, Episode 1* (ABC television broadcast Mar. 19, 2011) (*Copa di Vino*); *Shark Tank: Season 6, Episode 11* (ABC television broadcast Dec. 12, 2014) (*Zipz*).

83 *Shark Tank: Season 5, Episode 2* (ABC television broadcast Sept. 27, 2013) (*Breathometer*).

84 *Shark Tank: Season 3, Episode 13* (ABC television broadcast Feb. 10, 2012) (*AirBedz*).

85 *Shark Tank: Season 1, Episode 4* (ABC television broadcast Aug. 29, 2009) (*Gift Card Rescue*).

86 *Shark Tank: Season 3, Episode 13*, *supra* note 84 (*Villy Customs*); *Shark Tank: Season 5, Episode 19* (ABC television broadcast Mar. 7, 2014) (*RevoLights*).

87 *Shark Tank: Season 4, Episode 15* (ABC television broadcast Feb. 7, 2013) (*Grinds*).

88 *Shark Tank: Season 5, Episode 17* (ABC television broadcast Feb. 21, 2014) (*Spy Escape and Evasion*).

89 *Shark Tank: Season 5, Episode 11* (ABC television broadcast Dec. 6, 2013) (*Bubba's Q BBQ*).

90 *Shark Tank: Season 2, Episode 6* (ABC television broadcast Apr. 28, 2011) (*Daisy Cakes*).

91 *Shark Tank: Season 4, Episode 3* (ABC television broadcast Sept. 27, 2012) (*FuzziBunz*).

92 *Shark Tank: Season 4, Episode 8* (ABC television broadcast Nov. 1, 2012) (*Cool Wazoo*).

93 *Shark Tank: Season 4, Episode 14* (ABC television broadcast Jan. 10, 2013) (*Bibbitech*).

sleepwear for newborns,⁹⁴ books that use stress-relieving techniques to calm kids to sleep,⁹⁵ a jewelry line for kids,⁹⁶ nursing pillows to feed twins,⁹⁷ an organizer designed as a stuffed toy,⁹⁸ children's swimwear with UV sun protection,⁹⁹ moccasins for babies,¹⁰⁰ professional children's hair products,¹⁰¹ a device that helps parents give small children oral medicine,¹⁰² and many more similar products. In fact, the list is so long that at some point the *Shark Tank Success* blog observed that “[i]t appears that the *baby business is booming in the Shark Tank* as we have two new invention’s [sic] made by a Mom, for Mom’s [sic].”¹⁰³

Although *Shark Tank* did not invent the special term for this type of entrepreneurship—now known in the United States as mompreneurship and in the United Kingdom as mumpreneurship—the show, and the media that enhances its impact, certainly plays an active and influential role in disseminating the idea. As one blog described one of *Shark Tank*'s products: “Teddy Needs a Bath was invented when . . . ‘mompreneur’ Nicole Townend couldn’t find a simple way to clean her daughter’s stuffed animals after they got filthy from frequent use and encounters with the family dog.”¹⁰⁴ Remarkably, there is even a book titled *Shark Tank MOMpreneurs Take a Bite out of Publicity*, written to acknowledge “all the mompreneurs who are trying to make a difference in the world, creating value while raising children.”¹⁰⁵

94 *Shark Tank: Season 6, Episode 1* (ABC television broadcast Sept. 26, 2014) (*Sleeping Baby*).

95 *Shark Tank: Season 1, Episode 3* (ABC television broadcast Aug. 23, 2009) (*Stress Free Kids*).

96 *Shark Tank: Season 3, Episode 5* (ABC television broadcast Feb. 17, 2012) (*M3 Girl Designs*).

97 *Shark Tank: Season 6, Episode 21* (ABC television broadcast Mar. 6, 2015) (*The Twin Z Pillow*).

98 *Shark Tank: Season 1, Episode 8* (ABC television broadcast Oct. 6, 2009) (*Treasure Chest Pets*).

99 *Shark Tank: Season 5, Episode 15* (ABC television broadcast Jan. 24, 2014) (*SwimZip*).

100 *Id.* (*Freshly Picked*).

101 *Shark Tank: Season 4, Episode 12* (ABC television broadcast Jan. 4, 2013) (*Hot Tot*).

102 *Shark Tank: Season 1, Episode 1* (ABC television broadcast Aug. 9, 2009) (*Ava the Elephant*).

103 *Bibbitec Bib's*, SHARK TANK SUCCESS, <http://sharktanksuccess.blogspot.com/2013/01/bibbitec-bibs.html> [<https://perma.cc/VT7Q-DVAS>] (last visited July 11, 2016).

104 *Teddy Needs a Bath*, SHARK TANK BLOG, <http://sharktankblog.com/business/teddy-needs-a-bath> [<https://perma.cc/58Y5-KBSF>] (last visited July 7, 2016).

105 RACHEL OLSEN, SHARK TANK MOMPRENEURS TAKE A BITE OUT OF PUBLICITY (2014).

In Season 3, Shelly Ehler entered the tank accompanied by her two young boys to introduce her product ShowNo—a wearable towel that provides coverage for kids so they can change out of a swimsuit in public without their mom holding the towel.¹⁰⁶ A closer look at the way this pitch unfolded demonstrates some of the main challenges presented by the new concept of *momprenneurship*. To begin with, Shelly told the sharks, and about six million other people who watched the pitch when it first aired,¹⁰⁷ that she came up with the idea when she was with her kids at the swimming pool and both her children demanded her help at the same time. “It was one of those kind of mom moments,” she explained, articulating one of the traits of *momprenneurship*: the development of a product based on a motherly experience and on a need that mainly moms would understand, relate to, and later translate into consumption.

Following a question by Lori, Shelly further situated herself at the core of the domestic sphere when she shared that she works from home—another common reality in the life of many *momprenneurs*. It seems as if instead of leaving the domestic domain and entering the market, the *momprenneurship* model brings a piece of the market into the home. In a later interview Shelly would illuminate an important reason for running her business from home, conveying a logic often offered by *momprenneurs*: “I make my own schedule and I am home with my kids. I work a lot, but do most of my work when they are at school or in bed.”¹⁰⁸

Unfortunately, as a *momprenneur*, Shelly had to cope with a special challenge relating to her motherhood before gaining the sharks’ trust. To see that, it is important to remember that on the show Shelly *did not* share with the sharks any desire to combine motherhood with entrepreneurship. And yet, even without such avowal, she found herself under a questioning pattern that no other male entrepreneur on the show had to cope with. At an early stage of the pitch Mark said, “Let me ask you the most difficult question,” but his question did not address the usual issues of sales, inventory, or production costs. Instead, he continued by challenging Shelly with the following hypothetical situation: “You have two beautiful children and it’s a birthday. The CEO of a major corporation wants you to come out and make a presentation to all their buyers and the only day that they can see you

106 *Shark Tank: Season 3, Episode 4* (ABC television broadcast, Feb. 10, 2012).

107 Nellie Andreeva, *Rating Rat Race: ‘Shark Tank’ Hits Friday High, ‘Grimm’ Bounces Back*, DEADLINE (Feb. 11, 2012), <http://deadline.com/2012/02/ratings-rat-race-shark-tank-hits-friday-high-grimm-bounces-back-229813> [<https://perma.cc/Z93D-2BUX>] (reporting that on February 10, 2012, the night *ShowNo* aired, *Shark Tank* was the second most watched program of the night “with 5.9 million” viewers.).

108 OLSEN, *supra* note 105, at 10.

is on that birthday. What happens?”¹⁰⁹ Although Shelly handled the gendered question by clarifying to the sharks that she would go to the meeting, the damage is in the question itself. Presenting Shelly with such a dilemma—a need to choose between her child’s birthday and her business career, in the middle of her professional pitch—well demonstrates the unequal treatment of mompreneurs. It bluntly questions women’s ability to “have it all,” strike “a work-life balance,” focus on their business, or prioritize correctly. It voices, and amplifies, a prejudice common in the world of venture capital; one that makes it harder for all female entrepreneurs who are mothers, including the many young women that may become mothers, to raise money for their businesses.

Shelly’s explanation for her resolution of the balancing dilemma further highlighted the special dependency of mompreneurs on family support and especially on spousal support. As Shelly told the sharks and the viewers, “My husband is so supportive of me, I would not be here right now if it weren’t for all that support.” Shelly’s words reveal that she does not see a way to be a mompreneur without having the right partner at home, one who agrees with the entrepreneurial activity, is willing to invest in it, and is ready to sacrifice his own independence for it to succeed. Similar sentiment was expressed by Sandberg in *Lean In* when she declared, as part of a special chapter she dedicates to the partner issue, “I don’t know of one woman in a leadership position whose life partner is not fully—and I mean fully—supportive of her career.”¹¹⁰ Awareness of the special dependency of mompreneurs is important for two main reasons. One is that it marks mompreneurship as not only different but also more vulnerable than “regular” entrepreneurship. The other, which will be further explored later, is that it makes mompreneurship inaccessible and unattainable for many women who do not enjoy the right kind of support.¹¹¹

It is also important to note that as far as the relationship with investors is concerned, mompreneurship raises the question: to what extent does it and should it matter that the entrepreneur is a woman? When Daymond expressed his readiness to make Shelly an offer, his attention and interest brought Lori into the competition. Highlighting her position as the only female shark on the panel, Lori told Shelly how much she saw herself in Shelly. Then, Lori did something that was never done before on *Shark Tank*, and may be considered less calculated than what a rational investor would have done: she offered Shelly an immediate

109 *Shark Tank: Season 3, Episode 4, supra* note 106.

110 SANDBERG, *supra* note 54, at 110.

111 Although in *Lean In*, Sandberg holds women responsible for the approach of their husbands, starting from the need to choose the right man and continuing to avoid mistakes that would make the man less capable of offering the needed support.

check, foregoing the ordinary *Shark Tank* process that includes due diligence after the show. Lori further enhanced her effort to convince Shelly to partner with her by explicitly reminding Shelly of her unique “advantage”: the advantage of a female pitcher having a female partner. Lori’s use of gender affinity was immediately contested by Daymond, who left an important question hanging in the tank: “What does it even have to do with it?” Like Mark’s hypothetical mentioned earlier, Lori and Daymond’s debate raises a broader puzzle regarding mompreneurs: are they similar to or different from “regular” entrepreneurs? In this context, it is worth recalling that with regard to her own entrepreneurship, Lori expressed a different sentiment than the one she used to convince Shelly, rejecting the notion that women in business are somehow different than their male counterparts.

Moreover, the pitch indicated that mompreneurs, and perhaps women more generally, tend to be less decisive than male entrepreneurs. When Mark, despite his doubts, added his offer to the mix, Shelly needed to decide between three offers. At this critical moment she seemed hesitant to make up her mind and—in an act seldom seen on the show—asked to consult with her husband. The sharks immediately agreed, acting as if such an unusual request were suddenly normal when a married mompreneur must decide, even though as a rule pitchers are required to decide on the spot and sometimes are specifically pressured to do so fast. This part of the pitch portrays mompreneurs as less independent than “regular” entrepreneurs who have no problem deciding on their own.

This problematic portrayal of the decisionmaking of women in business was supplemented by the ending of the pitch, which implied that mompreneurs are much more emotion driven than male entrepreneurs, at the expense of rational thinking. Such association of women with emotions and men with rationality is, of course, not new. However, it is significant to account for this form of perpetuation of the gender line as it manifests itself in the business context. When Shelly left to consult with her husband the camera followed her, allowing the viewers to hear his advice that Shelly should follow her heart. As advised, Shelly returned to the tank and announced that despite her high appreciation to all the sharks who made her tempting offers she decided to go with her heart and therefore partner with Lori. Here, the show’s framing of the pitch works to depict female entrepreneurs as emotional and intuitive, rather than rational and calculated as male entrepreneurs are presumed to be.

Finally, despite Shelly’s success in getting offers from several sharks and closing a deal with one of them, the pitch further exposed the doubt that even successful mompreneurship may not be considered a legitimate brand of entrepreneurship. After Shelly left the tank, Kevin—probably the most stereotypical male shark—turned to his fellow sharks and

disparaged them for letting Shelly, to use his words, “cry a story.”¹¹² He also criticized them for offering Shelly money even though by being emotional she increased the price beyond its “metrics of value.” Kevin went as far as calling the entire pitch “financial pornography,” exhibiting not only more sexism of the kind discussed earlier, but also a broader doubt regarding the real economic value of mompreneurship. Expressing self-awareness of *Shark Tank*’s impact on viewers, Kevin further delegitimized mompreneurship as a form of entrepreneurship, saying, “We got kids watching this show that are learning exactly the wrong thing.”

All in all, the numerous female pitches that adhere to traditional gender roles or treat women with sexism, and particularly the pitches that celebrate mompreneurship as a distinct genre of entrepreneurship, cast women—once again—as a second class. This time, the arena is the market and the context is entrepreneurship, but within it women are often neither already equal (as suggested by the post-feminist view), nor working their way towards equality via entrepreneurialism (as suggested by the neoliberal view). Rather, women in the *Shark Tank* are too frequently more akin to our mothers and their grandmothers—craving freedom and success but severely constrained by a gendered society. From this perspective, the presence of women in the entrepreneurial arena has not improved their situation. And, as feminist scholar Helene Ahl recently argued, “even if the number of women entrepreneurs increases and they become more visible, the feminist project does not move forward unless their position in business and society is also improved.”¹¹³ In the next Part, I reconsider the two optimistic messages of *Shark Tank* that suggest a defeat of gender inequality (described in Part I) and the three more pessimistic indications that the show contributes to a perpetuation of gender inequality (described in Part II). My goal is to explain why beyond entertainment there are important lessons that legal feminism can learn from analyzing the five insights that emerge from carefully tracing *Shark Tank*’s discourse.

III. Legal Feminism in Entrepreneurial Times

For many years, legal feminists have sought to use the law to fight against all forms of gender inequality and have made it a leading goal to defeat *economic* gender inequality.¹¹⁴

112 *Shark Tank: Season 3, Episode 4, supra* note 106.

113 Helene Ahl et al., *From Feminism to FemInc.ism: On the Uneasy Relationship between Feminism, Entrepreneurship, and the Nordic Welfare State*, 12 INT’L ENTREPRENEURSHIP & MGMT. J. 369, 383 (2016).

114 *See generally* NANCY LEVIT ET AL., *FEMINIST LEGAL THEORY: A PRIMER* (2d ed. 2016) (see especially Martha Minow’s *Forward to the Second Edition*).

By and large, feminist battles for economic gender equality have focused on women in the workplace. In the meantime, the rise of neoliberalism in the last few decades has created a new reality and a new common sense with a special belief in the power of entrepreneurial activity. For the last seven years, and with its growing popularity, *Shark Tank* has symbolized, celebrated, and marketed to the masses the idea of a new world—the world of entrepreneurship. And, as the show proves, women are welcome to participate and do so with much success. Perhaps for that reason, or simply by the power of inertia, feminists in general and legal feminists in particular have remained focused on the employment setting and have so far paid little attention to the meaning of women's participation in the entrepreneurial world.

However, I argue now that legal feminists can no longer afford to leave the entrepreneurial arena for others to interpret. Without a critical analysis of the state of things, female entrepreneurship of the sort presented and produced by *Shark Tank* would be wrongly understood as either proof of a feminist victory, or as confirmation that such entrepreneurship is, if not *the one and only* way, at least the leading way to achieve economic gender equality in the future. And yet, as the previous Part aimed at showing, both interpretations are too rosy while the glamorous façade conceals the production of gender inequality at the core of the entrepreneurial sphere. Without looking behind this façade, the highly popular *Shark Tank* participates in producing a *social context* that idealizes entrepreneurship in general and female entrepreneurship—including mompreneurship—in particular. Such social context influences more than our appreciation of entrepreneurial women; it shapes our understanding of *all* women and all existing feminist battles. It also impacts the way women perceive themselves, their problems, and the solutions they should seek. Without taking away from the individual accomplishment of some female entrepreneurs on *Shark Tank* or in real life, I argue that the broader myth of egalitarian participation of women in the entrepreneurial sphere harms the quest for gender equality in a variety of ways. Accordingly, I argue that it is imperative for legal feminists to account fully for the many challenges presented by the success of the entrepreneurial myth and develop appropriate responses to cope with them. In what follows I discuss the harms, the challenges, and some possible feminist responses by focusing on three different sub-groups: female entrepreneurs, female workers, and all women regardless of their occupational status.

A. Harm to Female Entrepreneurs

For the most part, the existing literature regarding female entrepreneurs has focused on comparing the performance of male and female entrepreneurs, documenting the significant differences between the genders, and attempting to explain their causes. As a recent

article covering thirty years of writing in the field concluded, such an “objective” mode of study demonstrates that “few entrepreneurship researchers are interested in feminist epistemology.”¹¹⁵ However, as the same article pointed out, feminist analysis of gender issues in entrepreneurship is sorely missed and much needed.¹¹⁶ The discourse analysis of *Shark Tank* offered here seeks to fill some of this void by calling attention to the fact that the celebration and idealization of the phenomenon of female entrepreneurs carries significant cost to the women who embark on the entrepreneurial journey.

At the most basic level, the celebratory nature of the discourse works to put entrepreneurship on a pedestal and thus obscures major flaws including the problem of gender inequality. By making entrepreneurial activity seem like a level field in which only talent and hard work dictate results, female participants are misled to believe they have equal opportunity to succeed. Yet, in reality many would suffer from obstacles closely related to their gender and to their status as wives and/or mothers. Recall Mark’s question about the conflict between the entrepreneur’s son and her important business meeting discussed earlier. Even though many parenting entrepreneurs may experience such conflict, the question was directed only at a female pitcher. Similarly, in another pitch of a cake business,¹¹⁷ the male sharks refused to make offers, arguing that the business was too small for investment, even though they had no such reservation when a male pitcher presented a ribs business.¹¹⁸ Again, although the “too-small” argument may sound gender-neutral, it is strongly gendered and influenced by the trivialization of the baking of cakes and other types of labor that women traditionally did at home for free. As these two examples show, and as additional data proves,¹¹⁹ investors are not treating women equally and are far less willing to invest in small businesses run by women. And yet, the fact that female entrepreneurs struggle more than their male counterparts when they try to raise money is concealed by success stories disseminated to the masses through shows, blogs, social media, and other mediums. In fact, many younger female entrepreneurs are *expected* (and expect themselves) to *produce* such success stories by constantly self-branding themselves

115 Henry et al., *supra* note 11.

116 *Id.*

117 *Shark Tank: Season 2, Episode 6, supra* note 90 (*Daisy Cakes*).

118 *Shark Tank: Season 5, Episode 11, supra* note 89 (*Bubba’s Q BBQ*).

119 See, e.g., SUSAN COLEMAN & ALICIA ROBB, NAT’L WOMEN’S BUS. COUNCIL, ACCESS TO CAPITAL BY HIGH-GROWTH WOMEN-OWNED BUSINESSES 14 (2015), [https://www.nwbc.gov/sites/default/files/Access%20to%20Capital%20by%20High%20Growth%20Women-Owned%20Businesses%20\(Robb\)%20-%20Final%20Draft.pdf](https://www.nwbc.gov/sites/default/files/Access%20to%20Capital%20by%20High%20Growth%20Women-Owned%20Businesses%20(Robb)%20-%20Final%20Draft.pdf) [<https://perma.cc/B8FM-FV8P>] (on average, men start their businesses with nearly twice as much capital as women).

via any possible channel.¹²⁰ The female entrepreneurs who do so, including those who have won deals on *Shark Tank*, further assist in building an egalitarian myth and by doing so contribute to the concealment of a much more gendered reality.

Unable to recognize the gender problem, many female entrepreneurs tend to blame themselves at times of failure. And, being susceptible to engaging in self-blame, they may end up disempowered by the same activity that was allegedly a mark of their empowerment. This difficulty comes from the combination of a gendered universe and the growing domination of the neoliberal common sense. As described earlier, pitches on *Shark Tank* and entrepreneurship more generally are framed in accordance with neoliberalism as highly individual projects and as such are divorced from any social context. Accordingly, due to “discourses that reinforce the autonomy . . . of the ‘enterprising self,’ success and failure are understood as triumphs and tragedies of individual design.”¹²¹ To this individualized view, neoliberalism adds responsabilization—the imposition of responsibility on the same subject that is expected to self-invest in her success.¹²² As a recent study of female entrepreneurial musicians shows, responsabilization means in this context that “neoliberal subjects only have themselves to blame” and “difficulties can only be regarded as individual failure.”¹²³ Based on this logic, when things go wrong many female entrepreneurs are at risk of self-doubt, attributing failures to themselves rather than to our gendered society. They may think, for example, that their problems result from their *personal* lack of experience, limited willingness to take risks, flawed networking, lack of focus (due to their focus on their kids), or lack of confidence; they may not realize how structural and gendered their impediments are. In other words, too often female entrepreneurs may wrongly assume and accept that difficulties are a product of their shortcomings, while in fact they are much more related to systematic biases and thus require feminist activism. It is important to note that the need for feminist help is crucial because under the influence of neoliberalism the responsabilized entrepreneur is expected to respond to obstacles and failures by taking measures of self-help and self-improvement—measures that are ineffective against structural problems.

In addition to having to cope with a biased *market*, female entrepreneurs face difficulties that originate at *home*. As opposed to the ordinary male entrepreneur who is free to focus

120 Brooke Erin Duffy & Emily Hund, “Having it All” on Social Media: Entrepreneurial Femininity and Self-Branding among Fashion Bloggers, 1 SOC. MEDIA + SOC’Y 1 (2015).

121 MARK BANKS, THE POLITICS OF CULTURAL WORK 63 (2007).

122 BROWN, *supra* note 6.

123 SCHARFF, GENDER, *supra* note 9.

on his business outside of the home, travel frequently, and do *everything* it takes to achieve success, the common female entrepreneur is expected to *balance* her entrepreneurship with her domestic duties and internalize this expectation as a self-requirement. Indeed, studies show that “most women entrepreneurs are found in low-skilled, low-paid occupations, with the greatest earning penalties incurred by wives and mothers who start small, home-based businesses to balance work and family.”¹²⁴ Recall that Shelly from *ShowNo* was not only asked by Mark about this kind of balancing, but also said in a later interview that this is what she sees herself gaining from being a mompreneur. As she further explained, and as many female entrepreneurs report,¹²⁵ “balancing” means in this context difficult and ongoing juggling efforts which require, among other things, working around children’s schedules and accommodating other family needs. And, if that’s not hard enough, female entrepreneurs are supposed to do all of that with a smile and without complaints, a fact that adds to the complex balancing task an exhausting *affective* component. As another feminist scholar recently noted, “women are compelled and encouraged to pursue *happiness* through constructing a self-tailored work-family balance.”¹²⁶ Indeed, satisfying the demand to juggle with a smile was demonstrated by Shelly when she reported being “grateful” for her ability to combine two missions into every single day.¹²⁷ In reality, however, this double task of balancing work and family *and* doing all of it while expressing happiness can be daunting, taking a heavy toll on women’s well-being. Moreover, even if achievable, the goal of maintaining a happy balance is always “elusive,” and thus requires investing additional energies in “constant calculation and optimizing of personal resources.”¹²⁸

It is also important to recognize that despite the common belief that female entrepreneurship (including mompreneurship) represents women’s freedom of choice and autonomy, for some women this hard work is more a product of *limited* choices and heightened vulnerability. This is especially the case in hard economic times and has particular relevance to the life of mompreneurs. Under a legal regime that does not award paid maternity leave, does not secure affordable, quality child care, and is otherwise not

124 Ahl & Nelson, *Policy Positions*, *supra* note 10, at 6.

125 ELIZABETH PALLEY & COREY S. SHDAIMAH, *IN OUR HANDS: THE STRUGGLE FOR U.S. CHILD CARE POLICY 2* (2014) (describing the fact that mompreneurs “often pay a high price” and sharing the words of one of them who said that “[t]he lack of sleep is the hardest part. The kids are up by 5:30. When I put my daughter down for a nap, I do as much work as I can . . . Any time a child is sleeping, I am doing work.”).

126 Rottenberg, *supra* note 32, at 429 (emphasis added).

127 OLSEN, *supra* note 105, at 10.

128 Rottenberg, *supra* note 32, at 429.

family-friendly, new mothers often find it hard to keep their jobs while ensuring that all the needs of their children are met.¹²⁹ On this last point, it is worth remembering how choices are always constrained by the possibilities available in a given context. For example, feminist discussions of women's entrepreneurship in the Nordic countries comparatively suggest that in countries such as the United States, which lack "family-friendly policies such as the provision of public, subsidized daycare services," it is this lack of alternatives (and not personal choice), which brings some employed women to "opt for starting a home-based business in order to have a career, as well as a family."¹³⁰ Add to this an economic downturn that prevents relying on one income per family and the resulting decisions of mothers to leave their work and start businesses are less a matter of true choices and more a product of the pressing need to earn a living at any personal cost. Pitches on *Shark Tank* tell this story, although between the lines. For example, in both *ShowNo* and another mompreneurial pitch,¹³¹ the mompreneurs relayed that what made them start their businesses was an extreme financial need caused by the recent economic crisis. Here, again, the signature of neoliberalism is evident, when women are expected to demonstrate self-care and self-coping, and cannot expect any state-based support in time of trouble. "Out-of-necessity" mompreneurs fit more with the iconic Rosie the Riveter than with the image of a choosing, liberated "person in business." Like Rosie the Riveter, they too, do "what is needed . . . regardless of their positions or preferences."¹³²

For all these challenges and their worrisome accumulation, it is, I argue, truly important for feminists in general and legal feminists in particular to start paying closer attention to the realm of entrepreneurship and the state of female entrepreneurs in it. Feminists should not be impressed by the glorified and beautified myth that presents entrepreneurship as an egalitarian realm and they should resist the message that in entrepreneurship *everything* depends on one's merits. In accordance with a long-established feminist sensitivity to issues of power and structural causes of inequality, feminists ought to first investigate and then expose how a gendered society produces a gendered entrepreneurial world. Next, instead of the neoliberal responsabilization of female entrepreneurs, feminists should insist that women should not be blamed, or blame themselves, when their success is impeded

129 Ruth Rosen, *The Care Crisis*, NATION (Feb. 27, 2007), <https://www.thenation.com/article/care-crisis> [<https://perma.cc/4DZJ-V6YE>] ("an absence of quality, affordable child care and flexible working hours, among other family-friendly policies, greatly contributes to women's so-called 'choice' to stay at home").

130 Ahl et al., *supra* note 113.

131 *Shark Tank: Season 6, Episode 21*, *supra* note 97 (the Twin Z Pillow, a special pillow for simultaneously nursing twins).

132 Ahl & Nelson, *Policy Positions*, *supra* note 10, at 279.

by structural inequality. Interventions on behalf of female entrepreneurs are as needed as previous feminist reforms aimed at assisting women to join the workforce and demanding that they would be treated fairly while on the job or if terminated. This last task is particularly challenging given the fact that in general the entrepreneurial sphere is far less regulated than the workplace, to a large degree due to the mythological status of entrepreneurship in the neoliberal age.

The issue of pregnancy can serve as an illuminating example. While female workers have enjoyed legal protections and much feminist attention,¹³³ female entrepreneurs are much worse off: they are left alone to cope with all the difficulties relating to their pregnancy. A one-of-a-kind British study recently documented some of those difficulties and their toll on female entrepreneurs absent regulation.¹³⁴ Explaining that pregnancy is negatively perceived by both existing and potential customers or clients, the study describes how pregnant entrepreneurs felt pressured to develop individual strategies to negotiate the physical challenges imposed by their pregnancy and their need to survive the fierce competition that predominates in the entrepreneurial setting.¹³⁵ The findings of the study reveal a special vulnerability of pregnant entrepreneurs. Despite the fact that in theory customers and business owners can mutually agree to modify the entrepreneur's changing needs due to her pregnancy, it uncovers that in reality accommodation was scarce and by and large "pregnant entrepreneurs faced a high threat of exclusion" as a result of the tendency to perceive them as inferior to "normal" entrepreneurs.¹³⁶ The fear of losing business as a result of this negative framing of pregnancy yielded a variety of individual strategies

133 Pregnant employees are protected by the Pregnancy Discrimination Act ("PDA") which in general requires employers to treat pregnant employees "the same" as similarly situated non-pregnant employees. This protection is far from satisfying. See Eliza H. Simon, *Parity by Comparison: The Case for Comparing Pregnant and Disabled Workers*, 30 COLUM. J. GENDER & L. 254, 254 (2015) (describing how "the prevailing interpretation of the PDA has made it difficult for plaintiffs to establish a successful claim," and how "many pregnant workers could work later into their pregnancies if their employers made even simple accommodations—but these accommodations are not currently required by law."). The protections and their limitations have been discussed and debated by many legal feminists. For a review see Vicki Schultz, *Taking Sex Discrimination Seriously*, 91 DENV. U. L. REV. 995, 1066–95 (2015).

134 Julia Rouse & John Kitching, *Embodying Entrepreneur Pregnancy: More Individualised Strategising than Mutual Adjustment*, in 37TH INSTITUTE FOR SMALL BUSINESS AND ENTREPRENEURSHIP (ISBE) ANNUAL CONFERENCE: THE FUTURE OF ENTERPRISE: THE INNOVATION REVOLUTION (2014), <http://www.business.mmu.ac.uk/knowledgehub/docs/embodying-entrepreneur-pregnancy.docx> [<https://perma.cc/Z5ME-QAYW>] (last visited July 8, 2016).

135 *Id.* at 5.

136 *Id.* at 8.

deployed by the studied pregnant entrepreneurs. In general, those included increased efforts to function as if the pregnancy didn't exist as well as bearing alone, rather than sharing with customers, all costs arising from any limitation relating to the pregnancy. For example, entrepreneurs reported engaging in disguising their pregnancy, making special efforts to dress meticulously "despite the challenges posed by the fecund body,"¹³⁷ discretely making up for lost work hours that had to be spent on prenatal care, avoiding discussions of the pregnancy, manipulating schedules so projects would "naturally" end before the delivery to minimize disruption of clients' expectations (at the expense of working and profiting until delivery), "handling chemicals and climbing on ladders" despite the obvious hazards to the pregnant entrepreneur,¹³⁸ and maintaining "regular" levels of service against all odds, including traveling to a distant city in the last week of pregnancy to ensure no interruption of a client's convenience.¹³⁹ As the researchers pointed out, while some of those strategies are also often utilized by pregnant workers, entrepreneurs demonstrated "extreme behaviours including widespread disregard for health and safety."¹⁴⁰ The study explains the difference between workers and entrepreneurs by the lack of regulatory protection outside of the employment setting combined with the fact that, unlike employees, entrepreneurs "must sustain business competitiveness throughout their maternity periods to have a job to return to after maternity leave."¹⁴¹

Those findings suggest that feminists urgently need to pay more attention to women's issues in the entrepreneurial arena. Concretely, a feminist reform with regard to pregnancy would alleviate some of the need of pregnant entrepreneurs to negotiate their own pregnancies in the face of "an ever-present threat of market rejection."¹⁴² An appropriate mechanism, possibly based in part on the Social Security system, should be found to have society take part in the cost associated with the impact of the pregnancy on the business. In addition to the monetary aspect, more creative thinking should be dedicated to finding ways in which pregnant entrepreneurs would not be forced to compromise either their safety and health, or their financial stability and the future of their business. One possibility relies on contract law—the law that governs the relationship of the entrepreneur with her

137 *Id.* at 8 (Emma).

138 *Id.* at 9 (Judith).

139 *Id.* at 10 (Cassie).

140 Rouse & Kitching, *supra* note 134, at 8.

141 *Id.*

142 *Id.* at 10.

clients and suppliers. Since all contracts are subject to the implied duty of good faith, it is possible to imagine judicial help to pregnant entrepreneurs in the form of a presumption that a cancellation or one-sided modification of a contract with a pregnant entrepreneur amounts to a breach of the duty of good faith.¹⁴³ Beyond pregnancy, female entrepreneurs need legal feminists to extend—and adjust—legal protections that currently apply only in the employment setting to the entrepreneurial realm. One especially acute issue is sexual harassment, where the law presently leaves female entrepreneurs exposed to harm from investors and powerful clients without protection.

B. Harm to Working Women

Shark Tank's idealization of entrepreneurship in general and its inclusion of women in the celebration of such a career path, may make people believe that female entrepreneurship is a viable alternative for women who want to earn money while fulfilling themselves on equal footing with men. For working women, this illusion of an alternative outside the world of employment is problematic and even risky for a combination of reasons.

In the real world, most women have to work for a living and cannot enter the world of entrepreneurship, even assuming it is as promising as presented under the neoliberal approach. Watching *Shark Tank* makes it quite evident that the entrepreneurial “solution” is mainly used by white, younger, middle-class people, adhering to what others described as the “preexisting gendered and racial scripts and their attendant grammars of exclusion.”¹⁴⁴ Sharks and pitchers, men and women alike, are all ideal neoliberal subjects: active, empowered, and independent. Pitchers are by and large self-made people who had enough money and education to make the first investment that would allow them to develop a product, protect it with a registered patent, and sell it online through a self-made or paid-for website in order to show sufficient initial success that would justify further investment by the sharks. Therefore, even if female entrepreneurship would have offered a path to gender equality, it is simply, and dangerously, misleading to think about it as a broad solution available to all.

The neoliberal project's constant effort to romanticize entrepreneurship comes at

143 Although pregnant entrepreneurs certainly do not need the burden of litigation, it is important to take into account the expressive and educational powers of the law. A few aptly published decisions may suffice to convince those who deal with pregnant entrepreneurs that they should participate in the adjustment to the temporary situation and consequentially can release pregnant entrepreneurs from the threat of losing business due to their pregnancy.

144 SARAH BANET-WEISER, AUTHENTIC TM: THE POLITICS OF AMBIVALENCE IN A BRAND CULTURE 89 (2012).

the expense of those who work hard every day, not to fulfill themselves or their passion, not to become rich, but merely to survive on a day-by-day basis. The more glamorous the images of female entrepreneurship and mompreneurship become, the more ordinary female workers are trivialized and marginalized. In fact, interviews with young German and British women regarding their approach to feminism demonstrated that “they often presented themselves as empowered and that they did so by constructing the figure of the oppressed, ‘other’ woman who was a passive victim of patriarchy.”¹⁴⁵ Every female success story on *Shark Tank*, such as Shelly’s ShowNo towels that helped her family recover from the economic crisis, therefore has a dicey potential. It may be marking non-entrepreneurial women as inferior, as not doing enough to improve their own situation (even if in reality they could not have become entrepreneurs), and thus as not deserving much appreciation and support.

Perhaps most importantly, the model of mompreneurship as magnified by *Shark Tank* also creates a cultural beacon that stands to deplete energy from feminist efforts to protect the needs and interests of pregnant women and mothers of young children in the workplace. The more that people believe mompreneurship is a viable formula available to many, offering a happy balance between motherhood and work, the more likely it is that they will believe working women who get pregnant can remove themselves from the workforce, go back home, but still be productive and satisfied. The threat comes from the fact that coping with the “problem” of combining work with pregnancy and motherhood via voluntary (“chosen”) mompreneurship is an extremely tempting idea. First, it is presented as based on women’s individual choice, which both liberal and neoliberal traditions associate with liberty and autonomy, rendering it moral. Second, mompreneurship handles the problem *privately*, via the market, and most importantly, without imposing difficult demands on employers, taxpayers, or the state. However attractive it may appear at first glance, this line of thinking can quickly lead to releasing the state from any responsibility for the condition of working women. In this way, the idealization of mompreneurship operates to “deflect attention away”¹⁴⁶ from important reforms that are urgently needed in the workplace and to decrease the motivation of policymakers and politicians to find and make available solutions that would allow women (and men) to combine parenthood with a productive professional life. This problem is especially acute in the United States, where basic legal reforms such as paid maternity leave and universal childcare have been on the feminist agenda for many years without gaining enough political support to turn into a reality.¹⁴⁷

145 SCHARFF, GENDER, *supra* note 9.

146 Rottenberg, *supra* note 32, at 432.

147 See generally PALLEY & SHDAIMAH, *supra* note 125.

Legal feminists should thus be aware of this risk and be more critical of the neoliberal relentless promotion of mompreneurship. Most basically, the façade of choice needs to be treated with greater skepticism. In the last decade legal feminists debated the idea of flexible workplaces as a possible solution to the work/family conflict. In this context, Vicki Schultz argued that “[in] many places that offer flexible work options . . . it is likely that women will disproportionately opt for these choices,”¹⁴⁸ and cautioned that “allowing people to exercise individual choice for flexible work options will frequently exacerbate, and even create, new forms of sex segregation in the workplace rather than undermining those patterns.”¹⁴⁹ And, as Schultz demonstrates, in the wrong hands the fact that women “choose” flexible work harmfully turns into evidence that women are less compatible with the demands of the workplace.¹⁵⁰ A similar negative effect, I believe, arises when a type of “mommy-track” emerges *outside* of the workplace in the form of mompreneurship. This new track may suggest the same incompatibility of motherhood and professional demands, although the path may have never emerged in a world in which all parents have access to appropriate child care and equally participate in raising their children. Moreover, even in cases in which mompreneurship does reflect a meaningful choice, feminists ought to embrace it while insisting that this is a very limited solution that should not impede social and legal reforms intended to fight gender inequality stemming from the inappropriate treatment of working mothers and mothers-to-be.

Beyond obstructing needed reforms, the glorification of mompreneurship also influences courts’ interpretation of *existing* legal norms. Again, the context of pregnancy can offer a telling example. In *Young v. United Parcel Service*, the Supreme Court had to determine the scope of rights guaranteed to pregnant employees under the Pregnancy Discrimination Act (“PDA”), and eventually adopted a narrow reading of the Act that correlates with, and arguably is related to, the reluctance to keep pregnant women at work.¹⁵¹ Peggy Young was employed as a UPS driver when, “after suffering several miscarriages,”¹⁵² she got pregnant and her doctor told her to refrain from lifting heavy weight. According to UPS’ general policies, however, drivers should be able to lift packages weighing up to seventy pounds. For that reason, UPS told Young she could not work while under a lifting restriction and she “consequently stayed home without pay during most of the time she was pregnant and

148 Vicki Schultz, *Feminism and Workplace Flexibility*, 42 CONN. L. REV. 1203, 1215 (2010).

149 *Id.* at 1216.

150 *Id.* at 1217.

151 *Young v. United Parcel Serv.*, 135 S. Ct. 1338 (2015).

152 *Id.* at 1344.

eventually lost her employee medical coverage.”¹⁵³ Since according to its policies UPS did accommodate many other drivers who temporarily could not lift heavy weight, offering them alternative light-duty jobs, the Supreme Court focused on Young’s argument that “UPS acted unlawfully in refusing to accommodate her pregnancy-related lifting restriction.”¹⁵⁴ Particularly, Young argued—with the support of the Equal Employment Opportunity Commission—that the fact that many similarly situated non-pregnant employees were accommodated renders the refusal to accommodate her discriminatory and thus a breach of the PDA. However, both the majority and the dissent in this case were reluctant to agree with this argument. All justices were of the opinion that such reading of the PDA’s ban on discrimination “grants pregnant workers a ‘most-favored-nation’ status.”¹⁵⁵ While the dissent relied on this idea to emphatically reject Young’s argument, the majority allowed her to go back to trial and try to prove “*individual* disparate treatment.” However, it should be noted that the majority’s seemingly more protective approach is still likely to force pregnant women to leave their jobs due to the consensus that “individual disparate treatment” is “notoriously difficult to prove.”¹⁵⁶

Furthermore, in addition to this significant pragmatic problem, it is critical to recognize that the Supreme Court’s analysis of the matter failed to critique the framing of women capable of pregnancy as a second class. UPS’ policy granted accommodation to all drivers temporarily unable to lift heavy weight due to an on-the-job injury. Since pregnancy does not occur “on-the-job,” such a policy clearly, albeit impliedly, discriminates against pregnant workers. Such a category should not be shallowly (or naively) accepted as merely distinguishing between workers based on an objective criterion—the process that led to their limitation. Rather, what UPS created—and the Court allowed—is the existence and use of a category that, by definition, is closed to pregnant workers while covering many of their similarly impaired co-workers. Because the Court affirmed the existence and use of the “on-the-job” category, pregnant workers are left dependent on their ability to find a concrete “comparator” (a non-pregnant worker with similar impairment that has received the accommodation the pregnant worker was refused). This task is especially daunting when the accommodated comparator has to be found among those whose temporary impairment is unrelated to the worker’s job.¹⁵⁷ In other words, this approach

153 *Id.*

154 *Id.*

155 *Id.* at 1349.

156 Schultz, *supra* note 133, at 1094.

157 It is currently debated whether or not workers eligible for accommodations due to temporary impairments

immensely increases the chances that pregnant employees will be sent home. And, the more women who are forced to leave due to pregnancy, the less reliable and valuable any female worker seemingly capable of giving birth is going to be considered due to the association of pregnancy with discontinuation of employment. The result of *Young v. United Parcel Service* indeed triggered some feminist protest and criticism.¹⁵⁸ However, the greater battle over establishing a general duty of employers to accommodate their pregnant workers as much as possible (or pay them anyway) requires a much larger expenditure of energy, resources, and effort, and will depend on a greater activist and political sense of urgency. It is at this point that the mompreneurship alternative promoted by *Shark Tank*'s discourse has a harmful potential: it may work to numb the sense of urgency in the context of pregnant workers. If mompreneurship is as constructive a path as the show represents, then it suggests that women like Peggy Young can, and perhaps should, help themselves by choosing (or "choosing") to become mompreneurs: the market-based solution for unemployed new moms.

The zero-sum game that sometimes exists between *Shark Tank*'s celebration of female entrepreneurship and the status of working women can be further demonstrated by a moment in which neoliberal feminism *directly* conflicted with the fight for gender equality in the workplace. Recall the pitchers of Roominate with their girl-empowering toys. In a later update, *Shark Tank* reported their achievements and shared with viewers that much of the young entrepreneurs' success has been accomplished by marketing Roominate in collaboration with Walmart.¹⁵⁹ The catch is, of course, that Walmart has been notorious for its mistreatment of its female workers for many years. So much so that a class action on behalf of thousands of Walmart female employees from around the country made its way to the Supreme Court.¹⁶⁰ This litigation and its problematic results will be discussed in the coming Section. For now, however, it is important to notice how the market effort of two entrepreneurs with feminist goals was used to wash away—via profitable sales—the blemish of gender inequality that stained Walmart's public profile. Such entrepreneurial collaboration with a discriminating employer further obscures the inappropriate conditions in the workplace and thus makes it harder to fight against them. As any other form of feminism, I argue, neoliberal feminism ought to be more sensitive to *all* women and *all*

under the Americans with Disabilities Act ("ADA") can serve as comparators for PDA's purposes. See Simon, *supra* note 133 (discussing the debate and recommending the use of "ADA-covered employees as comparators for PDA plaintiffs").

158 Schultz, *supra* note 133, at 1095–1102.

159 *Shark Tank: Season 7, Episode 6* (ABC television broadcast Oct. 30, 2015) (update on Roominate).

160 Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011).

feminist needs and goals, so as not to result in the empowerment of some women at the expense of others.

C. Harm to All Women and to the Feminist Project

In several important ways, the myth of achieving gender equality via the market, one woman at a time, conflicts with interests shared by all women—at home, at work, and in the market—and thus jeopardizes the general feminist quest for gender equality.

As discussed earlier, while *Shark Tank* may appear to present sharks and pitchers with equal exposure and equal treatment regardless of gender, a closer look offers strong evidence to the contrary. Common gendered mistreatments such as objectifying women and their bodies and creating a sexualized environment around women are repeated in the entrepreneurial setting staged by the show. The unique combined power of money and popular television further enhances this negative impact. Additionally, a closer look also reveals that the “entrepreneurship practices reify traditional gender roles,”¹⁶¹ reproducing the infamous public/private divide that so many earlier feminists sought to eradicate. Overall, entrepreneurship does not seem to truly liberate women from their “secondary position in society,”¹⁶² by merely letting them into the entrepreneurial arena. Rather, the reality is that old gender problems persist only in a modernized and polished version. The splendor added to entrepreneurship in our neoliberal age—for example by the creation and success of shows like *Shark Tank*—may make it harder to see, but the truth is that the promotion of the “happily balancing mompreneur” as a preferred way of being a woman closely tracks past propaganda that marketed her predecessor, the housewife.¹⁶³ And now, as before, the gratified image not only conceals many frustrations, but also threatens to undermine the appropriateness of other ways for women to achieve satisfaction. Disturbingly, making the mompreneur the new “ideal woman” alienates other women, suggesting by comparison that stay-at-home moms are not working at all, career women are neglecting their children, and women who do not have children are missing the essence of life.

Additional harm to all women stems from the fact that the competitive entrepreneurialism broadcast by *Shark Tank* symbolizes and reinforces the relentless individualization of all subjects under neoliberalism. According to this neoliberal rationality, as effectively disseminated by the show, the game is merit-based and patterns are by definition nonexistent

161 Ahl & Nelson, *Policy Positions*, *supra* note 10, at 274.

162 *Id.*

163 Sara Ahmed, *Multiculturalism and the Promise of Happiness*, 63 *NEW FORMATIONS* 121 (2007).

and in any case irrelevant. Moreover, female participants, like all other stakeholders, are viewed as atomized beings in a manner that makes it harder, if not impossible, to seek solidarity and adopt collective measures of resistance. Such an approach efficiently works as a *divide-and-conquer* mechanism and yields grave harms to oppressed groups in general and to women in particular.

An unfortunate example of the legal impact of this individualized way of thinking on women workers can be found in *Wal-Mart Stores, Inc. v. Dukes*.¹⁶⁴ In this notorious case¹⁶⁵ the Supreme Court rejected the collective effort of thousands of Walmart's female employees to challenge gender-based discrimination by their employer in countless stores around the country. The reasoning of the majority relied heavily on the idea that each of the discrimination stories of Walmart's employees was different and should be treated separately and individually. The Court was unwilling to connect the dots and recognize patterns of discrimination despite clear evidence of systemic mistreatment of female employees nationwide. The Court's decision refers to rich statistical data, 120 interviews with female employees, and proof that female employees were referred to as "'little Janie Q's,' denied . . . promotions on the ground that 'men are here to have a career and women aren't,' and deprived . . . of equal pay because 'retail is for housewives who just need to earn extra money.'"¹⁶⁶ And yet, even in the face of such compelling evidence, the Court insisted on treating the proved facts separately, shredding the evidence to small pieces until no coherent picture of Walmart's mistreatment of its female workers remained. This, in turn, allowed the majority to affirmatively repeat Judge Kozinski, who wrote in earlier stages of the litigation that female employees of Walmart have "*little in common but their sex and this lawsuit*."¹⁶⁷ The immediate result was a denial of the class action, although individual litigation by a single worker complaining about mistreatment would not have been financially possible, and even if funded by others, would have probably failed if divorced from the context of the overall mistreatment of female workers. Indeed, this is precisely how "divide" directly leads to "conquer."

164 *Wal-Mart*, 564 U.S. 338. In fact, this case belongs with a longer line of cases that together constitute a legal-neoliberal assault on anything collective. See BROWN, *supra* note 6, at 153–54; Hila Keren, *The Two Rises of the Freedom of Contract and the Fall of Equity*, (forthcoming, CAN. J. COMP. & CONTEMP. L.) (both discussing neoliberalism's assault on class action and class arbitration as part of neoliberal individualized rationality).

165 See, e.g., Maureen Carroll, *Class Action Myopia*, 65 DUKE L.J. 843 (2016) (criticizing the Supreme Court's decision in *Wal-Mart Stores, Inc. v. Dukes*).

166 Schultz, *supra* note 133, at 1065–66.

167 *Wal-Mart*, 564 U.S. at 360.

Although the defeat in the courts of Walmart's female workers might be seen as limited to the employment setting, I see the logic of the decision as both reflecting and producing a discourse with a broader reach. I believe that *Wal-Mart Stores, Inc. v. Dukes* should not be read in isolation, and I suggest instead that its *legal* message must be seen as working in concert with *Shark Tank* and other influential mediums through which neoliberalism disseminates itself to achieve hegemony.¹⁶⁸ Read this way, the case takes part in the production of neoliberal common sense and leads to an epistemological refusal to see patterns of inequality and exploitation. It is significant to recognize that such refusal to acknowledge gender problems (and other group-based issues such as racial discrimination) operates *everywhere*—within and outside of the workplace—and is thus threatening to women in *all* spheres as well as to feminism. Notably, the two different discourses produced by *Shark Tank* and *Wal-Mart Stores, Inc. v. Dukes* reinforce each other's message through the power of popular culture and law and, with their combined effect, serve to individualize women and separate their experiences. Accordingly, both discourses deny the problem of gender inequality altogether, thereby defeating efforts to bring change about. In that sense, neoliberal feminism of the kind presented by *Shark Tank* in some of the pitches is almost an oxymoron. Or, in other words, it is highly questionable that the battle for gender equality *can* be won in a neoliberal manner, i.e., *one woman at a time*. Rather, looking at past feminist accomplishments, they all seem to have required both a recognition of the structural nature of gender problems and an ability to respond with solidarity and collective action.¹⁶⁹ For that reason, while appreciating the efforts of neoliberal feminists, I am reluctant to view them as exclusively defining the new feminism. Other forms of feminism that work outside of the market and are structural and collective in nature must not only be maintained but also further developed to resist neoliberalism's "divide and conquer" techniques.

Furthermore, the individualized ethos of entrepreneurialism not only prevents seeing patterns of problems, it also limits the *solutions* to those problems to those embedded in the private sphere and rising from individual acts of self-caring. It is important to take into account that when everything is framed as a product of choice it is easy to forget that one can only choose from what is on the menu. For example, mothers who "choose" to stay at home, work part-time, or become mompreneurs may have all chosen otherwise in a world that includes affordable and reliable state-funded childcare. However, individualizing

168 BROWN, *supra* note 6, at 151–73 (analyzing several *other* legal cases as participating in the creation of neoliberal rationality); Keren, *supra* note 164 (analyzing several *additional* legal cases as participating in the production of the neoliberal common sense).

169 Schultz, *supra* note 133.

women and responsabilizing them into finding individual solutions to their own problems means that no one is looking to enrich the menu and find, for example, a way to establish social sharing of care duties.¹⁷⁰ Importantly, this entrepreneurial and inward-looking state of mind *depoliticizes* gender inequality, foreclosing “the possibility of collective political struggle.”¹⁷¹ Accordingly, no one challenges the state or dares to present political demands. The feminist argument that “the personal is political” is inverted and hollowed as nothing looks political anymore, including things that were political to begin with, such as the wage gap between men and women and the corresponding demand for equal pay. This last point has substantial *legal* significance, as by buying into the entrepreneurial myth and refraining from making political claims, women lose access to the law and the resource it can be or become in coping with gender inequality. Similar to earlier feminist criticism of the “lawlessness” of the domestic sphere and the negative impact of lawlessness on women’s lives,¹⁷² legal feminists ought to resist the neoliberal pressure to leave the law behind and let the market rule alone.

Finally, the more women adopt the individualist discourse of empowerment and choice promoted by *Shark Tank* and other neoliberal discourses, the more they give up feminist politics and repudiate feminism.¹⁷³ To the extent that gender equality is still far from being achieved—as evidenced by *Shark Tank* itself—the risk of feminism’s premature death relates to women in general, not only to female entrepreneurs. Put differently, both the post-feminist and the neoliberal feminist messages of *Shark Tank* contribute to the fact that “women are currently being disempowered through the very discourses of empowerment they are being offered as substitutes for feminism.”¹⁷⁴

CONCLUSION

So what insights can be gained from carefully analyzing the status of women in *Shark Tank*? Surely one takeaway is that women’s presence in the entrepreneurial arena is strong, significant, and should not be ignored. Whether we like it or not, we live in the midst of

170 SCHARFF, GENDER, *supra* note 9 (“Resonating with the research participants’ individualised approach to injuries, the solutions and coping mechanisms they suggested were all limited to individual acts”).

171 SCHARFF, REPUDIATING FEMINISM, *supra* note 27, at 52.

172 Hila Keren, *Can Separate Be Equal? Intimate Economic Exchange and the Cost of Being Special*, 119 HARV. L. REV. F. 19 (2005).

173 SCHARFF, REPUDIATING FEMINISM, *supra* note 27, at 52.

174 McROBBIE, *supra* note 27, at 49.

the neoliberal age, which many see as “the age of the entrepreneur.”¹⁷⁵ With more women choosing, or being pressured to choose, the entrepreneurial path, feminists must pay closer attention to this important female experience and its many meanings. As I have shown in Part II, many female entrepreneurs may be in need of feminist support, whether they would admit it to themselves or not.¹⁷⁶ And, as previously argued, legal feminists in particular better not leave entrepreneurship under-analyzed so as not to leave female entrepreneurs behind and make it another area of “lawlessness.”

Furthermore, the highly individualized world of entrepreneurship challenges feminism in a new way and requires a careful re-articulation of feminist ideas. On the one hand, when women report success and a sense of liberation at the individual level, and especially when they commit themselves and their businesses to the advancement of women via the market, feminism should embrace those experiences and the important agency they demonstrate. It cannot repeat the past mistake of arguing false consciousness,¹⁷⁷ as such response would not only miss much woman-created value but also would contribute to the decreasing popularity of feminism. On the other hand, and at the same time, feminism—as a struggle for gender equality—cannot survive the neoliberal logic that threatens to squash any political resistance.¹⁷⁸ This is a fine line to walk and much more nuanced work is needed to find the right responses to the challenges of the moment.¹⁷⁹ A central problem in this respect is the fact that neoliberalism’s relentless individualization of everything works to approve anything that is presented as a personal choice. Therefore, it is hard to find a response for moments in *Shark Tank* in which, for example, women sexualize themselves in order to sell their products. Under neoliberalism such marketing methods would be framed as the individual choice of each entrepreneur, one that lies within her right to act as she wishes without prudent censorship. While it is certainly true that female

175 HOLBOROW, *supra* note 16, at 72.

176 See, e.g., Athena Cheng, *Affirmative Action for the Female Entrepreneur*, 10 AM. U. J. GENDER, SOC. POL’Y & L. 185, 221 (2001) (explaining that in 1999, only 5% of the \$48 billion in venture capital investment funds went to women-owned businesses).

177 I refer here to the treatment of pornography and sex-work under radical feminism. See Kathryn Abrams, *Ideology and Women’s Choices*, 24 GA. L. REV. 761, 795 (1990) (describing and critically discussing the feminist argument of women’s “false consciousness”).

178 BROWN, *supra* note 6.

179 Ahl et al., *supra* note 113 (“In pointing out the fact that women entrepreneurs are stigmatized, victimized, and subject to oppressive structural and institutional circumstances, as much contemporary post-structuralist research does, including our own, women are also deprived of the very agency that mainstream (nonfeminist) research has attributed to them in the first place”).

entrepreneurs who promote their businesses in that manner are within their rights, there are unintended consequences to be aware of. Outside of the neoliberal logic, individuals *are* connected and their behavior *does* influence both other people and the social norms. Thus, sexualized marketing contributes to the sexualization of the entire commercial sphere in which numerous other women, from other female entrepreneurs to workers to customers, have to function. Given the fact that in our gendered society all these women struggle to establish credibility and too often are subject to sexualization that they did *not* choose for themselves, I do not believe that a feminist approach can afford to accept without criticism this negative impact of sexualization.

Watching *Shark Tank* with attention to gender reveals that the notion of the self-made entrepreneur is not gender blind. Despite the neoliberal effort to “Photoshop” the entrepreneurial picture and erase from it any traces of social constructions, the reality is that the competition is infused with prejudices and has managed to reproduce social hierarchies within the shrine of neoliberalism. The denial of that reality entails risks that are particularly acute for women and other marginalized groups, precisely because neoliberal entrepreneurship gains its popularity through claims of empowerment while too many times it works to disempower. It is, therefore, part of feminism’s role to counter the myth of a world free of social constructions, and to insist on taking those into account. Moreover, feminist efforts should continue to focus on issues relating to gender inequality in the workplace. As important as the idea of entrepreneurship is according to neoliberalism, and as glamorous as this idea is as presented by *Shark Tank* to millions of viewers, most women still hold a job for a living or are trying to get such a job. For the reasons described in this Article, feminism should insist that the entrepreneurial alternative cannot and would *not* solve the problems of pregnant workers such as Peggy Young from UPS, and would *not* resolve the discrimination against women by employers such as Walmart. To generalize, it should be clear that with all its glory, the entrepreneurial alternative is very narrow and limited and should not distract activists, policymakers, and theorists from the main battle concerning female workers.

Internal debates between feminists and outside criticism by non-feminists notwithstanding, we still need feminism. To prove this point, it may be enough to mention that Sweden recently distributed Chimamanda Ngozi Adichie’s compelling feminist manifesto, *We Should All Be Feminists*, to every sixteen-year-old student in the country.¹⁸⁰ Similarly, it is worth noting that in addition to the messages of post-feminism

180 Laura Wagner, *Sweden Gives ‘We Should All Be Feminists’ To Every 16-Year-Old Student*, NAT’L PUB. RADIO (Dec. 4, 2015), <http://www.npr.org/sections/thetwo-way/2015/12/04/458514464/sweden-gives-we-should-all-be-feminists-to-every-16-year-old-student> [<https://perma.cc/FX6K-R7XC>].

and neoliberal feminism analyzed in this Article, *Shark Tank* itself has moments of “old-school” solidarity-based feminism and that this kind of feminism is alive, relevant, and effective even in the entrepreneurial domain. To see that, recall the *Hold Your Haunches* pitch in which Kevin raised the sexist theory of “false advertising” regarding leggings with built-in shapers. In response, Lori and Barbara joined forces and together defended the female entrepreneurs. In fact, they protested so clearly and so effectively against Kevin’s theory that a journalist later described it as a *Shark Tank* moment in which “the feminism in the room was fierce.”¹⁸¹ Additionally, after the *Roominate* deal closed, Mark only shook hands with Alice and Bettina but Lori supplemented the usual closing ritual with a moment of feminist sisterhood: she hugged the young entrepreneurs, adding “smart girl” and “good girl” compliments to her hugs. In the same vein, after the female pitchers left the room, the other sharks showed skepticism regarding their chances of success, and while Mark responded with a prediction that they would make money, Lori responded as a feminist activist; she emphasized not prospective profits, but rather the importance of investing and promoting businesses that expand the horizons of girls.

All of this leads me back to the starting point and to my focus on *Shark Tank*. As an exceptionally popular show that creates what Bourdieu called a “strong discourse,”¹⁸² it is crucial to see that *Shark Tank* functions as a tool to advance the broader neoliberal project. Therefore, more than anything else, what I have attempted to establish here and what I wish to emphasize now in conclusion is how imperative it is not to forego the battle over people’s “common sense,” and instead to get involved in the creation of a counter-discourse. As feminists we need to show that individualization does *not* “make sense” and we cannot agree that each one of us is responsible alone for herself. We also cannot accept the creation of yet another gender line, one that divides the entrepreneurial world according to the traditional division of labor between men and women. Accordingly, we should worry about mompreneurs, their well-being, and the consequences of their gendered naming. Even more importantly, we should embrace the *image* produced by a pitch like *Roominate* not because it proves that the world is merit-based and equality will be achieved one woman at a time. Instead, we should embrace it because it presents to the world highly capable women who have exhibited care for girls that unfortunately—and due to a flawed social structure—still do not have access to equal opportunities. We should promote such an image not because we believe it is enough to act via the market and appear on television

181 Rosenfeld, *supra* note 22.

182 Pierre Bourdieu, *The Essence of Neo-liberalism*, LE MONDE DIPLOMATIQUE (Dec. 1998), <http://mondediplo.com/1998/12/08bourdieu> [<https://perma.cc/V3H8-TXFN>] (“neoliberal discourse is not just one discourse among many”; rather, it is a “strong discourse”).

to eradicate inequality, but because we understand the combined power of market and television in shaping how people see and understand themselves and their world.¹⁸³ If we all resisted the individualization of people in *Shark Tank* and everywhere else, perhaps the Supreme Court would have been able to see what the female workers of Walmart have in common. In other words, it is important for feminism to *participate* in this conversation in a meaningful way rather than to leave the battleground unattended and have it be controlled by neoliberals and post-feminists. To be sure, entering the entrepreneurial arena does not mean other fronts should be neglected. To the contrary. At the end of the day I strongly believe that the most important feminist struggles—including equal pay, parental leave, and universal childcare—are linked to and not disconnected from the entrepreneurial arena. Those struggles would be served by improving the status and image of women *everywhere*: at work, at home, and in the market. In a neoliberal world in which branded messages matter so much it is precisely the feminist insistence that spheres are interlinked, and humans are interconnected and need each other's support that may be the key for a change.

183 See Ahl et al., *supra* note 113 (suggesting “that women’s entrepreneurship may be an alternative way of bringing about institutional change,” and coining the term “*FemInc.ism* to capture the phenomenon of ‘feminist activism through enterprise.’”).