THE COVID CEILING

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Abstract

Throughout the pandemic, Mother-Scholars, one of many types of "super-moms," have persisted despite the burdens of gender inequity in academia and the challenges of bearing the bulk of the domestic duties at home. The deep networks of help and social capital, referred to as familismo in Latina/x/o parenting discourse, that have historically helped super-moms be productive, coupled with strong self-care habits that have helped super-moms survive in academia, were slowly unraveling as a result of distancing and isolation measures that were aimed at curbing the spread of COVID-19. Mother-Scholars, now a village of one or two, with less scholarship, devalued productivity, and increased psychological distress, are less likely than ever to achieve tenure, receive grant awards, and assume leadership roles, particularly in legal education. Challenges exacerbated by the COVID-19 pandemic, and lack of adequate responses to those challenges, are subjecting Mother-Scholars to a new kind of glass ceiling made visible by the conditions of the COVID-19 pandemic—the COVID Ceiling. This Article establishes a framework for understanding and analyzing the intersectional and multi-layer impacts of the COVID Ceiling on mothers in the workforce, revealing intersectional impacts that exacerbate pre-existing inequities in academia, with a focus on the legal academy.

The implications of the COVID Ceiling are far-reaching and require policymakers to rethink baseline protections and social safety nets for all mothers, especially those in the workforce. Many scholars have renewed calls to expand and strengthen existing work-family policies, such as the Family Medical Leave Act (FMLA), so that all mothers are protected. This Article also advocates for free, accessible high-quality childcare for working mothers. Although a good start, work-family policy shifts alone will not eliminate the persistent gender, racial, ethnic, and motherhood biases prevalent in workplace attitudes and societal prejudices. The implications of the COVID Ceiling require self-governing institutions

and corporations to provide greater protections to ensure that mothers can thrive in the workforce and families can thrive in society. True equity requires changing work-family policies to better protect and acknowledge mothers' roles in society and the workplace. By applying the COVID Ceiling's vulnerability framework, institutions can identify subordinated or oppressed groups subgroups, such as unpartnered mothers, within traditionally dominant or privileged groups, like academia, in order to equitably distribute benefits and support.

The lack of adequate pandemic policy responses has made surviving in academia a challenge for many Mother-Scholars. Equity is key to helping Mother-Scholars, particularly unpartnered mothers and minoritized mothers in academia, thrive in pandemic and post-pandemic times. True equity requires reimagining hiring, promotion, and tenure standards. In particular, leaders must preserve and protect Mother-Scholars in legal education. Mother-Scholars in legal academia play a unique role in their [wo]mentorship of women and minoritized women law students, engagement in feminist critical knowledge production, and advocacy for women and families.

About the Author

Verónica Gonzales-Zamora is an Associate Professor at the University of New Mexico School of Law and mother to two children, ages 8 and 4. This Article would not have been possible without the encouragement and support of my immediate and extended family. I would be remiss if I did not thank my exceptional research assistants Alejandro Macias-Urias and Angelica Aragon. I am especially gratefully to my [wo]mentors Professor Barbara L. Creel and Professors emeriti Margaret Montoya and Christine Zuni-Cruz for their support, kindness, and wisdom in navigating this unprecedented time and improving the ideas in this Article. I am also deeply appreciative of comments from the late Professor Michael-Olivas, and Professors Marc-Tizoc González and Alexander Boni-Saenz. My role as a Mother-Scholar would not be possible without the M(other)work of my own mother, grandmothers, and great grandmothers.

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TABLE TABLE OF CONTENTS

Introduction

> She believed that by giving problems a name they tended to manifest themselves, and then it was impossible to ignore them; whereas if they remained in the limbo of unspoken words, they could disappear by themselves, with the passage of time.
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> —Isabel Allende, *The House of the Spirits*[1]

COVID-19-related closures of schools and childcare services across the country forced millions of parents in the United States to work, live, and supervise care for children at home.[2] As part of efforts to mitigate the spread of COVID-19, governments ordered social distancing and isolation protocols[3] that included the closure of or limited access to public spaces.[4] As parents attempted to quiet and occupy their children while working, children became invisibilized in work-at-home spaces and in public spaces.[5] These circumstances were especially challenging

[1] Isabel Allende, The House of Spirits 188 (1982).

[2] *See* Gema Zamarro & Maria J. Prados, *Gender Differences in Couples' Division of Childcare, Work, and Mental Health During COVID-19,* 6 U. S. Cal. Ctr. for Econ. & Soc. Rsch. & U. S. Cal. Ctr. for Health Pol'y & Econs. (2020), https://cesr.usc.edu/documents/WP_2020_003.pdf [https://perma.cc/JGB3-CXCH].

[3] Here, I use the term "social distancing and isolation" to mean the physical *and* emotional separation of people who are inter-connected, inter-dependent, and family-centered. Although "social isolation" can also mean the isolation of a sick person under pandemic protocols, I have assigned a different meaning to illustrate the "short path from social distancing to social isolation" for people in cohesive family systems. *See, e.g.*, Rajeev Gupta & Rajinder K Dhamija, *Covid-19: Social Distancing or Social Isolation?*, 369 BMJ m2399, m2399 (June 18, 2020) (describing how social isolation shields people from their kin and can impact psychological well-being).

[4] *See, e.g.*, Mohammad S Razai, Pippa Oakeshott, Hadyn Kankam, Sandro Galea & Helen Stokes-Lampard, *Mitigating the Psych. Effects of Social Isolation During the COVID-19 Pandemic*, 369 BMJ m1904, m1904 (May 21, 2020) (describing physical distancing measures (also called social distancing) to interrupt viral transmission and delay the spread of COVID-19 as ranging from mandatory quarantine to voluntary self-isolation, putting the mental and emotional health of many people at risk).

[5] I use the term "invisibilized" rather than "invisible" to describe children as actively removed from the public space. When children are topics in scholarly discourse, it is often to characterize children as burdens, barriers, and interruptions of institutional and economic productivity and recovery. The experience and social conditions children are facing are outside the scope of this Article but are relevant and require scholarly attention and governmental intervention. *See generally* Margaret E. Montoya & Francisco Valdes, *"Latinas/os" and Latina/o Legal Studies: A Critical and Self-Critical Review of LatCrit Theory and Legal Models of Knowledge Production*, 4 F.I.U. L. Rev. 187, 207 n. 45 (2008) (noting that in mainstream or traditional scholarship, "social conditions and identities tend to be formally marginal, if not irrelevant, to the application of supposedly neutral and scientific rules in varied factual settings," which allows scholars to "systematically elevate the preferred identities and

for working moms with young children,[6] including Mother-Scholars. In this Article, I use the term "Mother-Scholar" rather than the phrase "academic mother" typically used in "motherhood bias" and "maternal wall" discourse to highlight the need to reposition and reframe a mother's family role ahead of work rather than the other way around.[7]

Some of the challenges and consequences of the COVID-related closures and social distancing policies are uniquely tied to identity. For

'invisibilize' all 'others'").

[6] *See* Zamarro & Prados, *supra* note 2, at 2. *See, e.g.*, Liz Hamel, Lunna Lopes, Cailey Muñana, Jennifer Kates, Josh Michaud & Mollyann Brodie, *KFF Coronavirus Poll: March 2020*, KFF.ORG (Mar. 17, 2020), https://www.kff.org/coronavirus-covid-19/poll-finding/kff-coronavirus-poll-march-2020 [https://perma.cc/EE6D-BZYJ] (surveying 1,216 adults and finding that, of those more likely to say that their life were disrupted by COVID-19, 50 percent are were Hispanic, 46 percent were women, and 45 percent were parents of children).

I define "mom" and "mother" as social constructs rather than a biological identity or gender-determined role to include the diverse identities who identify as mothers; who are hoping to conceive a child or have lost a child; or who otherwise engage in "M(other)work" and "care work." *See* YOLANDA MARTÍNEZ, CONTESTING THE MEANING OF LATINA/CHICANA MOTHERING, *in* LATINA/CHICANO MOTHER 196 (Dorsía Smith Silva, ed., 2011).

This Article is not intended to be exhaustive, but rather illustrative and inclusive. *See generally* Maria do Mar Pereira, *Researching Gender Inequalities in Academic Labor During the COVID-19 Pandemic: Avoiding Common Problems and Asking Different Questions*, 28 GENDER, WORK & ORG. 498, 503–04 (2021).

[7] *See, e.g.*, Karyn E. Miller & Jacqueline Riley, *Changed Landscape, Unchanged Norms: Work-Family Conflict and the Persistence of the Academic Mother Ideal*, 47 Inn. Higher Ed. 471–492 (2022), https://link.springer.com/article/10.1007/s10755–021–09586–2 ("This article explores how academic mothers experienced their dual roles amid the unprecedented shift in the work-life landscape due to COVID-19.").; Joan C. Williams, *Hitting the Maternal Wall*, 90(6) ACADEME 16, 19 (Nov.–Dec. 2004) ("Far fewer studies have explored the patterns of bias and stereotyping that affect mothers as opposed to women in general. Yet a growing literature documents that mothers encounter specific forms of bias that differ from glass-ceiling bias."), https://www.researchgate.net/publication/246380119_Hitting_the_Maternal_Wall; Debra H. Swanson & Deirdre D. Johnston, *Mothering in the Ivy Tower: Interviews with Academic Mothers*, J. FOR THE ASS'N OF RES. ON MOTHERING 63 (2003), https://jarm.journals.yorku.ca/index.php/jarm/article/download/2003/1211; Andrea Riesch Toepell, *Academic mothers and their experiences navigating the academy*. J. MOTHERHOOD INITIATIVE FOR RES. & COMM. INVOLVEMENT (2003).

*Later i*n the Article, I also use the term M(other)work, a label Chicanas have used to draw attention to the intersections of race, gender and class with their care work in academia. *See* Cecilia Caballero, Yvette Martínez-Vu, Judith C. Pérez-Torres, Michelle Téllez, & Christine Vega, "*Our Labor is Our Prayer, Our Mothering is Our Offering:" A Chicana M(other)work Framework for Collective Resistance*, 16 CHICANA/LATINA STUDIES M.A.L.C.S. 44, 47 (2017) ("Whereas [Patricia] Collins introduces the term 'motherwork,' we modify it by embracing the term 'other' through the use of parentheses in Chicana M(other)work as this calls attention to our layered care work from five words into one—Chicana, Mother, Other, Work, Motherwork").

example, Latina/x/o people[8] and other ethnic and racial communities that center their lives on *familismo* experience distinctive challenges.[9] Familismo, as described in Part II, is a value held by Latina/x/o people such that physical closeness, interdependence, and inter-connectedness among the family is part of the communities' method of survival and ability to thrive.[10] Identity-based challenges extend to other aspects of identity beyond race and gender, including employment.

The pandemic also produced challenges and consequences unique to the legal discipline. Preliminary information and analyses from popular media, focused on and suggested that the impact of pandemic social distancing and isolation conditions on working. Mothers,[11] unpartnered Mother-Scholars,[12] and Mother-Scholars in scientific and

[8] *See* Ana María del Río-González, *To Latinx or not to Latinx: A Question of Gender Inclusivity Versus Gender Neutrality*, 111 Am. J. Pub. Health 1018, 1020 (2021) ("When gender identity is not known, or when referring to groups of mixed gender, use 'Latina, Latinx, and Latino' or 'Latina/x/o' to ensure that the visibility of gender diversity is not elided. When gender identity is known, use the label that is most precise: Latinx for gender-expansive people, Latina for women").

[9] *Familismo* is a concept and value not previously introduced to legal scholarship. *See, e.g.*, Belinda Campos, Jodie B. Ullman, Adrian Aguilera & Christine Dunkel Schetter, *Familism and Psych. Health: The Intervening Role of Closeness and Social Support*, 20 Cultural Diversity & Ethnic Minority Psych. 192–93 (2014) (describing "familism" in Latino cultures and filial piety in Asian cultures as both being associated with living near or together with family, contributing to family finances through work choices, and dividing time between friends and family) (citations omitted); *see generally* Esther J. Calzada, Catherine S. Tamis-LeMonda & Hirokazu Yoshikawa, *Familismo in Mexican and Dominican Families From Low-Income, Urban Communities*, 34 J. Fam. Issues 1711, 1711 (2012) (describing family support such as shared living, immigration, and childrearing as being essential to Latino survival given numerous stressors such as financial strain, acculturative stress, and discrimination).

[10] *See id.*

[11] *See, e.g.*, Madaleine Simon, *Women and the Hidden Burden of the Coronavirus*, The Hill (Mar. 19, 2020), https://thehill.com/changing-america/respect/equality/488509-the-hidden-burden-of-the-coronavirus-on-women [https://perma.cc/U5LU-55F4]; Patricia Cohen & Tiffany Hsu, *Pandemic Could Scar a Generation of Working Mothers*, N.Y. Times (June 30, 2020), https://www.nytimes.com/2020/06/03/business/economy/coronavirus-working-women.html [https://perma.cc/SZ9T-CKJN]; Abby Vesoulis, *'If We Had a Panic Button, We'd be Hitting it.' Women Are Exiting the Labor Force En Masse—And That's Bad For Everyone*, Time (Oct. 17, 2020), https://time.com/5900583/women-workforce-economy-covid [perma.cc/2QPV-36EU]; Ella Koeze, *A Year Later, Who Is Back to Work and Who Is Not?* N.Y. Times (Mar. 9, 2021), https://www.nytimes.com/interactive/2021/03/09/business/economy/covid-employment-demographics.html [https://perma.cc/U72F-TDYM].

[12] *See, e.g.*, Marika Lindholm, *Single Moms and COVID-19: Lessons in Desperation and Strength*, Ms.Magazine (Apr. 19, 2020), https://msmagazine.com/2020/04/08/single-moms-and-covid-19-lessons-in-desperation-and-strength [https://perma.cc/65JU-LZSB]; *see also* Nathalie Ségeral, *Academic Single Mothering During a Pandemic*, 11 and 12 J. Motherhood Initiative

medical disciplines was greater.[13] However, little attention has focused on the impact of the pandemic on Mother-Scholars in the legal academy who play a unique role in supporting law students who are mothers and advancing scholarly work and advocacy grounded in social justice for women.[14]

For decades, mothers have managed the so-called "work-life balance" demanded by the competing roles of mother and employee. Social distancing and isolation gave mothers the chance to finally merge work and family life, so why is this blending of work and family so challenging?[15]

In Part I, I build on my own *testimonio* as a Latina mother of young children and a law professor to develop an intersectional and multilayer

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139 (2020).

[13] *See, e.g.*, Olga Shurchkov, *Is COVID-19 Turning Back the Clock on Gender Equality in Academia?*, MEDIUM (Apr. 23, 2020), https://medium.com/@olga.shurchkov/is-covid-19-turning-back-the-clock-on-gender-equality-in-academia-70c00d6b8ba1 [https://perma.cc/QUL2-KJ2M]; Jillian Kramer, *The Virus Moved Female Faculty to the Brink. Will Universities Help?*, N.Y. TIMES (Oct. 6, 2020), https://www.nytimes.com/2020/10/06/science/covid-universities-women.html?referringSource=articleShare [https://perma.cc/U7VP-7YUM]. *See also* Robinson Fulweiler, Sarah Davies, Jennifer Biddle, Amy Burgin, Emily Cooperdock, Torrance Hanley, Carly Kenkel, Amy Marcarelli, Catherine Matassa, Talea Mayo, Lory Santiago-Vazquez, Nikki Traylor-Knowles, Maren Ziegler, *Rebuilding the Academy: Supporting Academic Mothers during the COVID-19 Global Pandemic and Beyond*, PLOS BIOLOGY (Mar. 2021); Caitlyn Collins, *Productivity in a Pandemic*, 369 SCIENCE 603 (2020); Sirisha Narayana, Brita Roy, Sarah Merriam, Emmanuelle Yecies, Rita S. Lee, Julie L. Mitchell, & Amy S. Gottlieb, *Minding the Gap: Organizational Strategies to Promote Gender Equity in Academic Medicine During the COVID-19 Pandemic*, 35 J. GEN. INTERNAL MED. 3681 (Oct. 6, 2020).

[14] The wave of literature on academic motherhood during COVID-19 primarily focuses on non-law disciplines. *See, e.g.*, KELLY WARD & LISA WOLF-WENDEL, ACADEMIC MOTHERHOOD: HOW FACULTY MANAGE WORK AND FAMILY (2012); Batsheva Guy & Brittany Arthur, *Academic Motherhood During COVID-19: Navigating Our Dual Roles as Educators and Mothers*, 27 GENDER, WORK & ORG. 887, 887 (2020). For broader discourse on the pandemic experience of women in the academy and pipelines thereto, see the *COVID Care Crisis Symposium Collection of Essays*, F.I.U. L. REV. (forthcoming). For an autoethnographic example of how women, as professionals, engage in advocating for social justice for other women from multiple disciplines and racial backgrounds, *see* Dorothea Bowyer, Milissa Deitz, Anne Jamison, Chloe E. Taylor, Erika Gyengesi, Jaime Ross, Hollie Hammond, Anita Eseosa Ogbeide, Tinashe Dune, *Academic mothers, professional identity and COVID-19: Feminist reflections on career cycles, progression and practice*, 29 GENDER WORK ORGAN. 309, 318 (Sept. 19, 2021), https://onlinelibrary.wiley.com/doi/full/10.1111/gwao.12750#gwao12750-bib-0079.

[15] *See, e.g.*, Guy & Arthur, *supra* note 14, at 897 ("Being a working mom is tough, but being a mom during COVID is more difficult than we could have ever imagined. Despite all of the challenges we are facing, we wouldn't trade a second of this time we are able to spend at home with our children for anything . . . Our identities of being a mother and a professional can be seen as opposites in many respects, creating a paradox within us.").

framework through which the experiences of mothers and Mother-Scholars with intersecting identities and roles can be analyzed.[16] In the words of one of my [wo]mentors,[17] Professor Emerita Christine Zuni-Cruz, "[A]s people of color, as people who love our families, our people, we don't engage in critical race analysis in the abstract. We are part of the analysis. [. . .] If we don't speak [our stories], no one else will."[18] In this Article, I share how my experience as a super-mom is shaped by my identity as a Latina with unique sociocultural roots of social resiliency turned vulnerability as a Mother-Scholar during the pandemic.[19]

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[16] The methodological process called *testimonio* is grounded in Chicana feminist and Latino/a Critical Race theories. In developing my *testimonio*, I reflect upon my lived reality, examine larger social inequities, engage in dialogue, find meaning, and cope, all while moving toward racial justice in the academy by making space for stories of women of color to be included. *See* Lindsay Pérez Huber & Bert María Cueva, *Chicana/Latina Testimonios on Effects and Responses to Microaggressions*, 45 Equity & Excellence in Education 393, 397 (2012), (describing *testimonio* as a methodological tool that "supports critical reflection, healing, and collective memory through the act of *testimoniando*" and "shift[s] discursive power to Chicanas/Latinas in constructing knowledge from our lived realities," so that we become part of the process of passing down knowledge to the next generation of scholars). Polls also indicate that Latinas and parents have been disrupted by the pandemic. *See, e.g.*, Liz Hamel, Lunna Lopes, Cailey Muñana, Jennifer Kates, Josh Michaud, and Mollyann Brodie, *KFF Coronavirus Poll: March 2020*, Kff.org (Mar. 17, 2020), https://www.kff.org/coronavirus-covid-19/poll-finding/kff-coronavirus-poll-march-2020 [https://perma.cc/EE6D-BZYJ] (surveying 1,216 people over 18 years old and finding that those more likely to say their life was disrupted were Hispanic (50 percent), women (46 percent), and parents of children (45 percent)).

[17] I intentionally use the term "[wo]mentor" to highlight the specific and continuous type of mentorship women require to survive and overcome persistent sexism in higher education and the workplace. *See, e.g.*, Ariela L. Marshall, Renee K. Dversdal, Martina Murphy, Donna M. Prill, Tian Zhang & Shikha Jain, *WOMENtorship: The #WomenInMedicine perspective*, 42(2) Med. Teacher 228, 228–30 (2020) (describing "WOMENtorship" of women in medicine training). I include brackets to highlight the fact that women are underrepresented in legal academia and engage in undervalued and invisible work, including "academic housework" such as mentoring. *See* Meera E. Deo, *Looking Forward to Diversity in Legal Academia*, 29 Berkeley J. of Gender, Law, & Just., 352, 358 (2013) (noting that, in 2009, of the 10,965 law professors nationwide, only 4,091 were women and only 722 were women of color) (citing Ass'n Am. L. Schs., 2008–09 AALS Statistical Report On Law Faculty, Race And Ethnicity (2009)); Pereira, *supra* note 6, at 503–04.

[18] Christine Zuni Cruz, *Four Questions on Critical Race Praxis: Lessons From Two Young Lives in Indian Country*, 73 Fordham L. Rev. 2133, 2137 (2005).

[19] For a deeper discussion of *testimonio*, *see generally*, Edwin G. Lindo, Brenda Williams, and Marc-Tizoc González, *Uncompromising Hunger for Justice: Resistance, Sacrifice, and LatCrit Theory*, 16 Seattle J. Soc. Just. 727, 796–805 (2019), (discussing the use of counter-storytelling, Latina autobiography, and *testimonio* in legal scholarship); Lindsay Pérez Huber, *Beautifully Powerful: A LatCrit Reflection on Coming to an Epistemological Consciousness and the Power of Testimonio*, 18 Am. U. J. Gender Soc. Pol'y & L. 839 (2010) (describing the

In Part II, I summarize the sources of super-moms' social resiliency, which predates the pandemic, and mental health vulnerability caused by failures to respond to the pandemic equitably.[20] A super-mom is both a cultural representation of femininity (based on racial and ethnic community values and norms) and a gendered performance (stemming from societal expectations), exhibiting the unique intersections of gender and race expectations of "doing it all."[21]

In Part III, I propose the COVID Ceiling framework for analyzing the loss of resiliency and an increased mental health vulnerability for working mothers due to social distancing and isolation in the context of preexisting inequities and biases based on intersecting identities and ongoing impacts of the pandemic.[22] The COVID Ceiling framework combines intersectional analysis,[23] which assesses the unique

process and purpose of *testimonio*).

[20] Although I focus on super-moms in this Article, I acknowledge that there are family dynamics in which dads, stepparents, adoptive parents, foster parents, guardians, and other family members, are caring for children. They are super, too.

Adding the word "super" to the word "mom" is meant to acknowledge, on some level, the valiant efforts of many mothers in the public and private spheres. It is not in any way meant to indicate a deficiency in anyone who has no desire or, perhaps, no means to perform this gendered expectation.

[21] *See* Precilla Y.L. Choi, Carol A. Henshaw, Sarah R. Baker, & Joanne Tree, *Supermum, Superwife, Supereverything: Performing Femininity in the Transition to Motherhood*, 23(2) J. OF REPROD. & INFANT PSYCH. 167, 177 (2005). Gendered expectations apply to mothers across backgrounds and statuses. *See, e.g.*, Amani M. Allen, Yijie Wang, David H. Chae, Melisa M. Price, Wizdom Powell, Teneka C. Steed, Angela Rose Black, Firdaus S. Dhabhar, Leticia Marquez-Magaña, Cheryl L. Woods-Giscombe, *Racial Discrimination, The Superwoman Schema, and Allostatic Load: Exploring an Integrative Stress-coping Model Among African American Women*, 1457 ANN N.Y. ACAD SCI. 104, 111 (Dec. 2019); Vernessa Roberts, *Societal Female Expectations: How Ethnic Minority Women Experience Shame from Female Expectations* (2017) (California School of Professional Psychology Dissertation), (minoritized women); Ana Popović, *The Good Wife's Representation of Women in the Political and Legal Realms: Balancing Expectations*, 3 EX-CENTRIC NARRATIVES: J. ANGLOPHONE LITERATURE, CULTURE & MEDIA 288, (women in legal profession); Laurel Parker West, *Welfare Queens, Soccer Moms, and Working Mothers: The Socio-Political Construction of State Child Care Policy* (2003) (Doctoral Dissertation for Emory Univ. Dep't of Pol. Sci.) (women in various socioeconomic classes).

[22] *See* Pereira, *supra* note 6, at 503–04.

[23] Intersectionality is a process for analyzing how different parts of a subordinated identity interact with one another and enhance the level of oppression experienced by the combination of all those parts, *See* Margaret Montoya, *Defending the Future Voices of Critical Race Feminism*, 39(3) U.C. DAVIS L. REV. 1305, 1318 (2006) *(*defining intersectionality as "interlocking oppressions affecting women, such as racism, sexism, heteropatriarchy, classism, agism, etc."). *See generally* Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

personal experience created by the "intersection" of several identity characteristics in a person's life, with a vulnerability framework, which has been used in government response activities to emergency disasters or hazards to assess which subgroups are most impacted by a disaster or hazard and in most need of aid based on both susceptibility (or sensitivity) and adaptive capacity (or coping skills).[24] The methodology of the vulnerability framework is informed by the LatCrit methodology of "rotating centers" and "shifting bottoms,"[25] so the framework can be

[24] For more information on mapping vulnerability components and measures, *see* Ben Wisner, JC Gaillard, Ilan Kelman, *Framing Disaster: Theories and Stories Seeking to Understand Hazards, Vulnerability and Risk* (2012), https://www.routledgehandbooks.com/doi/10.4324/9780203844236.ch3 *[https://perma.cc/K383–8A7H]*. *See e.g.,* Iver Bakken Sperstad & Gerd H. Kjølle, Oddbjørn Gjerde, *A comprehensive framework for vulnerability analysis of extraordinary events in power systems*, 196 Reliab. Engin. & Sys. Safety 106743 (April 2020) https://www.sciencedirect.com/science/article/pii/S0951832019307008 *[https://perma.cc/4MS9-HBZW]*; William Kwadwo Dumenu, Xavier Takam Tiamgne, *Social vulnerability of smallholder farmers to climate change in Zambia: the applicability of social vulnerability index* (Mar. 2020), https://www.researchgate.net/publication/339337902_Social_vulnerability_of_smallholder_farmers_to_climate_change_in_Zambia_the_applicability_of_social_vulnerability_index *[https://perma.cc/Y3CF-UAME]* (see figure 1 for map of vulnerability components in this context); Ak. Mohd Rafiq Ak. Matusin, C. Siwar, & S. A. Halim, *Vulnerability framework of tourism to natural disasters, Geografia: Malaysian journal of society and space* (Nov. 2019), https://www.semanticscholar.org/paper/Vulnerability-framework-of-tourism-to-natural-Matusin-Siwar/c43ce2d3f60bc70494e12caf20ad41ef7741ae8d [https://perma.cc/UCN6-WQD5] (presenting an analysis of the tourism vulnerability framework for those areas that face natural prone disasters in Malaysia).

I chose the vulnerability framework because it considered pre-existing inequities and adaptive capacities in response to disaster, all components of the COVID ceiling analyses that I sought to map out. I came across at least one other interedendence model and two social vulnerability models (one pre-Covid, one post-Covid). *See Yulong Li*, *Jie Lin*, *Guijun Li*, *Chao Wang,* Chi Zhang, and Lili Gao, Vulnerability Assessment of Community-Interdependent Infrastructure Network Based on PSDA, https://ascelibrary.org/doi/10.1061/%28ASCE%29IS.1943–555X.0000535 *[https://perma.cc/5DK8–44J6]*; Carleigh Krubiner, Megan O'Donnell, Julia Kaufman, & Shelby Bourgault, *Addressing the COVID-19 Crisis's Indirect Health Impacts for Women and Girls* [Working paper 577 April 2021 Center for Global Development], https://www.cgdev.org/sites/default/files/Addressing-Covid-19-indirect-health-impacts-women-and-girls_0.pdf *[https://perma.cc/RX8J-45CG]*; Melissa K Andrew & Janice M Keefe, *Social vulnerability from a social ecology perspective: a cohort study of older adults from the National Population Health Survey of Canada*, 19(90) BMC Geriatrics (2014) https://bmcgeriatr.biomedcentral.com/articles/10.1186/1471–2318–14–90 *[https://perma.cc/6QSZ-LUVD]*.

[25] My focus on the burdens of Mother-Scholars and Latinas is to add my perspective to existing discourse, rather than suggest that our burdens are greater than others or that I speak for all. *See generally* Athena D. Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. Miami L. Rev. 1177, 1177–78 n. 2 (1999). I ground my analysis in the LatCrit methodology referred to as "shifting centers" and "rotating bottoms" because it "consciously is designed not only to center Latinas/os/x in a manner that

utilized for different emergencies and leadership can equitably manage resources in times of crisis.

In Part IV, in response to decreased personal and community adaptive capacities resulting from COVID restrictions, I propose a dual solution in which the remaining adaptive capacities of government and institutional or corporate policies that promote resiliency are enhanced to protect mothers, including the most vulnerable mothers such as minoritized mothers and unpartnered mothers. Mitigating a post-COVID social crisis of the loss of mothers in the workforce[26] requires the equitable distribution of benefits and support. These approaches can benefit all working mothers.

I. VILLAGE OF TWO – *MY TESTIMONIO*

A. *Familiar Sense of Doom*

It is the summer of 2020 in Albuquerque, New Mexico. Inside an air-conditioned and sunlit office space that is enchanting but small, I, a mom and law professor, am hunched over my computer. I had been typing in a fury for weeks, authoring my latest essay. I stared out the window as my two young children are shrieking one room over and tried to make out the Sandia Mountains which, like my brain, are covered with clouds. I could not focus.

My spouse and I heard that the Governor of New Mexico announced the closure of all schools and daycares. This was the

minimizes privileging any one Latina/x/o identity or interest over another but also to ensure critical discussion of Latinas/os/x as part of the larger intra-intergroup schematics." FRANCISCO VALDES, STEVEN W. BENDER, LATCRIT: FROM CRITICAL LEGAL THEORY TO ACADEMIC ACTIVISM 35–36 (2021), (describing a rotation of centers as a "constant and perpetual balancing of similarities" that requires participants to sometimes de-center "salient identities or preferred issues to juggle our collective limited resources," and describing shifting bottoms as a way to "recognize and center diverse marginalities in principled and ethical ways at different times and over time").

[26] Liana Christin Landivar and Mark deWolf for U.S. DEP'T OF LABOR, *Mothers' Employment Two Years Later: An Assessment of Employment Loss and Recovery During the COVID-19 Pandemic*, https://www.dol.gov/sites/dolgov/files/WB/media/Mothers-employment-2%20-years-later-may2022.pdf ("Maternal employment declined by 15.7% in April 202, a larger decline than the 9.6% reduction fathers experienced at that time. Throughout the pandemic, mothers' employment has recovered more slowly and remains 2.0% below their February 2020 employment rate, representing about 333,500 working mothers. Fathers' employment has fully recovered to pre-pandemic employment levels . . . Hispanic mothers had the largest initial decline in employment rates, falling 21.2% in April 2020 relative to February 2020. Black mothers' employment fell 15.2% and remains 5.7% below February 2020 levels.").

first-ever "safer-at-home" order issued under an executive order by the Governor.[27] "What does this mean? Why was this an emergency when there are no cases in New Mexico? We are spread out in New Mexico; we should be fine." I received an email announcing that an upcoming out-of-state conference was canceled. I saw on the news that people were warned not to travel to avoid spreading the deadly virus.

I received another email announcing that my son's childcare center was closing because of the Executive and Public Health Orders. My husband and I were plagued with questions. "Would childcare close to the public or close to everyone? They could not have possibly meant the latter. People have to work, don't they? What is different about this virus? Is it like the flu? Would it really take a year and a half to develop a vaccine? Would my children really be home with me and my spouse full-time?"

I reread the email from her daughter's elementary school. I waited anxiously to hear from the law school's administration as my mind mulled over the many possibilities. "Would instruction continue? Would faculty be furloughed or fired? Would students drop out? Would the end of the semester be postponed?" I never expected that fourteen months after the first shutdown, I would still have many of the same uncertainties and unanswered questions as in those early weeks.

My thoughts raced as I ran to the nearest grocery store in hopes of finding milk, diapers, and wipes for my one-year-old. I will never forget the look on my six-year-old daughter's face when she saw the aisles empty. I tried to explain why shelves were barren and why there was uncertainty over when they would be restocked. The somberness of everyone shopping around us quietly, in a hurry, and deep in their own thoughts signaled a seriousness that I had never felt amongst strangers.

I scoured the aisles of the grocery store for tortillas, beans, and potatoes—staples from when I was a kid because they offered myriad dinner options and took long to spoil. I only found half of the items on my list, and called my siblings, parents, and grandparents to find out what they needed—groceries, toilet paper, frozen foods, bottled water, vitamins, cold medicine, hand sanitizer, Clorox wipes, detergent, or antibacterial

[27] *See generally* Jordan Carter, Yucel Ors, & Stacy Richardson, *What's the Difference Between Shelter in Place, Safer at Home, and Stay Home Orders?*, Nat'l League of Cities (Mar. 30, 2020), https://www.nlc.org/article/2020/03/30/whats-the-difference-between-shelter-in-place-safer-at-home-and-stay-home-orders/ [https://perma.cc/9KW8-V36U].

hand soap. I felt surprised by the sound of their voices as they, too, were processing what was unfolding. "Should I be worried?"

The news was unclear. Some thought the virus-related closures would only last two weeks. Our Governor, a working mother and woman of color, planned to revisit the order in two weeks. That seemed to suggest that the situation was still developing. Others predicted it would be a year before public spaces returned to normal. "I need a plan." The media coverage was no help—an indistinguishable hodgepodge of fact, fiction, and unfiltered anxieties.[28]

There seemed to be disagreement about everything: what mitigation measures to undertake, whether closures were necessary, and whether some people were more vulnerable than others. After hours of late-night research while the kids were asleep, I decided the best thing to do was to socially distance and isolate myself, even from my extended family. There would be no more Wednesday night family dinners. No more playground dates. No birthday parties. No lunches with my sisters. No babysitting my nieces and nephew. No exercise classes with friends. It was all gone. I felt unprepared, but mostly, I felt sad.

That is how my home became my work, and my work became my home. The global pandemic crisis sweeping the world relegated my big, bold ideas (and children) to a small, minimalist, think-live-work-sleep-play space. I hoped that it was only temporary—the late-night typing, early-morning reading, forgetting to eat, never-ending housework, not stepping outside for days at a time. In between PBS, homeschooling, meals, showers, books, online orders, fingerpaints, and planning with my spouse when our schedules might overlap so we could coordinate how to care for both kids while we were both occupied with court hearings and teaching class, my scholarly pursuits were sprinkled, like goldfish-shaped crumbs hidden between couch cushions. My ideas, like loose change, were waiting for a proverbial rainy day (or any day, now that I stay inside every day), for someone to make use of them. I could not focus with the noise, cooking, laundry, dishwashing, cleaning, and homeschooling my daughter. Logging in seven times a day for forty-five minutes

[28] Salman Bin Naeem, Rubina Bhatti, & Aqsa Khan, *An Exploration of How Fake, News is Taking Over Social Media and Putting Public Health at Risk*, 38 HEALTH INFO. & LIBRS. J 143 (2020), (analyzing 1225 pieces of fake news stories and concluding "the COVID-19 infodemic is full of false claims, half backed conspiracy theories and pseudoscientific therapies, regarding the diagnosis, treatment, prevention, origin and spread of the virus. Fake news is pervasive in social media, putting public health at risk.").

at a time to read her worksheets to her while managing a toddler who just learned to walk is a full-time job. But I still had to teach, supervise two research assistants, do academic committee work, present scholarly work, teach online, do deep-thinking research, and find and respond to calls for papers and proposals–a job that was already *more* than forty hours pre-pandemic. I was working what little I could throughout the day, and for another four hours after putting the kids to sleep, to keep my head above water.

We struggled with feeling cabin fever, especially because public spaces and open spaces were closed, too. Zoom meeting after meeting, I kept my camera off because I didn't feel like being "on" by managing my appearance and my background. Even when I had something to add in a meeting, I stayed on mute because I could not predict what other noises would disrupt the meeting. Whenever I tried to start making progress on my proposals, outlines, and articles, my kids were knocking on my office door, begging me to play with them, lay down with them at nap and bedtime, or look at their artwork as I am logging onto Zoom to teach class. I felt the weight of imbalance and inadequacy. My spirit was as worn as my once bright eyes were dim. "Will everyone be okay?" I had only ever felt this overwhelmed one other time.

I shuddered at the thought of *that* time. My eyes and thoughts wandered back to the present, fixating on the tall, smooth ivory doors of my home office interrupted by a black roof, as striking as it is strong. Noticing for the first time that the outside matches the inside, my eyes followed my faux white leather writing chair and resilient black throw rug holding it all up. A familiar chirp brought me back to reality: a new email message. A subtle notification, floating on the right side of my computer screen, dragged me into a sea of louder and more urgent reminders, reminding me how tired I am of being notified of things. Emails from colleagues, family, students, businesses seeking donations, newspapers highlighting the latest racial transgressions, administration with a continuous stream of policy updates, people in need of pro bono legal advice, politicians' official statements, and courthouse press releases strained my inbox and eyes. Between budget cuts, bold conversations, and a bulleted grocery list, I could not shake that familiar sense of doom.

It was the feeling I had *that* time, when I was studying for the bar exam. That persistent worry that there are not enough hours in the day; that the stress was unbearable. I spent each waking moment studying

because learning twenty-something topics in twelve weeks required every second. My spouse cared for our daughter, who left her snacks on top of my study materials. I felt alone, tired, and inadequate. That feeling permeated my day-to-day activities, my sleep, and my thoughts. There was a deeply ingrained voice that never failed to remind me, "You are not going to make it. You have too much to do and not enough time. You should give up now to avoid disappointing everyone." The sense of doom I thought I rid myself of years ago made its way back into my small, cold office. It seemed there to stay. I wondered if, in fact, it ever left.

B. *A Familiar Sense of Isolation*

But somehow, I made it. I made it, I remind myself. I passed the bar exam. As time went on and I became a lawyer, people around me would say things like: "You are amazing! I don't know how you do it! You are so inspiring!" Yet I have not always felt amazing.

As a first-generation graduate of college and law school, and a mother of two, I am accustomed to being called a "super-mom." The truth is, it took a village to raise me, and it has taken a village to raise my children. When I was in law school, my mother babysat my daughter during my morning classes. As a law student living off student loans, I could only afford to pay for part-time childcare for my infant.[29] Full-time, high-quality care for my daughter would have cost $12,140 a year, slightly less than my in-state law school tuition at a public university.

Other members of my extended family also supported me. My dad frequently invited me over for dinner even though I no longer lived with him. My sisters took turns watching my daughter so I could attend my evening trial practice course. My dad and brothers helped me move to less expensive rental apartments countless times. My grandmother traveled with me to a moot court competition on the East Coast so she could watch my daughter during the competition. My family kept my fears of impending doom during law school and bar exam preparation at bay. Their support continued when I began to practice law and when I began my appointment as a tenure-eligible law professor before the

[29] The U.S. Department of Health and Human Services considers childcare affordable if it costs no more than 7 percent of family income. However, in 2013, families that fell below the Federal Poverty Level paid an average of 30 percent of their income toward childcare costs in comparison to 8 percent for non-poor families. *See* EXEC. OFF. OF THE PRESIDENT OF THE U.S., THE ECONOMICS OF EARLY CHILDHOOD INVESTMENTS 13–14 (2015).

global pandemic. But the pandemic isolated me from my network. Left without support, I, like other Mother-Scholars in law and other disciplines, found myself limited by circumstances out of our control despite the privilege of being an educated, working middle-class mother with a deep network of support.

Like others with multiple roles in a family-centric life—mother, professor, daughter, granddaughter, sister, [wo]mentor—my dependence on and responsibilities to my family permeate all aspects of my life. As a Latina, the typical interdependence of the nuclear family expands to my extended family.[30] This interdependent way of life is common among some Latinas/x/os[31] and other communities that are also family-centered and interconnected to family relatives, primarily as a source for resilience and identity, as evidenced by the cliché: "It takes a village."[32]

[30] Here I use the word "family" broadly to include social, natural, and community supports on which many women, including mothers, rely on in their daily lives.

[31] The Latina/x/o community is not a monolith. *See, e.g.*, Marissa A. Abrajano & R. Michael Alvarez, New Faces, New Voices: The Hispanic electorate in America (2012).

[32] It is not clear where this adage ("It takes a village to raise a child") originates but many attribute it to an African proverb. *See, e.g.*, Joel Goldberg, *It Takes A Village To Determine The Origins of an African Proverb*, Nat'l Pub. Radio (July 30, 2016), https://www.npr.org/sections/goatsandsoda/2016/07/30/487925796/it-takes-a-village-to-determine-the-origins-of-an-african-proverb [https://perma.cc/CVE5-SEK5]; Madelaine Hron, *"Ora Na-Azu Nwa": The Figure of the Child in Third-Generation Nigerian Novels*, 39(2) Rsch. in Afr. Literatures 27, 45 (2008), https://www.jstor.org/stable/20109577?seq=1 [https://perma.cc/AG9M-ZPVB] ("Ora Na-Azu Nwa" is an Igbo saying from Nigeria loosely translated as "It takes a village to raise a child"); *see also* Andrea O'Reilly, Toni Morrison and Motherhood: A Politics of the Heart 5–9 (2012), (describing othermothering and community mothering as practices developed in African traditions); Calzada et al., *supra* note 9, at 1717. *See* Linda C. Halgunseth, Jean M. Ispa, & Duane Rudy, *Parental Control in Latino Families: An Integrated Review of the Literature*, 77 Child Dev. 1282 (2006) (describing devotion of one's psychological, emotional, and economic resources to family, as well as the crafting of one's identity around one's family as being understood in the broader terms of social interdependence or connectedness).

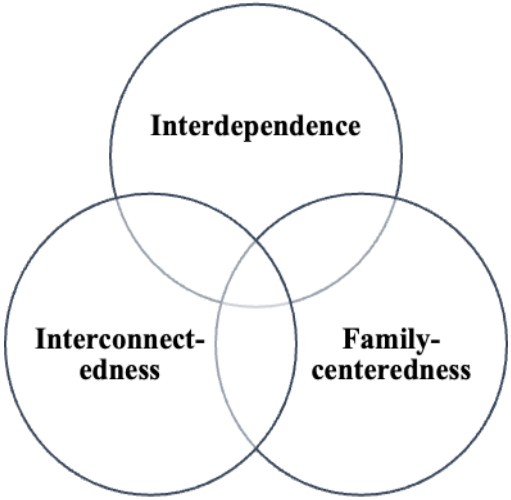

FIGURE 1. A visual representation of the concept of familismo.

This family-centered identity is not exclusive and is shared by many racial and ethnic groups. Families such as my own maintain this physical and emotional closeness even though we each have a level of independence.[33] We maintain respect for elders and a sense of obligation and responsibility to care for all members of the family.[34] It is why my family and I worked together to raise my daughter when I was in law school and started in the legal academy, and why I was in communication with my extended family about necessities in the early stages of the pandemic.

This value is referred to as *familismo*[35] or *familism*[36] *in psychology, anthropology, and sociology discourses. Other scholars refer to a variation*

[33] Angel G. Lugo Steidel & Josefina M. Contreras, *A New Familism Scale for Use With Latino Populations*, 25 HISP. J. BEHAV. SCI. 312, 314–15 (2003). *See also* Esther J. Calzada, *Bringing Culture into Parent Training with Latinos*, 17 COGNITIVE & BEHAV. PRAC. J. 167, 168–171 (2010).

[34] *See generally* CTR. FOR ADVANCED STUD. IN CHILD WELFARE, *Latino Cultural Guide: Building Capacity to Strengthen the Well-Being of Immigrant Families and Their Children: A Prevention Strategy* (2011), https://cascw.umn.edu/wp-content/uploads/2014/02/CulturalGuide-Latino.pdf [https://perma.cc/K2LH-BQAW]; Carolyn Smith-Morris, Daisy Morales-Campos, Edith Alejandra Castaneda Alvarez, & Mathew Turner, *An Anthropology of Familismo: On Narratives and Description of Mexican/Immigrants*, 35 HISP. J. BEHAV. SCI. 35, 38 (2013).

[35] *See, e.g.*, Calzada et al., *supra* note 9, at 1697.

[36] *See, e.g.*, Georgiana Bostean, *An Examination of the Relationship Between Family and U.S. Latinos' Physical Health*, 2 FIELD ACTIONS SCI. REP. 1, 1 (Apr. 20, 2010).

of the familismo concept as the "kin contract."[37] Many families, including my own, view each other, in part, as a social "safety net" for care and support.[38] This safety net is a relic of the historical and modern-day migration of families from Latin American and Caribbean countries.[39] Although the expressions of *familismo* vary based on socioeconomic status, national origin, and other factors,[40] it is a constant feature that does not tend to vary with time spent in the United States since migration[41] (or in some areas, like New Mexico, since colonization). Dr. Fabio Rosales describes *familismo* as prioritizing family and collective needs over one's individual needs and ambitions "[as] a response to Latinos/as' ongoing struggles for socioeconomic mobility and acceptance in U.S. society."[42] One way this manifests is through daily help with childcare from grandparents and

[37] Cortney Hughes Rinker, M. Aspen Bataille, & Loumarie Figueroa Ortiz, *COVID-19 and the Kin Contract: Navigating the Family and the State During the Pandemic*, 41 Anthropology & Aging 141, 142 (2020).

[38] *Id.* at 145. Although women generally rely on social support and connectedness to manage stress, resilience, and well-being, it does not appear to be as crucial to survival as *familismo* is to Latinas and other women. *See e.g.,* Megan Godwin, Stephen Whyte, Rebekah Russell-Bennett, and Uwe Dulleck, *Coping with Covid: Australian Women's Coping Responses During the Covid-19 Pandemic*, *in* 71 COVID Econ. 112, 129 (Mar. 10, 2021). For example, Black women, Asian American women, and Latinas have relied on family structures to help them resolve the "tension between maternal separation due to employment and the needs of dependent children." *See* Patricia Hill Collins, Shifting the Center: Race, Class, and Feminist Theorizing about Motherhood, 371, 376 (1994). Unpartnered mothers also rely on extensive villages for support. *See e.g.*, Rosanna Hertz, Jane Mattes, & Alexandria Shook, *When Paid Work Invades the Family: Single Mothers in the COVID-19 Pandemic*, 42 J. Family Issues 2019, 2021 (2021).

[39] *See e.g.,* Danielle Crosby, Julia Mendez, Lina Guzman, & Michael Lopez, *Hispanic Children's Participation in Early Care and Education: Type of Care by Household Nativity Status, Race/Ethnicity, and Child Ag*e, Nat'l Res. Ctr. on Hisp. Child. & Fam. (2016) (noting that two thirds of Hispanic children under the age of three have home-based care); *see also* Smith-Morris et al., *supra* note 34, at 22.

[40] Calzada et al., *supra* note 9, at 23 ("*Familismo* may manifest differently, and its costs and benefits be perceived differently, among Latinos who do not experience financial strain, undocumented status, and other stressful living conditions."); Rosiles, *infra* note 82, at 44 (describing gendered *familismo*, which encourages Latinas to achieve financial independence through education so as not to depend on a male partner, and yet are expected to fulfill certain gendered duties in the home).

[41] Cecilia Ayón, Flavio F. Marsiglia & Monica Bermudez-Parsai, *Latino Family Mental Health: Exploring the Role of Discrimination and Familismo*, 38 J. Cmty. Psych. 742 (Aug. 1, 2010).

[42] Rosiles, *infra* note 82, at 44.

great-grandparents,[43] as well as material and emotional support.[44] In other words, the *familismo* value is, in part, how Latina super-moms develop a deep support network that helps them thrive in the workforce.

COVID-19 mitigation strategies and state policies mandating social and physical distancing have made it challenging to be family-centered, interdependent, and interconnected for super-moms who rely on familismo to help them thrive in the workforce.[45] This impacts access to work and education for many mothers who are suddenly without "village" support for childcare.[46] The possibility of spreading a deadly disease while being asymptomatic—coupled with higher rates of

[43] *See, e.g.*, Elena Paredes, *Putting the "Family" in Family Child Care: The Alignment Between Familismo (Familism) and Family Child Care Providers' Descriptions of Their Work*, EARLY CHILDHOOD RES. Q. (2020).

[44] *See also* Crosby et al., *supra* note 39, at 5.

[45] This is particularly true for families that live in multi-generational households—of which Hispanics are the largest share—who face increased risks by virtue of increased physical contact with others outside the home. *See Households, by Family Size, Race and Ethnicity*, PEW RSCH. CTR. (2013), https://www.pewresearch.org/hispanic/ph_2015–03_statistical-portrait-of-hispanics-in-the-united-states-2013_current-40 [https://perma.cc/6STB-5E3X] (noting that 26 percent of Hispanic families live in five-person families or more). *See also* Titan Alon, Matthias Doepke, Jane Olmstead-Rumsey, & Michèle Tertilt, *The Impact of COVID-19 on Gender Equality*, NAT'L BUREAU OF ECON. RSCH. (Apr. 2020), https://www.nber.org/papers/w2694 [https://perma.cc/AG83-J4GB] (noting that despite the increased need for childcare after closure of schools and daycares, grandparent care is discouraged due to higher COVID-related risks for the elderly).

[46] *See* Calzada et al., *supra* note 9, at 3 ("For Latino families, who face numerous obstacles in raising children including stressors related to poverty, acculturation, and discrimination, *familismo* may serve a protective role in children's development."); Hertz et al., *supra* note 38, at 2021 ("Each single mother's village is essential to her ability to parent and be employed; indeed, it might be argued that her claim to having a so-called normal family is predicated on her ability to mobilize others so she can earn a living.") (citations omitted). *See also* Valerie Polakow, *A Question of Rights: Poverty and the Child Care Crisis*, 4 NEW EDUCATOR at 26, 28 (2008) (noting that for the 65 percent of mothers with children under the age of six who are in the labor force, access to childcare is critical to accessing education and employment).

unemployment,[47] infection, hospitalization, and death for Latinas/x/os[48]—exacerbates these challenges and impacts mental health.[49]

Mental health during the global pandemic is impacted by having to engage in ongoing negotiations—between parents and grandparents, extended family, and outside caregivers—about childcare and visits.[50] Ongoing considerations include weighing the importance of work requirements or social invitations relative to their health risks, viewing individual work tasks as being (in)flexible to interruptions, and more.[51] Employers may be aware that working mothers have concerns about

[47] *Compare Unemployment Rate–Hispanic or Latino*, Fed. Rsrv. Bank St. Louis, https://fred.stlouisfed.org/series/LNS14000009 [https://perma.cc/6H2U-AE5V] (Jan. 8, 2021) (showing Latino unemployment peaking at nearly 19 percent in April 2020) *with Unemployment Rate*, Fed. Rsrv. Bank St. Louis, https://fred.stlouisfed.org/series/UNRATE [https://perma.cc/S4T4-RCNX] (updated Jan. 8, 2021) (showing average unemployment in the United States peaking at nearly 15 percent in April 2020); Kweilin Ellingrud et al., *Diverse Employees are Struggling the Most During COVID-19—Here's How Companies Can Respond*, McKinsey & Co. (Nov. 17, 2020), https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diverse-employees-are-struggling-the-most-during-covid-19-heres-how-companies-can-respond [https://perma.cc/7XZG-HT25] (noting that 65 percent of Latinos work in the five most impacted sectors during the pandemic, including leisure, hospitality, and retail).

[48] *See Provisional Death Counts for Coronavirus Disease 2019* (COVID-19), Ctr. for Disease Control & Prevention, https://www.cdc.gov/nchs/covid19/pulse/mental-health.htm [https://perma.cc/R2CK-XLLW] (Jan. 13, 2021) (demonstrating an incidence of 20 percent higher deaths in comparison to proportion of the population for Hispanics across all age groups, the highest of any racial or ethnic minoritized group); *Hospitalization and Death by Race/Ethnicity*, Ctr. for Disease Control & Prevention (Mar. 30, 2022), https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html [https://perma.cc/K9AE-Q7BX] (noting that Hispanic or Latino persons are 1.5 times as likely to become infected, 2.3 times as likely to be hospitalized, and 1.8 times as likely to die in comparison to White, non-Hispanic persons).

[49] *Compare* Nicole Acevedo & Carmen Sesin, *Hard-Hit by COVID-19, Latinos Bear Mental Health Burden 8 Months into Pandemic*, NBC News (Nov. 20, 2020, 1:21 PM), https://www.nbcnews.com/news/latino/hard-hit-covid-19-latinos-bear-mental-health-burden-8-n1248199 [https://perma.cc/CP5Z-AHGM] (noting that 50 percent of Latina/x/o people nationwide reported experiencing frequent symptoms of anxiety or depressive disorder, according to the National Center for Health Statistics in partnership with the Census Bureau), *with* Nat'l Ctr. for Health Stats., *Anxiety and Depression Household Pulse Survey*, CDC (Jan. 6, 2021) https://www.cdc.gov/nchs/covid19/pulse/mental-health.htm [https://perma.cc/6ZUW-4JCF] (noting that from January to June 2019, only 11.0 percent of adults had symptoms of anxiety disorder or depressive disorder).

[50] Alon et al., *supra* note 45.

[51] *See, e.g.*, Caitlyn Collins, Liana Christin Landivar, Leah Ruppanner, & William H. Scarborough, *COVID-19 and the Gender Gap in Work Hours*, 28(S1) Gender Work Organ. 101, 102 (2020) ("[C]ouples must negotiate how to allocate childcare, homeschooling and the increase in housework along with the demands of their employers").

childcare or their work-at-home environment,[52] but they may not be fully aware of the daily mediations and micro-management of family, culture, finances, politics, media,[53] and work environment.[54]

These challenges create a conflict between the sense of moral responsibility to family members and the sense of civic responsibility to the community to prevent or minimize life-threatening risks.[55] Although the responsibility to care for oneself might ordinarily be part of the negotiation, in times like these, it is often the first responsibility to be sacrificed. For mothers in particular, the inner dialogue often means continual negotiation of how and when to prioritize being a good community member, good employee, and good parent, and both anticipating and mediating conflicts that arise when prioritizing one responsibility means not meeting expectations in another.

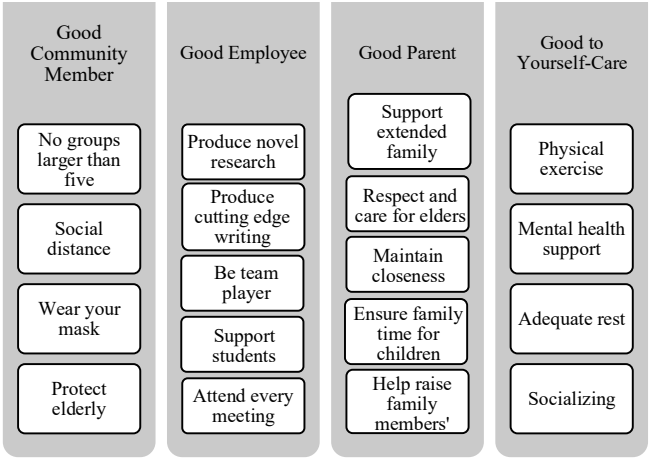

FIGURE 2. Depiction of one version of the daily negotiation and mediation of risk and roles that Latina super-moms engage in as COVID-19 mitigation strategies and mandates are required in most states.

[52] Ellingrud et al., *supra* note 47 (finding in a global survey of 1,122 executives and 2,656 employees across 11 countries that "[c]ompanies aren't in the dark about the[] struggles" of women, people of color, and working parents).

[53] Rinker et al., *supra* note 37, at 144.

[54] *See, e.g.*, Hertz et al., *supra* note 38, at 2021 (noting that while one might expect all parents to be stressed during the pandemic, single mothers are more stressed because they must singlehandedly work odd hours, complete lesson plans for their children, and provide support to relatives and friend facing greater challenges).

[55] *Id.*

Super-moms struggle to be on equal footing with their colleagues in the workforce.[56] Latinas and other racial and ethnic mothers are therefore required to leverage their deep social networks to survive in workplaces due to work-family policies that assume an outdated model of a male breadwinner with a housewife raising their children.[57] Although progress has narrowed the motherhood inequity gaps in the workforce, the loss of one's village during the pandemic has caused super-moms to lose ground with their mental health, childrearing, and success in the workforce. This problem has garnered little attention from government and self-governing institutions and may take decades to ameliorate. The public health, mental health, and labor crises deserve as much if not more attention as any other catastrophe.

II. BACKGROUND

Super-moms are the moms who "do it all"—the seemingly superhuman feat of raising children, maintaining a household, and achieving success in their work—without much help, if any at all.[58] They are especially "super" because they carry the stress of coping with multiple, competing demands—all while smiling.[59] The term originates in the comic books of the 1970s and 1980s which rebelliously reflected second-wave feminism and Black pride efforts to promote equality in the workplace by reimagining working women in maternal and traditional

[56] For a discussion on the "motherhood penalty," *see* BRIGHT HORIZONS MODERN FAMILY INDEX at 2, 5 (2018), https://www.brighthorizons.com/-/media/BH-New/Newsroom/Media-Kit/MFI_2018_Report_FINAL.ashx [https://perma.cc/79EW-66U9] ("Stereotypes—that women are the primary caregivers or that it's their duty to be at home and raise children—mean working moms are often perceived to be less committed or less competent than other employees. This penalty impacts a woman's hiring and promotion potential. It also extends to a wage gap that's evident not only between men and women, but also between women who are moms and those who do not have children . . . . [W]orking mothers face major obstacles on the path to leadership—not just a glass ceiling, but negative attitudes from both senior leadership and coworkers").

[57] *See* Susan Kolker Finkel & Steven G. Olswang, *Child Rearing as a Career Impediment to Women Assistant Professors*, 19 REV. HIGHER EDUC. 123, 130 (1996) (discussing the traditional tenure system); MARY SHRIVER, CTR. FOR ACAD. PROGRESS, THE SHRIVER REPORT: A WOMAN'S NATION CHANGES EVERYTHING at iv, 18–19 (Heather Boushey & Ann O'Leary eds., 2009) ("Government policies and laws continue to rely on [this] outdated model of the American family . . . [M]ost employers fail to acknowledge or accommodate the daily juggling act their workers perform, they are oblivious to the fact that their employees are now more likely to be women, and they ignore the fact that men now share in domestic duties.").

[58] Roberts, *supra* note 21, at 1 (discussing superwoman syndrome).

[59] *Id.*

female domestic roles as strong and authoritative.[60] In the 1990s, scholars began discussing "the second shift," the reality that even though moms were employed outside the home, they still performed the same number of daily household and childcare activities as moms who were not employed outside the home.[61] The cultural expectation of "doing it all" has continued into modern times, making its way from sitcoms to social media's rise of "mom-fluencers."[62]

A. *Adaptive Capacity of Mother-Scholars*

Men have outnumbered women in academia for decades, due in part to the inequities that make it more difficult for women to be hired and retained.[63] Despite these longstanding gender inequities in academia,[64] the super-moms of academia—Mother-Scholars—have secured faculty appointments and achieved tenure. In addition to the typical gender bias or racism they might encounter as underrepresented members of the academia, mothers also experience a motherhood bias.[65]

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[60] Laura Mattoon D'Amore, *The Accidental Supermom: Superheroines and Maternal Performativity, 1963–1980*, 45 J. POPULAR CULTURE 1226, 1230, 1244 (2012).

[61] Laurel Parker West, *Soccer Moms, Welfare Queens, Waitress Moms, and Super Moms: Myths of Motherhood in State Media Coverage of Child Care During the "Welfare Reforms" of the 1990s*, 25 S. CAL. INTERDISC. L.J. 313, 321 (2016).

[62] *See* Kathryn Jezer-Morton, *Did Moms Exist Before Social Media?* N.Y. TIMES (Apr. 16, 2020), https://www.nytimes.com/2020/04/16/parenting/mommy-influencers.html [https://perma.cc/V9YV-EPDA] (describing the evolution of social media representations of motherhood from blogging to aspirational lifestyle to mom-fluencer commodities, the most influential of which "tend to reinforce old norms about what it means to be 'good' and attractive.").

[63] *See generally* Robin West, *Women in the Legal Academy: A Brief History of Feminist Legal Theory*, 87 FORDHAM L. REV. 977 (2018) (noting that since the 1970s women law faculty have been suffered from sexual harassment that is unremedied, and suffer from a pay gap); Beth Z. Schneider, William Carden, Alyson Francisco & Thomas O. Jones Jr., *Women 'Opting Out' of Academia: At What Cost?* Forum on Public Policy (2011), https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=906a2bd0c308905690224463eda5545ef5bcfb7f ("The "publish or perish" mentality prevalent in many institutions is a reflection of the mindset that has created the inequities discussed here. The abundance of service expectations for lower level faculty, the lack of positive role models for females, limited access to mentoring and networking opportunities, inadequate access to funding and grant opportunities, and little focus on classroom performance and student interaction are all barriers to women's success that continue to create gender inequities in academia.").

[64] *See* Patsy Parker, *The Historical Role of Women in Higher Education*, 5 ADMIN. ISSUES J. 3, 3–14 (2015) (noting that men have outnumbered women in academia since higher education institutions formed in the United States in the early 1800s and that these disparities persist today, impacted by rising costs of living and society's expectations of women, among other factors).

[65] Joan C. Williams & Nancy Segal, *Beyond the Maternal Wall: Relief for Family Caregivers who are Discriminated Against on the Job*, 26 HARV. WOMEN'S L.J. 77, 77 (2003) ("We all know

Part of their capacity to overcome these challenges is reliance on their deep, social network. Mother-Scholars often uproot their families to work at academic institutions throughout the country, spending years building and rebuilding the deep social networks that help maintain their households. These networks generally provide super-moms the social resilience to overcome challenges, including the incongruence of a child's school schedule with a mother's work schedule,[66] a child's sudden illness or injury,[67] and providing a home-cooked, family meal after work.[68] This resilience is known as an adaptive capacity, or coping skill, that is personal and community-driven.[69]

The global pandemic has unraveled the social resilience of super-moms as pandemic mitigation efforts drag on,[70] including

about the glass ceiling. But many women never get near it; they are stopped long before by the maternal wall. Sociological studies show that motherhood accounts for an increasing proportion of the wage gap between men and women.").

[66] *See* Kathleen Christensen, Barbara Schneider, & Donnell Butler, *Families with School-Age Children*, 21(2) Future of Children 69, 70 (2011).

[67] *Id.* at 76.

[68] *See* Elinor Ochs et al., Coming Together at Dinner: A Study of Working Families, in Workplace Flexibility: Realigning 20th-Century Jobs for a 21st-Century Workforce 57, 59–61 (Kathleen Christensen & Barbara Schneider, eds., 2010) (concluding that the frequency of eating together with parents in the early 2000s was high for families with young children, "non-poor" families, and "Euro-American and Hispanic" families, and noting that "[i]t becomes increasingly difficult to find time for this and other household tasks with increased female participation in the workforce, producing significant identity conflicts for women.").

[69] *See, e.g., Wanfen Yip*, *Lixia Ge*, *Andy Hau Yan Ho*, *Bee Hoon Heng*, & *Woan Shin Tan*, *Building community resilience beyond COVID-19: The Singapore way*, 7 Lancelet Regional Health (Jan. 23, 2021), https://www.thelancet.com/journals/lanwpc/article/PIIS2666–6065%2820%2930091–2/fulltext [https://perma.cc/UN4S-P7UM] (describing components of community resilience during the COVID-19 response in Singapore).

[70] Post-isolation mandates, Mother-Scholars are beginning to put the pieces back together and rebuild their support networks, health-promoting behaviors, and adaptive coping mechanisms. But the pandemic-related stress and lack of options for childcare, coupled with economic worries, has made it difficult to return to pre-pandemic resiliency. public health concerns related to social isolation (e.g., loneliness and stress), which can cause premature mortality, will continue to affect mothers. *See generally* Theresa M. Bastain, Emily A. Knapp,Andrew Law, et al, *COVID-19 Pandemic Experiences and Symptoms of Pandemic-Associated Traumatic Stress Among Mothers in the U*S JAMA Network Open at 9 (Dec. 16, 2022), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2799633 ("However, along with the privilege of working remotely and being able to quarantine away from other household members, considerable disruption in day-to-day life was also experienced in the high change cluster including greater social isolation from family, friends, and colleagues, who are important sources of social support when confronted with a major traumatic life event."); Julianne Holt-Lunstad, *The Potential Public Health Relevance of Social Isolation and Loneliness: Prevalence, Epidemiology, and Risk Factors*, 27(4) Public Pol'y & Aging Rep. 127,

Mother-Scholars who are more vulnerable than ever to leaving academia.[71] Mother-Scholars working during the pandemic have had to take on the ultimate super-mom role without the physical presence of their villages and deep, social networks to help them care for their young children and keep up with their households.[72] Time generally devoted to teaching, service, research, scholarship, and [wo]mentorship[73] duties—in the hopes of achieving promotion and tenure—is at odds with family life, especially when working at home during the pandemic.[74] Post-pandemic, working mothers in general are continuing to balance work responsibilities with family responsibilities and making choices about whether or not to leave their jobs or the workforce altogether.[75]

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129 (2018). *See also No, the COVID-19 Pandemic Isn't Over*, CLEVELANDCLINIC.ORG (Apr. 24, 2023), https://health.clevelandclinic.org/is-the-pandemic-over/#:~:text=The%20bottom%20line&text=While%20case%20numbers%20and%20death,the%20pandemic%20isn't%20over [https://perma.cc/3HLH-BZGF] (explaining that the World Health Organization still considers the pandemic an emergency, death rates are still high, healthcare systems around the world remain stressed, and patients suffering from "long COVID" continue to need care and support).

[71] Cardozo, *infra* note 143, at 413 ("[F]ields *intellectually* well-positioned to enact the kind of intersectional and interdisciplinary analysis that the current situation [enduring bias that views people of color as 'not scholarly,' the underrepresentation of faculty of color in the tenure system or at the highest levels of administration] demands are often most poorly positioned *institutionally*.") (emphasis in original).

[72] As described further in Part III of this Article, Latinas/x/os are interdependent. Under an interdependence model, one might theorize that detriment is associated with a mutual care and concern for the other person(s) experiencing stress and worry at the same time during the pandemic.

[73] I intentionally use the term "[wo]mentor" to highlight the specific and continuous type of mentorship women require to survive and overcome persistent sexism in higher education and the workplace. *See, e.g.*, Ariela L. Marshall, Renee K. Dversdal, Martina Murphy, Donna M. Prill, Tian Zhang & Shikha Jain, *WOMENtorship: The #WomenInMedicine perspective*, 42(2) MED. TEACHER 228, 228–30 (2020) (describing "WOMENtorship" of women in medicine training). I include brackets to highlight the fact that women are underrepresented in legal academia and engage in undervalued and invisible work, including "academic housework" such as mentoring. *See* Meera E. Deo, *Looking Forward to Diversity in Legal Academia*, 29 BERKELEY J. OF GENDER, LAW, & JUST., 352, 358 (2013) (noting that, in 2009, of the 10,965 law professors nationwide, only 4,091 were women and only 722 were women of color) (citing ASS'N AM. L. SCHS., 2008–09 AALS STATISTICAL REPORT ON LAW FACULTY, RACE AND ETHNICITY (2009)); Pereira, *supra* note 6, at 503–04.

[74] *See* T. Murat Yildirim & Hande Eslen-Ziya, *The Differential Impact of COVID-19 on the Work Conditions of Women and Men Academics During the Lockdown*, 28 (S1) GENDER WORK ORG. 243, 247 (2021).

[75] Julia Boorstin, The No. 1 reason women say they would quit their jobs in 2023*, CNBC.com* (Mar. 1, 2023), https://www.cnbc.com/2023/03/01/the-no-1-reason-women-say-they-would-quit-their-jobs-in-2023.html *[https://perma.cc/6UGS-VFT4]* ("The top reason women say they're considering leaving their current role this year is for another job with higher pay

B. *Mental Health Susceptibility of Super-Moms*

Super-moms throughout the workforce rely on a deep, social network of friends, parents, grandparents, childcare workers, housekeepers, and others to help them deal with the competing demands of being a mom and worker.[76] Despite carrying a larger share of domestic work across income levels and professions,[77] mothers have managed to do it all because of this extensive network.

In addition to cross-cultural expectations, a super-mom is also a gendered performance in which super-moms appear to do it all, happily and without help.[78] Maintaining this social perception of a "super-mom" is how mothers balance negative biases associated with being a struggling, unhappy, and/or overwhelmed mother.[79] This kind of performance and masking manifests differently based on gender, race or ethnicity, age, and class.[80] For Latinas, the super-mom paradigm evokes burdens and stressors which produce an inauthentic performance and counteracts their efforts to break away from the super-mom construct. The internalized inauthenticity perpetuates the gendered expectation, often causing mothers who fail to simulate this performance to feel frustrated

(52%), followed by one with less stress (51%) and better work-life balance (48%).").

[76] *See* Elinor Ochs, Merav Shoshet, Belinda Campos, & Margaret Beck, Coming Together at Dinner: A Study of Working Families, in Workplace Flexibility: Realigning 20th-Century Jobs for a 21st-Century Workforce 57, 59 (Kathleen Christensen & Barbara Schneider, eds., Cornell Univ. Press 2010).

[77] Guy & Arthur, *supra* note 14, at 888.

[78] *See* Choi et al., *supra* note 21, at 177.

[79] *See, e.g.,* Bowyer, et al., *supra* note 14, at 330 (discussing post-pandemic rebuilding as academic mothers: "Our narratives collectively suggest that these sometimes intangible but deeply systemic impediments play a major role in how effectively we were able to both successfully transition back to work and rebuild a viable sense of professional identity. As demonstrated in other studies, our overriding sense was that the emphasis in "academic mother" was solidly on our parenting status – mother – and that this modified or, more accurately, reduced our professional status – academic. Ruiz and Nicolás argue that the social structures within which we operate as both mothers and academics have been programmed in such a way that a working woman's identity is predominantly viewed as primary carer first, professional worker second. As a result, many global and Western societies facilitate biases that construct women as less capable than men across varying professional and, in Australia, while women are afforded the right and agency to choose to work, this work is constructed as a privilege. Within this construct, women are (supposedly) given the opportunity to function at the same capacity as men but are not expected to continue to have professional aspirations after becoming mothers or taking extended periods of leave." (internal citations omitted)).

[80] *See, e.g.*, Sandra M. Florian, *Motherhood and Employment Among Whites, Hispanics, and Blacks: A Life Course Approach*, 80 J. Marriage Fam. 134, 136 (2018); *see also* Verónica C. Gonzales-Zamora, *An Introduction to the Collection*, 69 J. Legal Educ. 607, 613 (2020).

or have diminished self-worth.[81] These gendered roles are complicated by cultural differences in gender expectations. For example, Latina/x/o families often encourage Latinas to pursue a college degree to gain independence while still expecting them to continue performing m(other) work such as housework.[82] Layered expectations and pressures often lead to higher rates of stress and conflict for super-moms.[83]

Inauthenticity is harmful to one's mental health and overall well-being because it masks true feelings, like depression.[84] The idea that one should maintain a positive attitude, no matter how dire the circumstances, is sometimes referred to as "toxic positivity."[85] Inauthenticity, like toxic positivity, creates mental health vulnerability because it leads to faster rates of exhaustion,[86] depression,[87] and burnout.[88] Burnout can

[81] MARTÍNEZ, *supra* note 6, at 194–97; *see also* Allen et al., *supra* note 21, at 123 ("Feeling obligated to present an image of strength and an obligation to suppress emotions were each protective [for Black women] whereas feeling an intense motivation to succeed and feeling an obligation to help others exacerbated the health risk associated with experiencing racial discrimination.").

[82] Fabiola Rosiles, *The Telling is Political & Intentional: Resistance Through Testimonio for Latinas in Higher Education,* 3 DEPAUL UNIV. 43–44 (2018) (noting that this expectation is not placed on males).

[83] *Id.*

[84] *See* Tammy English & Oliver P. John, *Understanding the Social Effects of Emotion Regulation: The Mediating Role of Authenticity for Individual Differences in Suppression*, 13(2) EPUB 314, 316 (2013) ("Over time, repeated experiences of incongruence can lead individuals to experience themselves as inauthentic (feeling 'fake'; an inability to be 'true to my real self'), which puts the individual at risk for adjustment problems, such as anxiety and depression") (citations omitted); Choi et al., *supra* note 21.

[85] *See, e.g.*, Angela P. Harris, *Care and Danger: Feminism and Therapy Culture*, 69 STUDIES IN L., POLS., & SOC'Y 113, 126 (2016) ("A second, much-criticized failing of therapy culture is . . . its tendency to cultivate an obsession with happiness . . . and that relentless positivity is expected even (or especially) from the suffering.").

[86] *See also* Daniela Marchetti, Lilybeth Fontanesi, Cristina Mazza, Serena Di Giandomenico, Paolo Roma, and Maria Cristina Verrocchio, *Parenting-Related Exhaustion During the Italian COVID-19 Lockdown*, 45 J. OF PEDIATRIC PSYCH. 1114 (2020), (studying Italian families during the pandemic and concluding that parent-related exhaustion is more pronounced among young mothers, unpartnered mothers, mothers of a child with special needs, and mothers of multiple children).

[87] *See* Katrina Leupp, *Even Supermoms Get the Blues: Employment, Gender Attitudes, and Depression*, 9(3) SOC'Y & MENTAL HEALTH 316, 317 (2018).

[88] *See, e.g.*, Loes Meeussen & Colette Van Laar, *Feeling Pressure to Be a Perfect Mother Relates to Parental Burnout and Career Ambitions*, 9 FRONT PSYCH. 2113 (2018) (illustrating that feeling pressure to be a perfect mother, also called "intensive mothering," is related to parental burnout); *see also* Pooja Lakshmin, *How Society Has Turned Its Back on Mothers*, N.Y. TIMES (Feb. 4, 2021), https://www.nytimes.com/2021/02/04/parenting/working-mom-burnout-coronavirus.html [https://perma.cc/VYQ3-EAAF] ("Clinical-level burnout is defined

be hastened for mothers because motherhood is the one of the strongest trigger for gender bias and family responsibility discrimination in the workplace.[89] In performing the gendered super-mom role, mothers are less able to acknowledge their own suffering—a form of mental and physical suffering in and of itself with its own social consequences.[90] Ana Popović explains the "new gender gap:"

> The term refers to the declining levels of happiness for women despite (or possibly because of) the growing educational and professional opportunities. . . . [W]omen are still required to make sacrifices that men simply do not have to even consider . . . [D]espite the huge progress that feminists have made in trying to break the glass ceiling, they are still required to adopt a masculine attitude ("be a man") and constantly prove their commitment to work above all else in order to be successful. . . . there is no way to be successful in both realms, because they are structured in a way that requires different, and often opposing, attitudes, values, attributes, demands and so on; that is, unless one is superhuman.[91]

The current and growing wave of mental health crises among supermoms has been produced by the unique combination of motherhood, cultural and ethnic identity, and work requirements compounded by childcare and a public health crisis.[92]

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by a triad of symptoms: exhaustion, a sense of futility and difficulty maintaining personal connections.").

[89] *See* Stephanie Bornstein, Joan C. Williams, and Genevieve R. Painter, *Discrimination Against Mothers is the Strongest Form of Workplace Gender Discrimination: Lessons from US Caregiver Discrimination Law*, 28 Int'l J. Compar. Lab. L. & Indus. Rel. 45, 48 (2012).

[90] *See generally* James J. Gross & Robert W. Levenson, *Hiding Feelings: The Acute Effects of Inhibiting Negative and Positive Emotion*, 106 J. Abnormal Psych. 95, 102 (1997) (concluding that under some circumstances, emotional suppression and inhibition can interfere with coping, impair cognitive processing, and limit the ability of social partners to track and respond to needs); *see also* Nicole A. Roberts, Robert W. Levenson, and James J. Gross, *Cardiovascular Costs of Emotion Suppression Cross Ethnic Lines*, 70 Int'l J. Psychophysiology 82 (2008) (concluding that suppressing emotions increased cardiovascular activation similarly across ethnic groups).

[91] Popović, *supra* note 21, at 294 (citations omitted).

[92] *See, e.g.*, Katerina Standish, *A Coming Wave: Suicide and Gender After COVID-19*, 30(1) J. Gender Stud. 114, 114 (2020) ("Suicides are attempted and experienced by non-binary, LGTBQI2 and Indigenous persons, particularly youth, at higher rates than cis-gendered Western suicides."); Andrew Joseph, *As the Covid-19 Crisis Ebbs in the U.S., Experts Brace for Some to Experience Psychological Fallout*, Stat (May 7, 2021), https://www.statnews.com/2021/05/07/as-the-covid-19-crisis-ebbs-in-the-u-s-experts-brace-for-a-long-term-impact-on-mental-health

III. THE COVID CEILING: A THREE FACTOR APPROACH

The government's response to the pandemic has been problematic for many reasons and even catastrophic for particular sub-groups. The impacts of the COVID-19 pandemic exposed and exacerbated an existing vulnerability. Super-moms in the workforce who broke through or avoided the glass ceiling now have yet another barrier: the COVID Ceiling. Social and physical distancing created a need for fewer work burdens, mental health support, and a permanent childcare safety net. The C.A.R.E.S. Act, the legislative response to the pandemic, failed to address these needs by not providing for instance, protections for mothers whose performance at work suffered, funding and/or paid time off for childcare, and/or mandatory mental health benefits. Without those resources, the ratio of women in the workforce has quickly returned to levels not seen since the 1980s, prior to policies such as the Family and Medical Leave Act of 1993.[93] For mothers who are minoritized and unpartnered, the usual adaptations and coping mechanisms that helped them raise their children no longer work.

The impacts of the pandemic further exacerbated the inequities and vulnerabilities, also known as sensitivities in the vulnerability framework, that have been embedded since women became protected employees. Workplaces, private and public alike, continue to suffer from the lack of family-conscious policies and persistent racial, gender, and motherhood biases.[94] Combining the social research described in Part

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[https://perma.cc/39N7-QZ9R] (describing the increase in suicide rates, burnout, substance misuse, and PTSD for many groups—people of color, LGTBTQ+, people who experience household violence, health workers, people with long-term Covid symptoms, caregivers, people whose routine mental health care was interrupted—and the current mental health system's incapacity to handle a coming wave of crisis).

[93] *See* DEP'T OF LABOR, HOUSEHOLD DATA TABLE A-1, https://www.bls.gov/webapps/legacy/cpsatab1.htm, [https://perma.cc/8UMC-FYFY] (indicating that the participation rate of women sixteen years of age and over was 32.7 percent in 1948, peaked at 60.4 percent in 1997 and 1999, averaged 57.4 percent in 2019, and dropped to 56.2 percent in 2020 and then 56.1 percent in 2021, a rate not seen since April 1987).

[94] I intentionally use "lack" to acknowledge the role of the economic, social, and political systems in contributing to family vulnerability. When referring to mothers without care, I use the word "loss" to acknowledge the loss of physical support from their networks and the resulting vulnerability. *See generally*, Nina A. Kohn, *Vulnerability Theory and the Role of Government*, 26(1) YALE J.L & FEM. 1, 1 (2014).

For information about motherhood, racial, and gender inequities in academia, *see generally* Colleen Flaherty, *New Book on Gene, Family, and Academe Shows Kids Affect Careers in Higher Education*, INSIDE HIGHER ED (June 6, 2013) (discussing the retention gap of professors who are women with young children compared to others in their cohort); MEERA

I, it is clear that the historic lack of childcare safety nets, inequities in homes and workplaces, present-day impacts of the pandemic, and lack of adequate response for mothers will continue to worsen, impacting mothers' mental health and burdens. Of course mothers are leaving the workforce. Mothers—even super-moms—cannot thrive without adequate responses aimed at mitigating these vulnerabilities.

Glass ceiling theory involves somewhat invisible or at least unacknowledged barriers and impacts that are not context- or time-specific.[95] However, the COVID Ceiling framework, described below, acknowledges preexisting barriers and adds impacts made *visible* by the COVID-19 global pandemic across several categories of identity.[96] It utilizes social

E. Deo, Unequal Profession, Race and Gender in Legal Academia (Feb. 2019); Kristina M. W. Mitchell & Jonathan Martin, Gender Bias in Student Evaluations (Mar. 6, 2018).

For additional information about motherhood bias, *see generally* Martha Chamallas, *Mothers and Disparate Treatment: The Ghost of Martin Marietta*, 44 Vill. L. Rev. 337, 340 (1999); Laura T. Kessler, *The Attachment Gap: Employment Discrimination Law, Women's Cultural Caregiving, and the Limits of Economic and Liberal Legal Theory*, 34 U. Mich. J.L Reform 371, 413–14 (2001); Claire-Therese D. Luceno, *Maternal Wall Discrimination: Evidence Required for Litigation and Cost-Effective Solutions for a Flexible Workplace*, 3 Hastings Bus. L.J. 157 (2006).

[95] Ann Pietrangelo, *The Impacts of the Glass Ceiling Effect on People*, Healthline (June 16, 2020), https://www.healthline.com/health/mental-health/glass-ceiling-effect [https://perma.cc/S2A8-NQ8L] (defining the glass ceiling as "invisible barriers that keep some people from advancing in the workplace . . . [like] getting certain jobs, despite being well qualified and deserving. It's a phenomenon that affects career trajectory, status, and lifetime earning potential. The glass ceiling effect doesn't end with the workday. . . . It can even affect mental and physical health.").

[96] Public discourse often incorporates words like "exacerbates," "illuminates," "highlights," and "exposes" when describing the impacts of Covid on women. *See*, *e.g.,* Ellingrud et al., *supra* note 47; Godwin et al., *supra* note 38, at 114; Suzanne Kim, *A Workforce Crisis*, Rutgers Today (visited Apr. 11, 2022), https://www.rutgers.edu/news/rutgers-marks-womens-history-month[https://perma.cc/JF7A-*FPLC*] ("Despite legal advances toward greater parity in the family and the workplace, the pandemic highlights continuing stratification of our labor force, with losses hitting hardest industries in which women's employment is more concentrated, including restaurants, retail, hospitality, health care and childcare."); Anna North, *Every Aspect of the Coronavirus Pandemic Exposes America's Devastating Inequalities*, Vox (Apr. 10, 2020), https://www.vox.com/2020/4/10/21207520/coronavirus-deaths-economy-layoffs-inequality-covid-pandemic [https://perma.cc/FF3B-UPAQ].

Contrast the descriptions of the pandemic with glass ceiling discourse. *See, e.g.*, Manuela Barreto, Michelle K. Ryan, & Michael T. Schmitt, The Glass Ceiling in the 21st Century: Understanding Barriers to Gender Equality (2009) ("As this volume explores women's current experiences in the workplace, a critical emphasis is making visible what women encounter as their career trajectory ascends and suggesting how they can enhance their career choices and thrive in the hard-won positions they attain.").

research to combine some intersectional identities such as motherhood, unpartnered status, race/ethnicity, and type of employment.[97]

The purpose of developing this framework is to mirror disaster response and resource management for vulnerable groups. When the government or organization responds to a disaster, they apply a vulnerability framework to help mitigate impacts to susceptible pieces of systems. [98] They do an inventory where they (1) identify who is most impacted by a disaster and (2) categorize needs based on urgency. Similarly, academia needs a framework to categorize susceptibility or sensitivities, such as preexisting inequities, and adaptive capacity, such as government response, in order to distribute resources equitably.

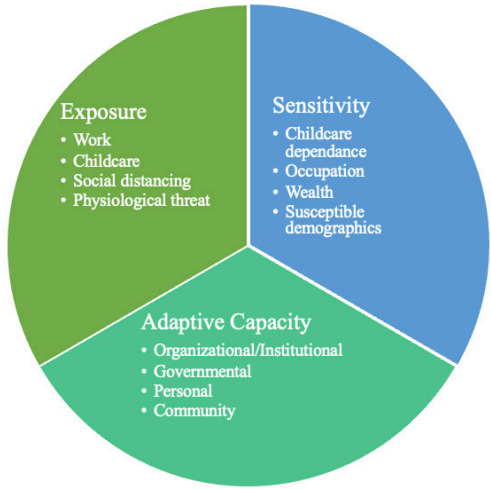

FIGURE 3. The dimensions and components of vulnerability.

The vulnerability framework can be applied to any disaster or societal problem, but it is developed in this Article to specifically address the impacts of the COVID-19 pandemic on vulnerable mothers in the workforce. The first ring of the framework is the three typical components of vulnerability: susceptibility, adaptive capacity, and disaster impacts. The

[97] Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 590–92 (1990) (criticizing feminist theories that focus solely on experiences of gender and neglect the impact of race and other factors).

[98] *See, e.g.*, *supra* note 21.

second ring is measurements for each of the components. With the proliferation of sociological and psychological research, society is no longer in the dark about the inequities mothers have at home and work or how particular groups of mothers are more vulnerable to catastrophic events. Yet, mothers are remain partially unprotected by law and unsupported by their employers and policy. The COVID Ceiling framework includes intersectional identities, which demonstrate the pervasive impact of the pandemic on mothers' employment and lifetime earning potential due to inaccessible childcare. The childcare crisis reaches across races, ethnicities, classes, and education levels, and requires more public discourse and a sense of urgency about motherhood bias and racial equity that has rarely been part of the glass ceiling discourse.[99]

Three factors contribute to the COVID Ceiling:

1. A perpetual state of psychological distress resulting from the circumstances of the pandemic. The first factor likely affects all people, given that the pandemic stressors are widespread.[100] However, some groups experience higher levels of psychological distress as a consequence of their identity, status, and/or experience.
2. The devaluing of family responsibility or care work within the institution, which leads to a productivity deficit that affects people entering, existing in, or exiting the workforce in varying degrees.
3. Pre-existing biases and inequities in the workplace connect to aspects of identity and discipline that make certain groups more susceptible to catastrophic impacts of disasters or exposures to hazards.

[99] *See* Williams, *supra* note 7 ("Far fewer studies have explored the patterns of bias and stereotyping that affect mothers as opposed to women in general. Yet a growing literature documents that mothers encounter specific forms of bias that differ from glass-ceiling bias.").

[100] *See, e.g.*, Ellingrud et al., *supra* note 47 (noting that while all employees are struggling during the pandemic—particularly in mental and physical health,—workload increases, lack of progress and growth, and loss of connection to colleagues, women, people of color, and parents are having the hardest time).

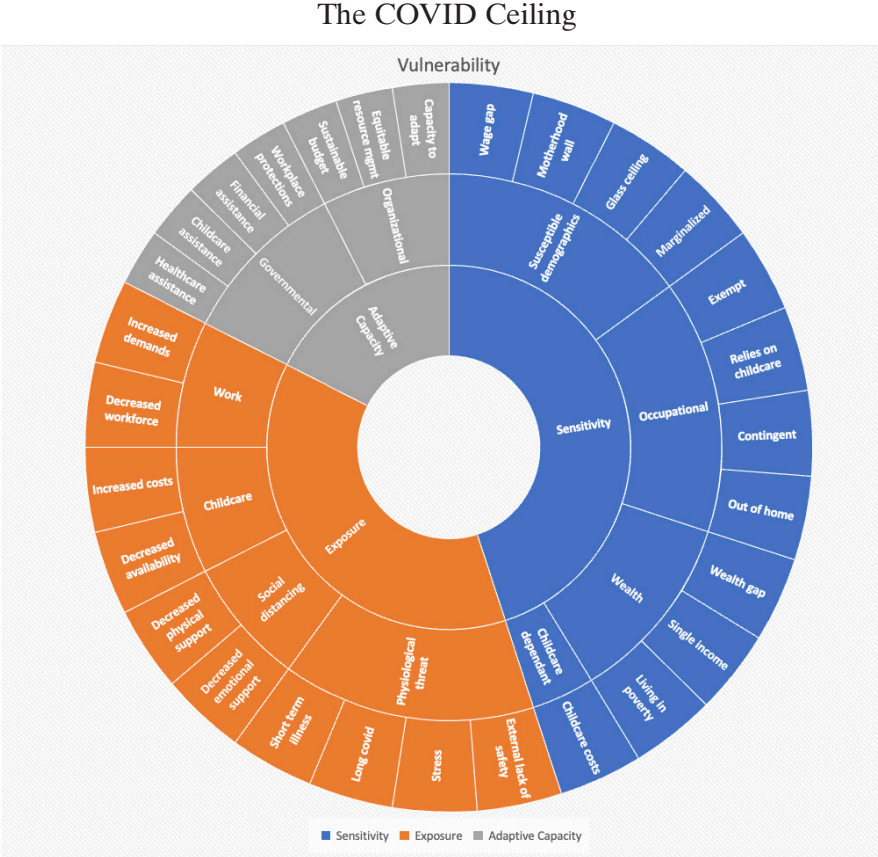

FIGURE 4. A visual depiction of the COVID Ceiling, a visible barrier to advancement and improved mental health that builds on the impacts of pre-existing biases in the academy.

This framework can be adapted to analyze other systems and impacts with additional or fewer layers or sublayers using the "rotating centers" and "shifting bottoms" framework to mold around ever-evolving dynamics and effects of history, law, policy, and social movements:

> Combining rotating centers and shifting bottoms provides a conceptual and planning framework for situating 'different' social problems or populations at the center of our programmatic inquiries. In this way, diversely situated individuals and groups can and should take lead roles in exposing and combatting interlocking systems of injustice, recognizing that,

> depending on circumstances, a 'different' outsider community might find itself 'at the bottom'—as well as sometimes at the center.[101]

For instance, the framework I have developed can be reoriented, refreshed, and reconsidered as the pandemic and subsequent crises evolve. This will allow researchers to analyze the ongoing dynamics and factors that affect resource distribution and equitable support management. The use of this framework can also provide a template for building resilience in equitable systems by identifying who is most marginalized and vulnerable in addition to the support they need. "Systems" are conceptualized broadly because humans are far more complex than our work identity, and we should not reduce the purpose of our existence to simply becoming more efficient and productive at work.[102]

The most useful contribution of this framework is that it assumes multiple dynamics and differential impacts at the outset; offers unlimited levels and layers of issues, factors, or circumstances to analyze; and enables analyses to identify which groups or identities may be more vulnerable to or more greatly impacted by external realities or anticipated crises at a given time.[103] In addition, the layers indicate that the inequalities and inequities at work and home are mirrored by gender and racial inequalities in society.[104] An analysis of labor inequity cannot

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[101] Valdes & Bender, *supra* note 25, at 36.

[102] *See, e.g.*, Pereira, *supra* note 6, at 502 ("At any time, but especially during a pandemic, we must recognize that academic work might also be disrupted by other aspects of our experience as human beings with multiple interests, limited capacities, fluctuating energies, overwhelming emotions, vulnerable bodies, and fallible brains.") (citations omitted).

[103] This framework is similar to an "institutional vulnerability audit" (IVA), a disaster response tool developed to self-identify, quantify and prioritize risks and vulnerabilities to environmental or other external factors, and guide analysis and allocation of resources to avoid or mitigate the impacts of a disaster. *See generally*, James L. Morrison & George Keller, *The Institutional Vulnerability Audit*, 21 Soc'y For Coll. & Univ. of Plan. 27–34, (1992–1993), http://horizon.unc.edu/courses/papers/AUDIT.html [https://perma.cc/8JC7-TG8M].

[104] Hill Collins, *supra* note 38, at 46 ("While male domination certainly has been an important theme for racial ethnic women in the United States, gender inequality has long worked in tandem with racial domination and economic exploitation. Since work and family have rarely functioned as dichotomous spheres for women of color, examining racial ethnic women's experiences reveals how these two spheres actually are interwoven.") (citations omitted). For a broader gender parity framework that goes beyond equality in the workforce, see McKinsey Global Institute, The Power of Parity: How Advancing Women's Equality Can Add $12 Trillion to Global Growth 6–7, 41 (Sept. 2015), https://www.mckinsey.com/~/media/mckinsey/industries/public%20and%20social%20sector/our%20insights/how%20advancing%20womens%20equality%20can%20add%2012%20trillion%20to%20global%20

be divorced from domestic inequity, because together they create the limits that impact the experience of super-moms.[105]

Having already discussed the vulnerability created in part by gender and cultural performances, I focus my discussion of the COVID Ceiling on the first and second factors—psychological distress and productivity deficit/devaluing—in more detail. I then address the consequences in academia and legal education.

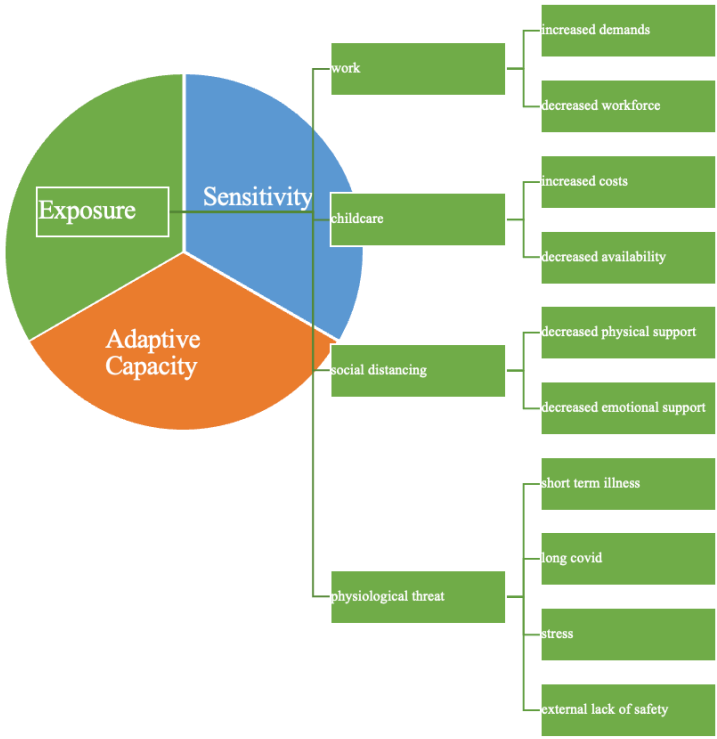

FIGURE 5. A visual depiction of the exposure dimension of vulnerability branched out to its components and measures of each component, whose effects are lingering post-pandemic.

growth/mgi%20power%20of%20parity_full%20report_september%202015.pdf [https://perma.cc/3P78-EMU5] (establishing a multi-dimensional framework "arguably for the first time" linking gender equality in work to gender equality in society, economic development, and a shift in attitudes) [hereinafter MCKINSEY REPORT].

[105] *See generally* June Carbone & Naomi Cahn, *Unequal Terms: Gender, Power, and The Recreation of Hierarchy*, 69 STUD. L., POL'Y & SOC'Y 189 (2016).

A. *Factor One: Psychological Distress*

This subpart addresses the impact of social distancing and isolation on personal, pandemic-related, and parenting-related stressors. In losing social resilience and regaining domestic childcare, mothers have also lost opportunities to care for themselves, adding to their mental health vulnerability. In a report on gender differences in the impact of COVID-19, 49 percent of mothers showed at least mild symptoms of psychological distress in early April 2020, compared to 32 percent of U.S. adults.[106] By June 2020, it was clear that increased symptoms of anxiety, depression, and other mental health-related issues were widespread among minoritized women.

1. *Personal Stressors*

Under social distancing and isolation mandates, people were no longer legally allowed to engage in many of the self-care practices that helped them thrive pre-pandemic. For example, when states all over the country issued COVID-19 mandates restricting gatherings to ten people or prohibiting any kind of gathering at all,[107] activities like yoga, group fitness classes, and concerts became inaccessible. Self-care at home, with children, noise, and housework to be done, became inaccessible for mothers. Even as people return to work in person, mothers (now without their networks) are expected to care for sick children and continue to work from home, making it difficult to separate work, childcare, and housework from self-care. Mothers cannot engage in needed self-care without added support at home or work.

One might argue that self-care has simply evolved during pandemic times.[108] Self-care for an individual in a state of chronic stress

[106] Zamarro & Prados, *supra* note 2, at 3. *See also* Audrey Kearney, Liz Hamel & Mollyann Brodie, *Mental Health Impact of the COVID-19 Pandemic: An Update*, KFF (Apr. 14, 2021), https://www.kff.org/coronavirus-covid-19/poll-finding/mental-health-impact-of-the-covid-19-pandemic [https://perma.cc/UV5W-HQ6M].

[107] Jacob Gerhsman, *A Guide to State Coronavirus Reopening's and Lockdowns*, WALL ST. J. (2020), https://www.wsj.com/articles/a-state-by-state-guide-to-coronavirus-lockdowns-11584749351 [https://perma.cc/ZX92-B3U].

[108] *See generally* Anne D'Innocenzio & Sophia Rosenbaum, *In Pandemic Era's Isolation, Meaning of 'Self-Care' Evolves*, ASSOCIATED PRESS (2020), https://apnews.com/article/pandemic-self-care-evolves-b4d5058f346db9ff1fc1b3c899066de7, [https://perma.cc/X4H2-HXTA]; *see* Bruce S. McEwen, *Neurobiological and Systemic Effects of Chronic Stress*, 1 CHRONIC STRESS 1, 2 (2017) (arguing that stress models should account for health damaging behaviors "that people adopt in a stressful lifestyle, as well as factors like circadian disruption, loneliness, noise, pollution, lack of green space and crowding").

might include obsessing over skincare, indulging in comfort foods, or other health-damaging behaviors.[109] Although self-care habits such as exercise have improved for White affluent people, mothers in other groups have exercised significantly less in part due to gender roles and increased responsibilities.[110] When one cannot engage in self-care, they often develop chronic stress, which has detrimental effects on physical health, such as altering sleep patterns.[111] Mothers likely want to engage in more, or healthier, forms of self-care, but it is difficult as work and home life blend together,[112] and as more energy is dedicated to child-care.[113] Therefore, this examination of personal stressors illuminates how minoritized and unpartnered women are left most vulnerable to this impact of the pandemic.

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[109] *Id.*

[110] *See, e.g.*, Chloe Sher & Cary Wu, *Who Stays Physically Active during COVID-19? Inequality and Exercise Patterns in the United States*, 7 SOCIUS 1, 3 (2021) (concluding that the gaps in physical exercise from April 2020 to January 2021 "widened substantially between men and women, whites and nonwhites, the rich and the poor, and the educated and the less educated"); Rebecca Hasson, James F. Sallis, Nailah Coleman, Navin Kaushal, Vincenzo G. Nocera, & NiCole Keith, *COVID-19: Implications for Physical Activity, Health Disparities, and Health Equity*, 16 AM. J. LIFESTYLE MED. 420, 425 (2021); Meera E. Deo, Investigating *Pandemic Affects on Legal Academia*, 89 FORDHAM L. REV. 2467, 2478 (2021), https://fordhamlawreview.org/wp-content/uploads/2021/05/Deo-May-.pdf [https://perma.cc/E427-RWKF] (noting that the majority of women law students spend fewer hours per week engaging in social activities such as downtime—which is crucial to relieving the pressures of law school—or social events at school which are often informal networking events, exercise less often, and are chronically sleep deprived sleeping on average 5 or fewer hours per night).

[111] John T. Cacioppo & Louise C. Hawkley, *Social Isolation and Health, with an Emphasis on Underlying Mechanisms*, 46 PERSP. BIOLOGY & MED. S39, S45 (2003); *Stress in America 2021: One Year Later, A New Wave of Pandemic Health Concerns,* AM. PSYCH. ASS'N (Mar. 11, 2021) (conducting a survey of 3000 adults in the United States and finding that many are getting less sleep, increasing alcohol consumption, and delaying health care services due to "difficulty managing stressors, including grief and trauma," which will likely lead to "significant, long-term individual and societal consequences including chronic illness").

[112] The distress of work-family conflict is a consequence of workplace inequity rather than a mental health deficit of the worker. *See, e.g.*, Jaeseung Kim, Julia R. Henly, Lonnie M. Golden, & Susan J. Lambert, *Workplace Flexibility and Worker Well-Being by Gender*, 82 J. MARRIAGE & FAM. 892, 903 (2020) (indicating that flexible start and end times and being able to catch up on work at home were associated with higher work-family conflict, particularly for women, and that "greater job demand was associated with higher probability of working at home to catch up on work, which in turn was associated with greater job stress, daily fatigue, and work-to-family conflict").

[113] *See generally* Rebecca J. Erickson, *Why Emotion Work Matters: Sex, Gender, and the Division of Household Labor*, 67 J. MARRIAGE & FAM. 337, 337–351 (2005) (discussing emotional labor, a type of mental load).

2. *Pandemic-related Stressors*

The pandemic has initiated another aspect of increased psychological distress. First, the pandemic produced many uncertainties, such as school closures, children's confinement at home, and concerns that children could fall ill and perish.[114] Such uncertainties are made worse when it's hard to discern between conflicting news reports and circulating conspiracy theories.[115] Some potential threats, such as the safety of government-mandated vaccines against the coronavirus,[116] require many mothers of color to do hours of independent reading and research. Both chronic stress and unresolved uncertainty cause higher risks of depression, cognitive impairment, heart attack, and stroke.[117]

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[114] "Physical survival is assumed for children who are white and middle class." Hill Collins, *supra* note 38, at 374. "Struggles to foster the survival of Native American, Latino, Asian American, and African American families and communities by ensuring the survival of children are a fundamental dimension of racial ethnic women's motherwork." *Id.*

[115] *See, e.g.*, Karen M. Douglas, *COVID-19 Conspiracy Theories*, 24 GRP. PROCESSES & INTERGROUP RELS. 270, 271–72 (2021) (discussing how conspiracies based on Q-Anon, anti-masking, and anti-vaccination have been received and accepted by many because "[u]ncertainties are high, and people are worried and fearful for their future and the future of their loved ones.").

[116] Although the safety and effectiveness of the vaccine has become less disputed over time, people of color are still hesitant to get the vaccine given the United States' recent history of sterilizing and performing medical experimentation on low-income women of color. *See, e.g.*, Abigail Higgins, *A Whistleblower Alleges Mass Hysterectomies at an ICE Detention Center. The U.S. has a Brutal History of Forced Sterilizations*, WASH. POST: THE LILY (Sept. 15, 2020), https://www.thelily.com/a-whistleblower-alleges-mass-hysterectomies-at-an-ice-detention-center-the-us-has-a-brutal-history-of-forced-sterilizations [https://perma.cc/32F2-LUVP] (describing forced sterilization and experimentation on enslaved Black women, immigrants, and women in California, North Carolina, and Puerto Rico from the early 1800s to the present); Alexandra Minna Stern, *When California Sterilized 20,000 of Its Citizens*, ZÓCALO PUBLIC SQUARE (Jan. 6, 2016), https://www.zocalopublicsquare.org/2016/01/06/when-california-sterilized-20000-of-its-citizens/chronicles/who-we-were [https://perma.cc/ME8F-2XSN] (describing sterilization in state institutions of young women from 1935 to 1944, and revealing that Spanish-surnamed patients were 3.5 times more likely to be sterilized than the general group); *The Puerto Rico Pill Trials*, PUB. BROAD. SERV., https://www.pbs.org/wgbh/americanexperience/features/pill-puerto-rico-pill-trials [https://perma.cc/93SZ-Y5JR] (discussing researchers who tested high doses of birth control contraceptives in 1956 in Puerto Rico on poor, uneducated women who were not informed that the drug was experimental, was a clinical trial, or that there was a chance of potentially dangerous side effects, including death) (last visited May 10, 2021); Sally J. Torpy, *Native American Women and Coerced Sterilization: On the Trail of Tears in the 1970s*, 24 AM. INDIAN CULTURE & RSCH. J. 1, 7–8 (2000) (discussing coerced sterilization of 3,406 Native American women—leaving only 100,000 Native American women of childbearing age—from 1973 to 1976 at Indian Health Services facilities in Albuquerque, Phoenix, Oklahoma City, Aberdeen, and South Dakota).

[117] *See, e.g.*, Achim Peters, Bruce S. McEwen, & Karl Friston, *Uncertainty and Stress: Why it Causes Diseases and How it is Mastered by the Brain*, 156 PROGRESS NEUROBIOLOGY 164, 167–68

Second, social distancing and isolation triggered unique physiological stressors. As social animals, humans are not accustomed to being isolated from other people.[118] Social animals often thrive in packs in which there are two essential groups of members. The first group guards the outer circle of the physical location of the pack and alerts the others of a risk before it arrives.[119] The second group in the inner circle is able to relax or let down their guard because they are protected by the outer circle and typically engage in child rearing activities.[120] But when pack members are segregated (i.e., government mandated social distance or isolation), the lack of physical proximity to others prevents the solo member from letting their guard down.[121] Being in a prolonged, heightened state of stress due to challenges in one's environment, such as changes in levels of social interaction, weather, disease, or pollution, leads to what is known as allostatic overload.[122]

Allostatic overload results from increased activation of the sympathetic nervous system, often referred to as the "fight or flight" or "tend-and-befriend" instinct.[123] The system dismisses mechanisms in the brain, immune system, cardiovascular system, and metabolism attempting

(2017).

[118] Noah Snyder-Mackler, Joseph Robert Burger, Lauren Gaydosh, Daniel W. Belsky, Grace A. Noppert, Fernando A. Campos, Alessandro Bartolomucci, Yang Claire Yang, Allison E. Aiello, Angela O'Rand, Kathleen Mullan Harris, Carol A. Shively, Susan C. Alberts & Jenny Tung, *Social Determinants of Health and Survival in Humans and Other Animals*, 368 SCI. 1 (May 2020) ("Much research over the past decade or so has revealed that health and lifespan in humans, highly social animals, are reduced with social adversity"); Rodrigo G. Arzate-Mejía, Zuzanna Lottenbach, Vincent Schindler, Ali Jawaid & Isabelle M. Mansuy, *Long-Term Impact of Social Isolation and Molecular Underpinnings*, 11 FRONTIER GENETICS 1, 8–9 (2020) (concluding that social isolation affects physiology, cognition, and behavior in humans due to evidence in animal models that strongly suggests "social isolation can induce transcriptional changes in different brain areas fundamental for memory and cognition and also relevant for the modulation of mood and even addictive behaviors.").

[119] Snyder-Mackler, *supra* note 118, at 4–5 (concluding in a study of female baboons that social affiliation predicted survival more accurately than social status).

[120] *Id.* at 2 (noting that social integration and early life adversity in social mammals, including humans, are among the strongest predictors of health and survival outcomes).

[121] *See* Gillian A. Matthews & Kay M. Tye, *Neural Mechanisms of Social Homeostasis*, 1457 ANNALS N.Y. ACAD. SCIS. 5, 8 (2019).

[122] Bruce S. McEwen, *Stressed or Stressed Out: What is the Difference?*, 30 J. PSYCH. NEUROSCI. 315, 317 (2005).

[123] *Id.* at 316 (recognizing that not all types of stress evoke the same response as was once previously thought but that there are different patterns of response based on the stressor and gender: "fight or flight" describes the male response and "tend-and-befriend" describes the female response to non-life-threatening stress).

to return to a state of homeostasis.[124] During the pandemic, mothers continue to be psychologically threatened due to the risk of physical illness from contracting the virus coupled with the loss of social networks for long periods of time. Although some people were cavalier about the pandemic and risked getting sick, the consequences of this behavior are different for mothers. They may be forced to miss work, work from home while caring for sick children or potentially infect their children, or worse, die from an illness that leaves their children orphaned.[125] As a result, mothers have been on high alert, in allostatic overload, which will have ongoing impacts.[126]

Social safety and social homeostasis theories connect the ideas of social environment with physiological responses to external threats.[127] Similar to the social pack theory, recent research theorizes that to ensure survival, humans developed a fundamental need to form social bonds and to mount inflammatory responses to external threats.[128] Those historical drives, coupled with one's coping mechanisms, affect how brains and

[124] *Id.*

[125] *See, e.g., Global Orphanhood Associated with COVID-19,* Ctrs for Disease Control, https://www.cdc.gov/globalhealth/covid-19/orphanhood/index.html [https://perma.cc/8RMD-Z4QZ] (noting that orphanhood increases the likelihood of poverty, abuse, delayed development, mental health challenges, reduced access to education, and institutionalization; describing global efforts to prevent orphanhood and increase resiliency) (last visited Feb. 9, 2023).

[126] McEwen, *supra* note 108, at 317 (noting that allostatic overload can influence mood, attention, and arousal); George M. Slavich, *Social Safety Theory: A Biologically Based Evolutionary Perspective on Life Stress, Health, and Behavior*, 16 Ann. Rev. Clinical Psych. 265, 265 (2020), https://www.annualreviews.org/doi/abs/10.1146/annurev-clinpsy-032816–045159 [https://perma.cc/D6LB-N2U7] ("When sustained, however, this multilevel biological threat response can increase individuals' risk for viral infections and several inflammation-related disease conditions that dominate present-day morbidity and mortality.").

[127] Social support theory supports the idea that *familismo* enhances survival because social safety has been associated with greater longevity, lower hazard of death, practicing better health behaviors, perseverance, productivity, and greater occupational and scholastic achievement. Slavich, *supra* note 126, at 277; *see also* Julianne Holt-Lunstad, Timothy B. Smith & J. Bradley Layton, *Social Relationships and Mortality Risk: A Meta-analytic Review*, 7 PLOS Med. 1, 14 (2010) (conducting a meta-analysis of data from 148 studies across 308,849 individuals, followed for an average of 7.5 years and concluding that across age, sex, cause of death, and other factors, people with adequate social relationships had a 50 percent greater likelihood of survival compared to those with poor or insufficient social relationships, an amount comparable to the influence of quitting smoking or alcohol consumption). For more on social homeostasis theory, see Matthews & Tye, *supra* note 121, at 5.

[128] Slavich, *supra* note 126, at 272.

immune systems respond to social circumstances or external threats.[129] Threats might include (1) physical injury (such as physical attacks, abuse, neglect, aggression, exclusion, etc.), (2) microbial threats (such as viruses and bacteria), or (3) perceived dangers based on perceptions of self (such as one's ability to cope with risks or mitigate a disaster), the social world (such as loneliness or discrimination), or the future (such as the impact of global warming in one's lifetime).[130]

An unnecessary or prolonged response to threats during the pandemic can heighten a person's risk for viral infections and inflammatory conditions.[131] Unsafe conditions can also trigger sustained perceptions of danger for months or years after the initial triggering event has passed.[132] Emerging research in psychoneuroimmunology concludes that psychological stressors can lead to disruptions between the central nervous system and immune system, causing chronic illnesses and COVID-19.[133] The lack of social safety also makes people more vulnerable to dying from COVID-19.[134] People who value *familismo* likely experience less

[129] *Id.* at 273–74.

[130] *Id.* at 272–73.

[131] *Id.* at 275 ("including anxiety, depression, asthma, heart disease, stroke, and cancer, as well as other metabolic, autoimmune, and neurodegenerative disorders" as potential consequences).

[132] *Id.*

[133] *See* Jeffrey Pfeffer & Leanne Williams, *Mental Health in the Workplace: The Coming Revolution*, MCKINSEY QUARTERLY (Dec. 8, 2020), https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/mental-health-in-the-workplace-the-coming-revolution [https://perma.cc/ENB2-LLJY] (*citing* Edna Maria Vissoci Reichea, Sandra Odebrecht Vargas Nunes & Helena Kaminami Morimotoa, *Stress, Depression, the Immune System, and Cancer*, 5 ONCOLOGY 617 (2004)); *see also* Samantha K. Brooks, Rebecca K. Webster, Louise E. Smith, Lisa Woodland, Simon Wessely, Neil Greenberg & Gideon James Rubin, *The Psychological Impact of Quarantine and How to Reduce It: Rapid Review of the Evidence*, 395 LANCET 912, 913 (2020) (reviewing twenty-four peer-reviewed papers discussing the likely effects on the mental health and psychological well-being of those in quarantine during the COVID-19 pandemic in a dozen countries; reported psychological effects included "emotional disturbance, depression, stress, low mood, irritability, insomnia, post-traumatic stress symptoms, anger, and emotional exhaustion"); Jonathan P. Rogers et al., *Psychiatric and Neuropsychiatric Presentations Associated With Severe Coronavirus Infections: A Systematic Review and Meta-analysis with Comparison to the COVID-19 Pandemic*, 7 LANCET PSYCH. 611, 623 (2020) (concluding that people with severe COVID-19 infections had a higher than usual prevalence of anxiety, obsessive-compulsive symptoms, insomnia, digestive problems, symptoms of depression, and post-traumatic stress).

[134] *See generally* Andrea Porzionato et al., *Sympathetic Activation: A Potential Link Between Comorbidities and COVID-19*, 287 FEBS J. 3681 (2020) (finding that pre-existing lung and heart conditions that make people more susceptible to dying from COVID-19 primarily affect organs that are activated in the body's stress response system); Sheldon Cohen et al.,

social safety and higher levels of distress due to greater risks to their communities,[135] which in turn increases their own susceptibility to chronic disease and vulnerability to COVID-19.

3. *Parenting-related Stressors*

Parenting-related stress can have negative mental health outcomes for both parents *and* their children.[136] Research shows that the stress response of the parent is more predictive of parents' and children's psychological well-being than the stressor itself.[137] This explains why it is especially important for mothers to have space and time to engage in self-care and self-preservation, and to have increased community care and flexibility at work when facing increased stressors. Parenting-related stress can be caused by the need for self-care[138] and feelings of social isolation,[139] but also by psychological distress or burnout,[140],due in part to social distancing.[141]

Super-moms are forced to "do it all," sacrificing their mental health and quality of life to stay "on track."[142] Remote work, technology

Chronic Stress, Glucocorticoid Receptor Resistance, Inflammation, and Disease Risk, 109 PNAS 5995, 5995 (2012) ("[C]hronic stress is associated with increase susceptibility to . . . persons experimentally exposed to an upper respiratory virus."); *see also* Slavich, *supra* note 126, at 265 ("When sustained, however, this multilevel biological threat response [to threats to social safety] can increase individuals' risk for viral infections and several inflammation-related disease conditions"); Holt-Lunstad, *supra* note 70, at 129 (noting that public health concerns related to social isolation and loneliness will continue to affect certain groups).

[135] For a clearinghouse of resources discussing the multi-layered impact on Latina/x/o people in the United States and Latin America, see *COVID-19: Latin America & Latinos in the U.S.*, Am. U., Ctr for Latin Am. & Latino Studs., https://www.american.edu/centers/latin-american-latino-studies/covid-19.cfm [https://perma.cc/BR5M-QMF5] (last visited Feb. 15, 2021).

[136] Marchetti et al., *supra* note 86, at 1116.

[137] *Id.* at 1123 (studying parent-related exhaustion in Italy during the first month of the pandemic; concluding that the parental psychological condition of parents was found to be the most impactful stressor—more than living in high spread geographic areas or having relatives who contracted COVID-19; and calling for "psychological first aid").

[138] *See infra* Subpart III.A.1.

[139] *See infra* Subpart III.A.2.

[140] *Id.*

[141] *See infra* Subpart III.B.

[142] For additional anecdotal evidence, see Lysette Romero Córdova, *"Mommy Track" on Steroids: How the Pandemic is Further Derailing "Moms of Law,"* J. Legal Educ., 69 (2020). *See generally* Leupp, *supra* note 87, at 316–17 (noting that self-discrepancy theory predicts that psychological distress occurs when a person's behaviors and achievements do not align with their aspirations and expectations; stress process model specifies that hardships are more likely to lead to depression when they occur in highly valued areas of life; and role strain

upgrades, and telework have not made academics more productive; they have only made them more accessible for added responsibilities while at home.[143] Consequences for individual mental health and family well-being of family-work-life-self balancing may also be difficult to repair over the long term.[144]

This research shows that when looking at those who suffered psychological distress during the pandemic, minoritized, unpartnered, working mothers were most affected. For Latina/x/o families in particular, the impacts of the pandemic built on their already vulnerable mental health and well-being as a consequence of structural factors such as anti-immigrant policies, poverty, poor housing conditions, rigid work demands, and discrimination;[145] and cultural factors such as *familismo* and super-mom pressures.

perspective hypothesizes that too many roles or conflicting roles result in diminished well-being) (citations omitted).

[143] Karen M. Cardozo, *Academic Labor: Who Cares?*, 43 CRITICAL. SOCIO. 405, 417 (2017) ("Indeed, college teaching has always been susceptible to presence bleed: technology merely exacerbates it.").

[144] *See* Leupp, *supra* note 87, at 316–17.

[145] *See* Ayón et al., *supra* note 41, at 742.

B. *Factor Two: Productivity Deficit and Devaluing*

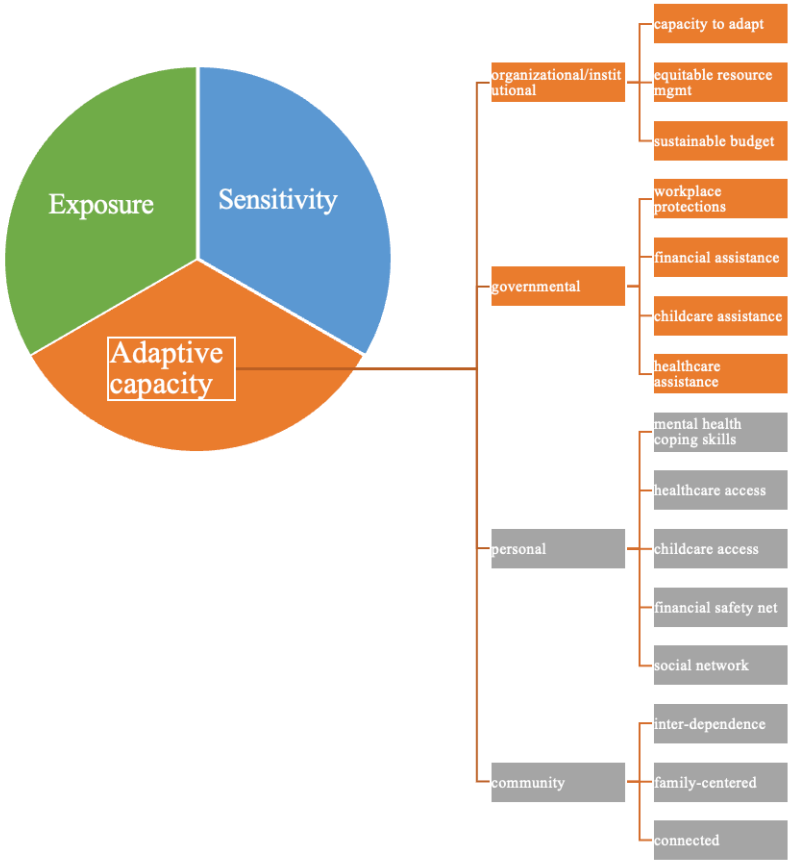

FIGURE 6. A visual depiction of the adaptive capacity or coping skill dimension of vulnerability branched out to its components and measures of each component, and highlighting the loss or decreased personal and community capacity during Covid restrictions.

Because of the childcare crisis and lack of mothering support, working mothers are less productive. When governments and institutions fail to provide equitable support for working mothers, and institutions overload them with institutional care work, mothers' participation in institutions is devalued and their markers of success (e.g., productivity) suffer.

Being a stay-at-home mother was the gold standard.[146] So why isn't it working for mothers working from home? Whether working at home or at a workspace, mothers feel overwhelmed both as parents and employees.[147] Combining those two spaces multiplies the pressures. The childcare crisis in the United States—specifically, the lack of financial or other kinds of mothering support for mothers of young children—has required working mothers to engage in unpaid care work since before the pandemic.[148] But the depth and urgency of the crisis dramatically increased as schools and childcare facilities closed due to reasonable fears, which renewed calls for more childcare support.[149] Without access to their sources of resiliency, working mothers are leaving the workforce,[150] in part because of the realities of the care crisis, but also because of their inability to be in two places at once and having to

[146] Megan Shepherd-Banigan et al., *Workplace Stress and Working from Home Influence Depressive Symptoms Among Employed Women with Young Children*, 23(1) INT'L. J. BEHAV. MED. 102, 102 (2016) (noting that women who worked from home reported a decrease in depression scores); Leupp, *supra* note 87, at 316, 318 ("[I]n 2012, substantial portions thought mothers of preschoolers should not work (34%) and that 'family life suffers' as a result of women's full-time employment (28%). Increased approval of women's employment has not been accompanied by reduced role expectations for mothers . . . [I]ntensive mothering, where mothers devote full attention to meeting children's needs whenever possible, remains 'the normative standard, culturally and politically, by which mothering practices and arrangements are evaluated.'") (citations omitted).

[147] *See* Shepherd-Banigan et al., *supra* note 146, at 103 (noting attributes that contribute to increased psychological distress for working mothers of young children such as a stressful work environment, non-standard schedule, high work intensity, and lack of schedule control leads to difficulty controlling family schedules and participating in family activities).

[148] For broader discourse on the experience of different minoritized and nonminoritized women in the academy, legal academy, and pipelines to academia, see *The COVID Care Crisis Symposium Collection of Essays*, *supra* note 14.

[149] *See* Arwa Mahdawi, *The Pandemic Made the Childcare Crisis an Urgent Talking Point–Will the US Finally Change Things*? THEGUARDIAN.COM (Jan. 16, 2021), https://www.theguardian.com/commentisfree/2021/jan/16/coronavirus-pandemic-women-workforce-childcare-crisis [https://perma.cc/5QPE-YW8L].

[150] Hertz et al., *supra* note 38, at 2021 (discussing how "strategic villages" played a significant role in care giving and women called on family for support prior to COVID-19). This fact has been discussed in detail in feminist and poverty law discourse prior to the pandemic. *See* Polakow, *supra* note 46, at 37 ("Universally accessible child care as a public service is a fundamental life anchor in order for low-income single mothers to exit poverty through employment and education; and for two-parent working families, it is a vital need.") (citations omitted); SHUT OUT: LOW INCOME MOTHERS AND HIGHER EDUCATION IN POST-WELFARE AMERICA 75–96 (Valerie Polakow et al. eds., 2004); Leila Schochet, *The Child Care Crisis is Keeping Women Out of the Workforce*, CTR. FOR AM. PROGRESS (Mar. 28, 2019), https://www.americanprogress.org/issues/early-childhood/reports/2019/03/28/467488/child-care-crisis-keeping-women-workforce [https://perma.cc/XNL7-HNQJ].

choose their family over their work during the pandemic.[151] The deepening failure of the care crisis to support all families has implications for women across education levels, races and ethnicities, ages, and classes.[152] It also has implications for society, in need of a full workforce that is both racial and gender inclusive.

For example, within one month of government-mandated closures and social distancing and isolation mandates, nearly 320,000 childcare providers became unemployed.[153] This translates to an estimated 4.5 million childcare slots that could be *permanently* lost.[154] If parents, even wealthy ones, can no longer find high-quality and affordable childcare centers near them, the cost of care will be driven up even higher, pricing out working moms who already earn lower wages than their White

[151] Anneken Tappe, *Working Mothers are Quitting to Take Care of Their Kids, and the U.S. Job Market May Never be the Same*, CNN Bus. (Aug. 19, 2020), https://www.cnn.com/2020/08/19/economy/women-quitting-work-child-care/index.html [https://perma.cc/V3D7-DJRZ]; Scott Horsley, '*My Family Needs Me': Latinas Drop Out of Workforce at Alarming Rates*, Nat'l Pub. Radio (Oct. 27, 2020), https://www.npr.org/2020/10/27/927793195/something-has-to-give-latinas-leaving-workforce-at-faster-rate-than-other-groups [https://perma.cc/N9KA-MNQH] ("Analysts offer a variety of explanations for the widespread Latina exodus. Hispanic women are more likely to maintain a traditional view of mothers as primary caregivers."); Amanda Barroso & Rakesh Kochhar, *In the Pandemic, the Share of Unpartnered Moms at Work Fell More Sharply Than Among Other Parents*, Pew Rsch. Ctr (Nov. 24, 2020), https://www.pewresearch.org/fact-tank/2020/11/24/in-the-pandemic-the-share-of-unpartnered-moms-at-work-fell-more-sharply-than-among-other-parents [https://perma.cc/H26L-9AEJ] (noting that the number of Black and Hispanic unpartnered moms at work saw double decreases compared to white women).

[152] *See generally* U.N. Secretary-General, *Policy Brief: The Impact of COVID-19 on Women* (2020), https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/06/report/policy-brief-the-impact-of-covid-19-on-women/policy-brief-the-impact-of-covid-19-on-women-en-1.pdf [https://perma.cc/C3HQ-DMJX] ("Even the limited gains made in the past decades are at risk of being rolled back."). *See, e.g.*, Liane Jackson, *Female lawyers face unique challenges during the COVID pandemic*, 106 A.B.A. J. (Oct. 1, 2020), https://www.abajournal.com/magazine/article/female-lawyers-face-pandemic-challenges [https://perma.cc/JGV3-YZQB] ("COVID-19 has destroyed any pretext that it's possible to successfully parent and excel in a demanding career without a crash and burn . . . Still, lawyer moms are better positioned during this crisis than low-wage earners, many of whom face the devastating choice of either going in to work to support their families or quitting so they can care for their children.").

[153] *See BLS Data Viewer,* U.S. Dep't of Lab., Bureau Lab. Stats., https://beta.bls.gov/dataViewer/view/timeseries/CES6562440010 [https://perma.cc/34GD-PXEZ] (last visited Jan. 8, 2021) (showing a drop from 940,000 women childcare service employees employed during the month of March to 622,000 by April 2021).

[154] *See* Julie Kashen, Sarah Jane Glynn & Amanda Novello, *How COVID-19 Sent Women's Workforce Progress Backward*, Ctr. for Am. Progress (Oct. 30, 2020), https://www.americanprogress.org/issues/women/reports/2020/10/30/492582/covid-19-sent-womens-workforce-progress-backward [https://perma.cc/58FY-4YTZ].

male counterparts.[155] Unpartnered mothers have even greater economic barriers to childcare access without the benefit of a two-person household income[156] or two-person social network.[157] Though physical and social distancing mandates are lifted, one cannot assume that the loss of social resilience and the unique impacts on mothers have subsided. Without a robust public childcare industry, many mothers are forced to continue living under high-stress conditions of raising children and working at home.[158]

Researchers conclude that there are three tasks that took up mothers' time during lockdown. First, 70 percent of women report that they are fully or mostly responsible for housework.[159] Second, 44 percent of women in households with children report being the sole care provider for their children, as compared to 14 percent of men,[160] and 66 percent of women are mostly or fully responsible for childcare.[161] Third, the education or schooling-from-home tasks also fall disproportionately on mothers.[162]All of this makes them more susceptible and thus vulnerable to leaving the workforce without additional adaptive capacities.

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[155] *See* Robin Bleiweis, *Quick Facts About the Gender Wage Gap*, CTR. FOR AM. PROGRESS (Mar. 24, 2020) https://www.americanprogress.org/issues/women/reports/2020/03/24/482141/quick-facts-gender-wage-gap [https://perma.cc/42SM-WK8T] (describing wage inequities, which are most significant for women of color and Latinas in particular).

[156] Chris Arnold, *'Incredibly Scary': Single Moms Fear Falling Through Holes in Pandemic Safety Net*, NAT'L PUB. RADIO (Oct. 26, 2020), https://www.npr.org/2020/10/26/925898367/incredibly-scary-single-moms-fear-falling-through-holes-in-pandemic-safety-net [https://perma.cc/4USS-FJVU] ("Women have lost more jobs than men during the recession, and others are quitting their jobs in frustration from the demands of child care. However, quitting is just not an option for most single parents.").

[157] *Id.*; Hertz et al., *supra* note 38, at 2029 (discussing how 57 percent of mothers in single-adult households felt their work productivity declined compared to 47 percent of women who lived in multi-adult households).

[158] Matt Krents, Emily Kos, Anna Green & Jennifer Garcia-Alonso, *Erasing the COVID-19 Burden on Working Parents*, BOS. CONSULTING GRP. (May 21, 2020), https://www.bcg.com/publications/2020/helping-working-parents-ease-the-burden-of-covid-19 [https://perma.cc/4VB3-WG4W].

[159] Claire Cain Miller, *Nearly Half of Men Say They Do Most of the Home Schooling. 3 Percent of Women Agree*, N.Y. TIMES (May 6, 2020), https://www.nytimes.com/2020/05/06/upshot/pandemic-chores-homeschooling-gender.html [https://perma.cc/FL6Q-SBNJ].

[160] Zamarro & Prados, *supra* note 2, at 3; Cain Miller, *supra* note 159.

[161] Cain Miller, *supra* note 159 (noting that the men and women in different-sex households are not sharing added responsibilities any more equitably than before).

[162] Daniel Carlson, Richard Petts & Joanna Pepin, *Changes in Parents' Domestic Labor During the COVID-19 Pandemic*, SOCARXIV 26 (May 6, 2020).

C. *Factor Three: Preexisting Inequities—Their Consequences in Academia and Legal Education*

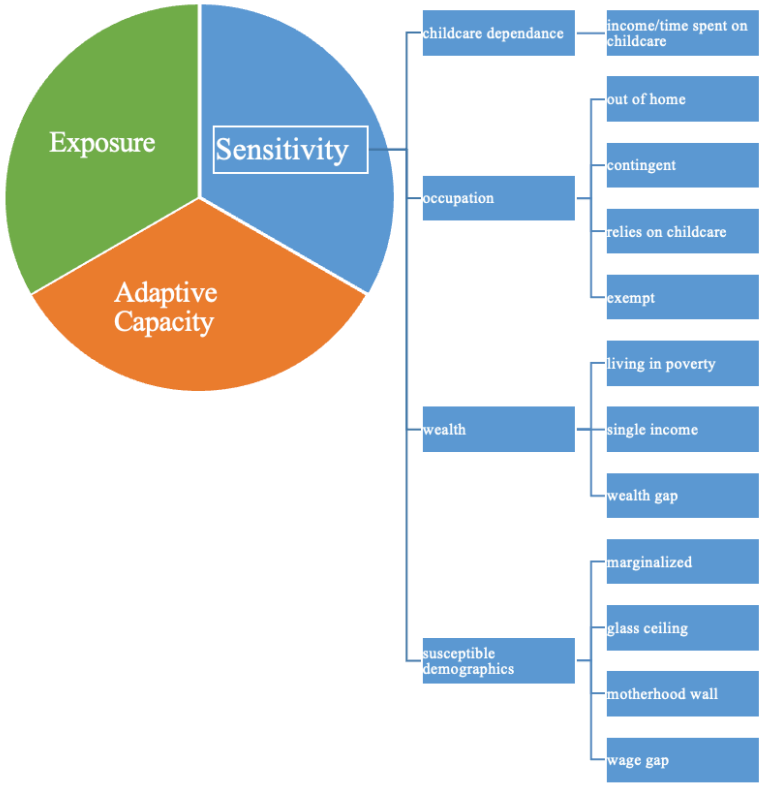

FIGURE 7. A visual depiction of the sensitivity dimension of vulnerability branched out to its components and measures of each component, which include the pre-existing inequities based on occupation, identity, wealth, and susceptible demographics.

Because Mother-Scholars have less time theoretically to devote to what has been described as unlimited academic work, they are less productive. Although the childcare crisis is discussed in ways that recognize and value Mother-Scholars' professional and domestic labor, it fails to acknowledge how institutions contribute to time oppression that impacts productivity during the pandemic. The time of a mother or caregiver, especially a woman of color, is much scarcer. In the salaried world, all employees are held to the same performance expectations, regardless of

whether there are competing socio-cultural and/or caregiving responsibilities. This scarceness of time to devote to work responsibilities results in a time oppression or time burden. Contributors to time oppression include uncompensated time spent modifying coursework to online and remote formats,[163] assisting students losing housing or experiencing food scarcity,[164] and advocating for racial equity during the pandemic.[165] All contributions, some of which are vital to the survival of individual students and to academia itself, are rarely acknowledged, much less valued appropriately in performance measures.[166] Therefore, Mother-Scholars have more work to do, but in a salaried world, we are held to the same performance expectations as everybody else.

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[163] *See, e.g.*, Elizabeth Heubeck, *How Did COVID-19 Change Your Teaching, for Better or Worse? See Teachers' Responses* (June 2, 2020), https://www.edweek.org/technology/how-did-covid-19-change-your-teaching-for-better-or-worse-see-teachers-responses/2020/06 [https://perma.cc/6FQS-4DRC] (noting that some teachers found the switch to online teaching a "painstaking and time-consuming process," making them feel overwhelmed and with little time outside work to devote to their own well-being); Bridget J. Crawford & Michelle S. Simon, *Law Faculty Experiences Teaching During the Pandemic*, ST. LOUIS U. L.J. 455, 461 (2021) (reporting that 70.3 percent of respondents said they were spending "much more time" (54.1 percent) or "more time" (16.2 percent) preparing for online classes than they typically spend preparing for traditional, in-person teaching).

[164] *See, e.g.*, EXEC. OFF. OF THE PRESIDENT, ECONOMIC REPORT OF THE PRESIDENT 125 (Mar. 2023), https://www.whitehouse.gov/wp-content/uploads/2023/03/ERP-2023.pdf (discussing maternal employment, childcare subsidies, and earned child tax credits and stating:

> Though food insecurity had been trending down in the decade preceding the COVID-19 pandemic, most dramatically for Hispanic and Latino households (figure 4-i), nonwhite children experienced setbacks in food security in 2020 and 2021 As of 2021, the rate of food insecurity was higher for households with children, for households with children under age six, and particularly for single-woman-headed households than it was for households overall.

; MISSION CRITICAL: THE ROLE OF COMMUNITY COLLEGES IN MEETING STUDENTS' BASIC NEEDS, CCSSE (2022), https://cccse.org/sites/default/files/Mission_Critical.pdf (discussing how too many students lack food and housing security).

[165] Patricia Kinser et al., "It's always hard being a mom, but the pandemic has made everything harder": A qualitative exploration of the experiences of perinatal women during the COVID-19 pandemic, MIDWIFERY (June 2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8923714/ (explaining that "the continual uncertainty related to the pandemic was compounded for some participants by the larger context of political election unrest and a social justice movement in the United States").

[166] Marwa Shalaby, Nermin Allam, & Gail Buttorff, *Gender, COVID, and Faculty Service*, INSIDE HIGHER EDUC. (Dec. 18, 2020), https://www.insidehighered.com/advice/2020/12/18/increasingly-disproportionate-service-burden-female-faculty-bear-will-have [https://perma.cc/X3XD-HSRG] ("It is not just the pandemic that has increased demands for institutional care work and service labor but also mass mobilizations against racial injustices and police violence. External service . . . is also a time-consuming activity for women in academia, especially when women are socially invested in the cause.").

The time of Mother-Scholars, especially if they are women of color and in the minority demographically amongst their peers, is in high demand. This is because of external circumstances such as not having social support for children, being exploited as a salaried worker consistently working 50–60 hours per week to meet performance measures (but without additional compensation), having to do more work to gain credibility, or having to do added "service work" in their institutions. "Service work" refers to the fact that:

> Many women of color are placed on committees because of their identities, regardless of their preferences or the repercussions. Their identities drive their placements on committees, including those involving student admissions and faculty appointments, where their backgrounds can be highlighted externally beyond the law school. Diversity committees are especially common as required service obligations for women of color faculty . . . Most women faculty are expected to perform additional service work, both at the law school level and university-wide.[167]

The little time remaining is devoted to childcare and housework. When there is a spare moment to focus on producing scholarly articles, the home environment is riddled with interruptions and distractions. The discourse continues, arguing that the little time remaining is insufficient for Mother-Scholars to produce scholarly articles because it is often riddled with so-called interruptions by children and the burdens of housework.[168] When a person resumes a task following an interruption,

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[167] Deo, *supra* note 110, at 89.

[168] Suzanne M. Edwards & Larry Snyder, *Yes, Balancing Work and Parenting is Impossible. Here's the Data*., Wash. Post (July 10, 2020), https://www.washingtonpost.com/outlook/interruptions-parenting-pandemic-work-home/2020/07/09/599032e6-b4ca-11ea-aca5-ebb63d27e1ff_story.html [https://perma.cc/N2SN-6XC6] (discussing data provided by two faculty parents demonstrating the difficulties of working from home with young children); *see also* Yildirim & Eslen-Zavat, *supra* note 74, at 247 (arguing that "academic work—in which career advancement is based on the number and quality of a person's scientific publications, and their ability to obtain funding for research projects—is basically incompatible with tending to children"); Jessica Grose, *'They Go to Mommy First*,' N.Y. Times (July 15, 2020) https://www.nytimes.com/2020/07/15/parenting/working-moms-coronavirus.html [https://perma.cc/X8H5-G7JV] (arguing that children in different-sex households go to their mothers first when they need something); Thomas Lyttelton, Emma Zang & Kelly Musick, *Gender Differences in Telecommuting and Implications for Inequality at Home and Work*, SocArXiv, 6–7 (2021).

the likelihood of making errors increases.[169] This is because it takes twenty-five minutes or more to regain focus.[170] Under these conditions, it becomes nearly impossible for Mother-Scholars to ever regain focus, thus prohibiting them from engaging in the deep-level thinking, reading, and writing that is required for scholarly output, community activism, and knowledge production.[171] Rather than viewing children as interruptions and burdens, public and private entities (such as government, higher education, and corporations) must acknowledge and mirror the priorities of working mothers.

Children are also suffering from this paradigm—they often feel as if their working parent is ignoring them, interrupting their play activities or meals, or is too busy for them. If children could research and write in academic journals, I imagine they would note all of the times their mothers' work interrupted their play activities or meals and the affects on their emotional well-being. The societal attitude that conditions must be improved solely to benefit the academic workforce by making Mother-Scholars more productive must change. Instead, equity demands that the academic workplace culture shift to one that encourages and supports Mother-Scholars in being more attentive, healthier, and balanced parents to their children while being valued members of an inclusive institution. The age-old dilemma for Mother-Scholars continues to be choosing between productivity and success in the eyes of the institution or being good mothers,[172] because doing both without added support and flexible performance measures is not possible.

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[169] Duncan P. Brumby, Christian P. Janssen & Gloria Mark, *How Do Interruptions Affect Productivity?, in* RETHINKING PRODUCTIVITY IN SOFTWARE ENGINEERING 89 (Caitlin Sadowski, T. Zimmermann eds. 2019).

[170] Gloria Mark, Victor M. Gonzalez & Justin Harris, *No Task Left Behind? Examining the Nature of Fragmented Work*, Proceedings of the SIGCHI Conference on Human Factors in Computing Systems (CHI '05) 321, 326 (April 2005).

[171] Tatyana Deryugina, Olga Shurchkov & Jenna E. Stearns, *Covid-19 Disruptions Disproportionately Affect Female Academics* at 8, 10 (NBER Working Paper No. 28360 Jan. 2021), http://www.nber.org/papers/w28360 [https://perma.cc/FNR7-LFZK]; Grose, *supra* note 168; ADVANCE at University of New Mexico, *Out of Balance: Faculty Work-Life Pre-Pandemic and During COVID-19* (Aug. 4, 2020), http://race.unm.edu/assets/documents/advance-report.pdf [https://perma.cc/G55W-5NM8].

[172] In arguing that work is important to a woman's identity, scholars assume that the workplace is a positive experience for mothers. *See, e.g.*, Vicki Schultz, *Life's Work*, 100 COLUM. L. REV. 1881, 1886–92, 1959–61 (2000) (describing work as important for women and as constitutive of citizenship, community, and personal identity); Kessler, *supra* note 94, at n. 43 ("[F]eminist legal scholarship urging workplace accommodation of pregnancy and family caregiving is based on the assumption, whether stated or not, that women's work outside

However, we must be careful not to overvalue White normative professional standards for academics to reach tenure.[173] It is true that Mother-Scholars will continue to be excluded from academic leadership roles for which scholarly production is a significant component because they lost their social resilience, and fell behind in research and scholarship during the pandemic.[174] But scholarly production is not the crux of the problem:

> If we explain pandemic gender inequalities in academia as a consequence of asymmetries in *private* or *personal* labor, which are *external* to academia, we neglect the many gender inequalities that result from asymmetries in *professional*

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the home is a positive experience from which women benefit."). Even when work is not a positive experience, a source of income is often critical to the survival of mothers. *See* Joyce Frye, *On the Frontlines at Work and at Home: The Disproportionate Economic Effects of the Coronavirus Pandemic on Women of Color*, CTR. FOR AM. PROGRESS (Apr. 23, 2020), https://www.americanprogress.org/issues/women/reports/2020/04/23/483846/frontlines-work-home [https://perma.cc/FC4E-VDCR] (discussing the vital role of women of color in maintaining economic stability for their families and communities); Gretchen Livingston, *The Changing Profile of Unmarried Parents*, PEW RSCH. CTR. (Apr. 25, 2018), https://www.pewresearch.org/social-trends/2018/04/25/the-changing-profile-of-unmarried-parents [https://perma.cc/GKL3-L8WC] (noting that 81 percent of all solo parents are mothers and nearly 27 percent of solo mothers are living below the poverty line).

[173] *See* Pereira, *supra* note 6, at 501 ("COVID-19's uneven impacts on publication productivity across different groups may further intensify the structural inequalities—namely those of gender or race—that already exist in academic careers . . . . One key problem is that an intense focus on productivity as the lens through which to analyze academic labor can end up reproducing the normalization of intense and constant work . . . often under the guise of seeking 'excellence.'"). *See, e.g.*, Guy & Arthur, *supra* note 14, at 887–88 (suggesting that early data reveals that submissions from men have dramatically increased while submissions from women have significantly decreased); Caroline Kitchener, *Women Academics Seem to be Submitting Fewer Papers During Coronavirus*, LILY (Apr. 24, 2020), https://www.thelily.com/women-academics-seem-to-be-submitting-fewer-papers-during-coronavirus-never-seen-anything-like-it-says-one-editor [https://perma.cc/BW4A-PV5Q]; Giuliana Viglione, *Are Women Publishing Less During the Pandemic? Here's What the Data Say*, 581 NATURE 365 (2020). *See generally* Philippe Vincent-Lamarre, Cassidy R. Sugimoto & Vincent Larivière, *Monitoring Women's Scholarly Production During the COVID-19 Pandemic*, http://shiny.initiativesnumeriques.org/monitoring-scholarly-covid/?fbclid=IwAR2Ng4IFECl2bCsyuQ43psVNC_1M55zE_XUC5wL0cmyk4MS25Hz-AkVh-qo [https://perma.cc/D75V-ANGT].

[174] *See generally* Meera E. Deo, *Trajectory of a Law Professor*, 20 MICH. J. RACE & L. 441, 443–46 (2015) (noting that 83 percent of law school deans and 79 percent of associate deans are White; only 8 percent of law deans were women of color in 2013; only 3.4 percent of women law professors were Hispanic as of 2008); Katherine Barnes & Elizabeth Mertz, *Is It Fair? Law Professors' Perceptions of Tenure*, 61(4) J. LEGAL EDUC. 511, 515–16 (2012) (discussing tenure as an "important gateway to professional success and stability" and an opportunity for promoting or blocking racial integration in the legal academy).

> labor, which are *internal* to academia . . . and, some may even argue, intrinsic to academia. One example of COVID-19 gender inequalities internal to academia is the tendency to attribute primarily to women the material and emotional labor of caring for students and colleagues during the pandemic. . . . [I]t disproportionately limits the amount of time that women have available for other forms of work, including those which bring the highest career benefits (such as publishing research outputs).[175]

The experience of children and mothers is overshadowed by discussions of scholarly productivity because survival in academia depends on scholarly output.[176] Crucially, the survival of academia and of future generations depends on other aspects of time oppression being acknowledged[177] and M(other)work being valued both at home and at work.[178]

Mental health vulnerability caused in part by parenting-related and work-related stress may affect the ability of Mother-Scholars to be "productive" scholars long-term. In academia, challenges to productivity not only affect one's propensity for burnout but also translate to unsuccessful promotion and tenure reviews.[179] Mother-Scholars are being described

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[175] *See* Pereira, *supra* note 6, at 503.

[176] *See* Pereira, *supra* note 6, at 6 ("If we explain pandemic gender inequalities in academia as a consequence of asymmetries in *private* or *personal* labor, which are *external* to academia, we neglect the many gender inequalities that result from asymmetries in *professional* labor, which are *internal* to academia . . . and, some may even argue, intrinsic to academia. One example of COVID-19 gender inequalities internal to academia is the tendency to attribute primarily to women the material and emotional labor of caring for students and colleagues during the pandemic . . . . [I]t disproportionately limits the amount of time that women have available for other forms of work, including those which bring the highest career benefits (such as publishing research outputs).").

[177] For example, minoritized women in white institutions continue to carry the emotional labor of everyday micro-resistances to preserve their mental health, using up valuable time and energy. *See* Louwanda Evans & Wendy Leo Moore, *Impossible Burdens: White Institutions, Emotional Labor, and Micro-Resistance*, 62 SOC. PROBS. 439, 441–45 (2015).

[178] *See* Pereira, *supra* note 6, at 502 (noting the importance of academic labor based on care and support, especially during a pandemic and during an era of mental health crisis, dismissal of scientific expertise, or backlash against feminist, queer, and antiracist movements); Shalaby et al., *supra* note 166 (noting that women have borne a disproportionate burden of COVID-related service work such as student mentorship and emotional support).

[179] *See generally* Jessica K. Ezell Sheets, Cassie L. Barnhardt, Carson W. Phillips & Peggy H. Valdés, *The Impact of Faculty Work-Life Factors on Faculty Service Morale*, 32(2) J. FAC. DEV. 53, 53 (May 2018). For additional anecdotal evidence, see Lysette Romero Córdova, *"Mommy Track" on Steroids: How the Pandemic Is Further Derailing "Moms of Law*," 69 J. LEGAL EDUC. 681 (2019–2020), https://heinonline.org/HOL/LandingPage?handle=hein.

as "unproductive"[180] and have been in a prolonged state of stress, causing burnout.[181] But if Mother-Scholars are forced to derail their careers during the global pandemic because they are unproductive,[182] male and childless faculty—who have less institutional care work and less domestic work—will gladly fill in as keynote speakers, candidates for dean or chair, members of "man-els,"[183] and more.

The COVID Ceiling is significantly impacting the proportion of Mother-Scholars in academia. The COVID Ceiling, like the glass ceiling, is a barrier that prevents Mother-Scholars (traditionally super-moms) from entering and climbing the ranks of academia.[184] Like pre-existing inequities in the workforce due to motherhood bias, the realities of Mother-Scholars cannot be divorced from the shortcomings of academia that predated the pandemic and persist.[185] One major consequence of burnout and the loss of Mother-Scholars from academia is the backsliding of progress in reducing gender disparities.[186] Mother-Scholars will continue to be overlooked for opportunities for years to come,[187] so long as their care work at home and in the workplace is devalued and ignored and existing biases and inequities are not addressed.[188] There are unique

journals/jled69&div=48&id=&page= [https://perma.cc/B7YB-JFSV].

[180] *See infra* Subpart IV.

[181] *See infra* Subpart III.C.1.

[182] Mother-Scholars fail to have meaningful choice. *See* Meeussen & Van Laar, *supra* note 88, at 10 ("[T]he strong rhetoric of 'choice' in women's home versus career decision making . . . fails to recognize the structural barriers women face and thus need to regulate—and even risks strengthening the belief that structural gender inequalities are no longer a problem."); Carbone & Cahn, *supra* note 105, at 192.

[183] A "man-el" is an all-male panel, a phenomenon that existed in academia prior to the pandemic. *See generally* Leila Fadel, *Survey Suggests 'Manels'—All-Male Panels—Are Still the Norm*, NAT'L PUB. RADIO (Nov. 1, 2018), https://www.npr.org/2018/11/01/663012390/survey-suggests-manels-all-male-panels-are-still-the-norm [https://perma.cc/8F7L-YJWN]. Men can take the pledge not to present as part of any all-male panels. *See* Owen Barder, *The Pledge: I Will Not Be Part of Male-Only Panels*, https://www.owen.org/pledge [https://perma.cc/97FH-ATSQ] (last visited Apr. 2, 2022).

[184] *See* Susan Kolker Finkel & Steven G. Olswang, *Child Rearing as a Career Impediment to Women Assistant Professors*, 19 REV. HIGHER EDUC. 123, 130 (1996) (discussing the traditional tenure system).

[185] *See* Pereira, *supra* note 6, at 499, 504–05.

[186] *See, e.g.*, MARY ANN MASON, NICOLAS H. WOLFINGER, & MARC GOULDEN, DO BABIES MATTER? GENDER AND FAMILY IN THE IVORY TOWER 40 (2013).

[187] *See generally* DEO, *supra* note 94.

[188] *See, e.g.*, Katherine A.M. Wright, T. Haastrup & R. Guerrina, *Equalities in Freefall? Ontological Insecurity and the Long-term Impact of COVID-19 in the Academy*, 28 (S1) GENDER, WORK & ORG. 163, 165–66 (2020) (arguing that as care responsibilities increase,

repercussions to the impact of the pandemic on the legal profession workplace.[189] Specifically, in legal academia, the existence of gender,[190] race/ethnicity,[191] and motherhood inequities[192] has been discussed extensively in the literature, so I do not revisit those topics in detail here.

To mitigate continued vulnerability, any response to the impacts of the pandemic on Mother-Scholars in legal education must consider the historical inequities, the current and ongoing impacts, and future consequences of the unique scholarly and non-scholarly roles in law schools, the legal profession, and society. The response must mitigate the loss of Mother-Scholars in the pipelines because of their lack of productivity during the pandemic.[193] Consequently, not only will fewer

creative endeavors and knowledge production will decrease, thus reducing and excluding diverse voices from academia); PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabriella Gutíerrez y Muhs et al. eds., 2012) (concluding that women of color enter the profession with a presumption of incompetence that serves as a preliminary barrier to success and manifests in student course evaluations, employment discrimination, and micro-aggressions).

[189] *See generally* Patricia Cohen & Tiffany Hsu, *Pandemic Could Scar a Generation of Working Mothers*, N.Y. TIMES (June 3, 2020), https://www.nytimes.com/2020/06/03/business/economy/coronavirus-working-women.html?campaign_id=154&emc=edit_cb_20200603&instance_id=19067&nl=corona virus-briefing&regi_id=34085178&segment_id=30021&te=1&user_id=ebdfd606c9c3133a0aacf56681b93b61[https://perma.cc/JL5J-NE86]; Meera E. Deo, *Pandemic Affects on Legal Academia*, 89 FORDHAM L. REV. 2467, 2481 (2021), https://fordhamlawreview.org/wp-content/uploads/2021/05/Deo-May-.pdf [https://perma.cc/S4KV-KGFE] ("The Clyde Ferguson Syndrome—where the challenging workplace environment produces real and measurable negative health consequences—is in full effect in legal academia.").

[190] *See, e.g.*, Christopher A. Cotropia & Lee Petherbridge, *Gender Disparity in Law Review Citation Rates*, 59 WM. & MARY L. REV. 771, 771 (2018), https://scholarship.law.wm.edu/wmlr/vol59/iss3/2 [https://perma.cc/NPD8-HXRG]; Christopher Ryan & Meghan Dawe, *Mind the Gap: Gender Pay Disparities in the Legal Academy*, 34 GEO. J. LEGAL ETHICS 567, 567 (2021), https://ssrn.com/abstract=3699208 [https://perma.cc/Q5SY-LSJA].

[191] *See, e.g.*, Tsedale M. Melaku, *Why Women and People of Color in Law Still Hear "You Don't Look Like a Lawyer*," HARV. BUS. REV. (Aug. 7, 2019), https://hbr.org/2019/08/why-women-and-people-of-color-in-law-still-hear-you-dont-look-like-a-lawyer [https://perma.cc/U6MF-JTYQ] (discussing the "inclusion tax" and the "invisible labor clause."); Rosiles, *supra* note 82, at 10; DEO, *supra* note 94.

[192] *See, e.g.*, AM. ASS'N U. PROFESSORS, *Statement of Principles on Family Responsibilities and Academic Work* (May 2001), https://www.aaup.org/report/statement-principles-family-responsibilities-and-academic-work#24 [https://perma.cc/BX7V-56XN] (noting that in 1975, women made up 22.5 percent of full-time faculty and in 2000–01, women made up 36 percent of full-time faculty, and attributing the slow progress to a lack of family leave policies, tenure clock delays, and recognition of mothers' needs for work-family integration).

[193] *See* Pereira, *supra* note 6, at 502:

> In many texts on the academic effects of COVID-19, academic work is implicitly or explicitly equated with the publishing of research. This normalizes the

Mother-Scholars engage in knowledge production and advocacy related to women's and family rights, but fewer women will be available to engage in [wo]mentorship of women law students.[194] Mothers not only engage in scholarship for career advancement, but also as "a form of expression, a passport into employment and financial security, an act of activism, or a space of autonomy."[195]

Figure 8. Consequences resulting from the loss of mothers, women, and women of color law faculty due to the impacts of the COVID-19 pandemic.

1. *[Wo]mentorship*

[Wo]mentorship is a vital component to the success of law students, particularly women and law students of color.[196] Thanks to

> broader fetishization of these outputs as the ultimate aim of academic activity. It also reproduces the common side-lining of other important dimensions of academic labor, such as teaching . . . mentoring . . . peer review, event organizing . . . trade union activism and equality and diversity work; collaboration . . . outside academia; or sharing research . . . When we privilege analysis of the more quantifiable, individualized, fast and productive dimensions of academic labor, we risk reproducing the common devaluing of the more qualitative, collective, slow, and reproductive dimensions of that labor.

[194] In highlighting the importance of women and mothers in law faculty to the progress of law and society, it is not my intent to discount the importance of the research, mentoring, and advocacy that women and mothers do in other disciplines. *See, e.g.*, Claudia Goldin, *The Quiet Revolution that Transformed Women's Employment, Education, and Family*, AEA PAPERS & PROC. 4, n. 8 (May 2006), https://scholar.harvard.edu/files/goldin/files/the_quiet_revolution_that_transformed_womens_employment_education_and_family.pdf [https://perma.cc/S295–8JSW] (referencing Edith Abbott, a historian and economics Ph.D. who from 1904 to 1925 and over the course of her lifetime published nearly twenty books and thirty-eight journal articles that discussed progressive social reform, including the history of women's employment).

[195] Although the institutional impact is the topic discussed here, individual impacts on mothers who engage in scholarly work for reasons beyond tenure requirements also require attention. *See* Pereira, *supra* note 6, at 501, 504. Of equal concern are non-childcare reasons that cause mothers not to enter pipelines or return to tenure-eligible positions, such as their commitment to social causes like the mass mobilizations against racial injustices and police violence during the pandemic. *See, e.g.*, Evans & Moore, *supra* note 177; Pereira, *supra* note 6, at 501.

[196] *See generally, Guest Post: A Message to White Law Faculty: Mentor Racial Minority Students* (Aug. 18, 2021), https://lssse.indiana.edu/blog/guest-post-a-message-to-white-law-faculty-mentor-racial-minority-students [https://perma.cc/6DS7-ZT4R] (noting that the 17 percent of Latinas felt very little institutional support for racial and ethnic diversity, second only to Black women at 26 percent, and in contrast to white men at 6 percent and Latinos at 5 percent). *See also* LSSSE 2012 ANNUAL REPORT: LESSONS FROM LAW STUDENTS ON LEGAL EDUCATION, https://lssse.indiana.edu/wp-content/uploads/2016/01/LSSSE_2012_AnnualReport.pdf [https://perma.cc/BCR2-MJFL] ("[R]esearch has suggested female law students suffer from an inhospitable climate that impedes their ability to flourish

deliberate efforts over the last twenty years to increase gender diversity and [wo]mentorship aimed at navigating the pressures of a predominately male legal profession,[197] 38 percent of lawyers are now women.[198] Even though gender inequities have somewhat improved, law schools still need to better prepare students for real-world practice.[199] [Wo]mentors are needed "because of implicit gender and racial bias—documented in social science for decades—playing out in everyday interactions in legal workplaces" and affecting basic workplace opportunities and advancement for women.[200] They must be prepared for the realities of being interrupted more often, being mistaken for nonlawyers, performing more office housework, and having less access to prime job assignments.[201] Losing access to [wo]mentors who are Mother-Scholars means women (including women of color) law students may be left without

academically" (citing Morrison Torrey, Jennifer Ries, Elaine Spiliopoulos, *What Every First-Year Female Law Student Should Know*, 7 COLUM. J. GENDER & L. 267 (1998); Elizabeth Mertz, Wamucii Njogu, & Susan Gooding, RACE, GENDER, AND STATUS IN LAW SCHOOL EDUCATION: A STUDY OF EIGHT CONTRACTS CLASSROOMS (1997)).

[197] *See generally* Robin West, *Women in the Legal Academy: A Brief History of Feminist Legal Theory*, 87 FORDHAM L. REV. 977 (2018) (noting that women law students during the 1980s, 1990s, and even 2000s participated less in the classroom, suffered more law-school-induced anxiety, had fewer leadership positions including law review, graduated with lower GPAs, and had far more difficulty connecting with mentors than male law students and at the same time, women faculty were hired in much lower numbers and few were tenured, had trouble maintaining authority in the classroom, taught at lower prestige schools, received low teaching evaluations, and published less frequently in the major and most prestigious law reviews)

[198] *A Current Glance at Women in the Law*, A.B.A (Aug. 8, 2019), https://www.americanbar.org/news/abanews/aba-news-archives/2019/08/annual-2019—aba-releases-new-report-on-legal-profession-statist [https://perma.cc/JX9G-E7TY].

[199] *See* Robert MacCrate, Peter W. Martin, Peter A. Winograd & Michael Norwood, *Report of The Task Force on Law Schools and the Profession: Narrowing the Gap*, A.B.A. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR 4 (July 1992), https://www.corteidh.or.cr/tablas/28961.pdf [https://perma.cc/NZ5S-MFQ7] (noting complaints by the practicing bar regarding the inability of new law school graduates to handle basic legal matters).

[200] Am. Bar Ass'n's Comm'n on Women in the Profession, the Minority Corporate Counsel Ass'n, & the Center for WorkLife Law at the Univ. of Cal., Hastings Coll. of the Law *You Can't Change What You Can't See*, MINORITY CORPORATE COUNSEL ASS'N (Sept. 2019), https://mcca.com/wp-content/uploads/2018/09/You-Cant-Change-What-You-Cant-See-Executive-Summary.pdf [https://perma.cc/4BH3-EBBA].

[201] Tonja Jacobi and Dylan Schweers, *Female Supreme Court Justices Are Interrupted More by Male Justices and Advocates,* HBR.ORG (April 11, 2017), https://hbr.org/2017/04/female-supreme-court-justices-are-interrupted-more-by-male-justices-and-advocates [https://perma.cc/7QC5-NMHP] (noting that 65% of all interruptions at the U.S. Supreme Court during oral argument were directed at Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan, who only made 24% of the bench on average from 2002–2017).

or with less support for critical parts of their professional preparation and personal development because there are so few women in the legal academy.[202] [Wo]mentors can support the next generation of legal professionals to advocate against gender bias, motherhood bias, and sex and race discrimination.

Following the unwritten rules of the white male legal profession is a barrier for women.[203] For example, many women have to moderate their tone of voice when advocating for a client for fear of seeming too assertive, emotional, or not assertive enough. For example, in *Price Waterhouse v. Hopkins*, 490 U.S. 228, 235 (1989), involving sex stereotyping for the only woman associate up for partner in a professional account firm, her colleagues described her as "sometimes overly aggressive, unduly harsh, difficult to work with, and impatient with staff."[204] She was told by one partner to walk, talk, and dress "more femininely," and "wear make-up, have [your] hair styled, and wear jewelry."[205] The emotional labor of being inauthentic can lead to emotional exhaustion, a major strain of work-related burnout.[206] Women of color continue to make up only 3% of law firm partners in the U.S.[207] For reasons like this, [wo]mentorship is a way for Mother-Scholars to help women law students navigate the difficulties of law school and a legal profession that is still far from gender and racial equity.

Challenging the written rules of the White male legal profession offers unique challenges for mothers in law. Motherhood is not a protected class once a mother is no longer pregnant.[208] Of course, not all

[202] Sara Bashi & Maryana Iskander, *Why Legal Education is Failing Women*, 18(2) Yale J. of L. & Fem. 388, 418–33 (2006) (explaining the consequences of having fewer women faculty than men on the success of women law students).

[203] Cara T. Laursen & Karen L Bashor, *Mentorship Makes a Difference, Diversity: Women Law*, 12 Nev. Law. 13, 13–14 (2020) (discussing the importance of mentorship and the difference it makes, especially for women in the law).

[204] *See, e.g.*, *Price Waterhouse v. Hopkins*, 490 U.S. 228, 235 (1989).

[205] *Id.*

[206] *See generally* Radostina K. Purvanova & John P. Muros, *Gender Differences in Burnout: A Meta-analysis*, 77(2) J. Vocational Behav. 168 (2010).

[207] Deo, *supra* note 110, at 2472.

[208] The U.S. Supreme Court appeared to recognize a "gender plus" scenario where subgroups of women are discriminated against on the basis of another category, such as a gender and marital status for a widower, in violation of equal protection and the protection could extend to stereotyping women as caregivers (but not necessarily discrimination based on gender plus parenthood specifically for mothers). *See Back v. Hastings on Hudson Union Free School Dist.,* 365 F. 3d 107, 117–122 (2nd Cir., 2004) (holding that an employment discrimination plaintiff alleging the violation of a constitutional right base don gender may

women are mothers, but many women are or hope to be mothers during their professional career. While racial and gender bias can legally only be implicit, motherhood bias can legally be explicit, resulting in career stagnation and biases about a mother's commitment to work.[209] Like in legal academia, there are few protections from motherhood bias, also known as the "maternal wall" in the legal profession. Mother-Scholars also help mothering law students navigate the "maternal wall," which affects women of all races, who are treated worse at work after they have children.[210] Unlike male parents, mothers in the legal profession are being passed over for promotions, given "mommy track" low-quality assignments, demoted or paid less, and/or unfairly disadvantaged for working part-time or with a flexible schedule."[211] Women of color reported that their commitment or competence was questioned at a level 29 percentage points higher than White men and 50 percent of women of color thought that taking family leave would have a negative impact on their career.[212] Challenging the maternal wall requires legal advocates with experience as mothers who can speak to the quiet struggles, the explicit and implicit biases, and the vulnerability of not being a protected class. For example, Mother-Scholars create spaces where moms can gather to speak freely about the struggles of work-life balance and validate and counsel one another in ways that enhance their well-being and success.[213] Losing Mother-Scholars from academia could mean losing gains for women in law schools and the legal profession long-term.

Mother-Scholars in law schools provide critical [wo]mentorship to law students who are moms and women of color as part of the "service"

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bring suit under § 1983 or Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.; citing the cases that protect individuals due process right to be free from undue interference with their procreation, sexuality, and family; and refusing to answer the questions of whether "a strict level of scrutiny must be applied to any state action that discriminates on the basis of childbearing or family care").

[209] *See generally, supra* note 88 (listing maternal wall resources).

[210] A.B.A. COMM'N ON WOMEN IN THE PROFESSION et al., *supra* note 201, at 8.

[211] *Id.*; *see also mommy track,* DICTIONARY.COM, https://www.dictionary.com/browse/mommy-track (defining "mommy track" as "a career path for women who opt to sacrifice promotions and pay raises in order to devote more time to raising their children") (last visited Apr. 24, 2023); *mommy track*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/mommy%20track (defining "mommy track" as "a career path that allows a mother flexible or reduced work hours but tends to slow or block advancement") (last visited Apr. 24, 2023).

[212] A.B.A. COMM'N ON WOMEN IN THE PROFESSION et al., *supra* note 201, at 8.

[213] *See, e.g.*, *Moms of Law*, U. N.M. SCHOOL OF L., https://lawschool.unm.edu/students/organizations/mol/index.html [https://perma.cc/KNX7-RKS5].

work or "care work" that is devalued in the hiring and promotion process but is vital to working toward equity in the legal profession as a whole.[214] Because the parent, gender, and racial diversity of the legal academy is so poor,[215] and service and support provided to students is assigned a lower value in terms of tenure and promotion standards,[216] [wo]mentorship has become primarily the work of underrepresented women of color faculty.[217] Thus, those mothers, women, and women of color will undoubtedly also struggle to meet a higher demand for [wo] mentorship in law schools.[218] The pandemic is threatening the progress of women and mothers in the legal profession and legal academy, and that of their mentees.

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[214] *See generally* Meera E. Deo, *Separate, Unequal, and Seeking Support*, 28 Harv. J. on Racial & Ethnic Just. 9 (2012) (noting that the benefits for members of racial/ethnic affinity groups are likely similar to women's groups).

[215] *See* Deo, *supra* note 110, at 2471 ("One primary focus of this study is women of color, who were bearing the brunt of service work and other invisible labor both at work and at home long before the pandemic and who have since shouldered increasingly and impossibly heavy burdens. This population was marginalized in legal academia pre-COVID-19 and is at even greater risk for attrition now."); Charlene Villaseñor Black, *Diversity in Academia in a Post-Truth World*, 1(3) Latin Am. & Latinx Visual Culture 3, 7 (2019) ("At my own institution, UCLA, with 21.2 percent of its undergraduate students but only 6.6 percent of its faculty identifying as 'Latina/o/x,' Latinx professors are overburdened to the breaking point. Students of color seek us out because they feel more comfortable with us; and we feel a moral imperative and responsibility to our communities to respond.") (citing Zak Vescera, *The Unseen Labour of Racialized Faculty*, The Ubyssey (Feb. 26, 2019)).

[216] *See* Deo, *supra* note 110, at 2471; Cassandra M. Guarino & Victor M. H. Borden, *Faculty Service Loads and Gender: Are Women Taking Care of the Academic Family?*, 58 Rsch. Higher Educ. 672, 673 (2017) .

[217] Deo, *supra* note 110, at 2471; Guarino and Borden, *supra* note 216, at 674 (noting that women do up to 25 percent more service than their male colleagues). *See generally* Social Sciences Feminist Network Research Interest Group, *The Burden of Invisible Work in Academia: Social Inequalities and Time Use in Five University Departments*, 39 Humboldt J. Soc. Rel. 228 (2017); Cardozo, *supra* note 143, at 412–13 (noting that people of color do a disproportionate share of diversity and care work such as identity-based mentoring).

[218] The starting law school class of 2021 was the most racially diverse and had the highest percentage of women. *The Incoming Class of 2021—The Most Diverse Law School Class in History*, L. Sch. Admissions Council, (Dec. 15, 2021), https://www.lsac.org/blog/incoming-class-2021-most-diverse-law-school-class-history, [https://perma.cc/47G6–2KG3]; *See ABA Reports Law School Enrollment for 2019 Remains Stable*, Am. Bar Ass'N, (last visited Feb. 15, 2021), https://www.americanbar.org/news/abanews/aba-news-archives/2019/12/aba-reports-law-school-enrollment/#:~:text=The%20203%20law%20schools%20approved,students%20or%201.2%25%20from%202018 [https://perma.cc/8FFW-MJ9J] ("He noted the gender mix in the 1L class is 54% women and 46% men, with about a third of the new students self-identifying as members of a racial or ethnic minority group.").

2. *Women's Rights in Law and Society*

A greater exodus of Mother-Scholars from law faculty (and potentially the legal profession) means fewer mothers will engage in knowledge production and advocacy related to women's and family rights.[219] Women's issues will likely lose momentum and new issues may go unraised.[220] Academic attention, policy advancements, and legal actions on such issues as the right to take leave to breastfeed,[221] childcare funding for law students,[222] safe and accessible family planning,[223] and workplace equity are at stake.[224] Mother-Scholars play an essential role

[219] Deo, *supra* note 110, at 2472–2473 (noting research conducted pre-pandemic that "traditional outsiders were leaving the law school tenure track in greater proportions than were white men" due in part to "implicit bias in the tenure process, and differential impacts on women and on scholars of color of the law school's pretenure institutional structures and cultures," presumptions of incompetence, "outright discrimination, being unwelcome on predominantly white campuses, and externally imposed and survival-oriented silencing."). Very little data exists about how many women of color and/or mothers are law professors because that information is not tracked in any meaningful way by the American Association of Law Schools. This problem can become invisible and unnoticed because of the lack of data. This underscores the importance of this article in shedding light on this issue of attrition in law faculty due to the circumstances of the pandemic that specifically apply to mothers and women of color.

[220] Stephanie A. Scharf & Roberta D. Llebenberg, *Practicing Law in the Pandemic and Moving Forward: Results and Best Practices From a Nationwide Survey of the Legal Profession*, A.B.A. 1, 12 (2021), https://www.americanbar.org/content/dam/aba/administrative/digital-engagement/practice-forward/practice-forward-survey.pdf [https://perma.cc/EC53-L6B8] (concluding that a transition to remote work has affected all lawyers but "has had a disproportionate impact on women lawyers with children," potentially reducing the amount of women in the legal profession).

[221] *See* Candace Saari Kovacic-Fleischer, *Litigating Against Employment Penalties for Pregnancy, Breastfeeding, and Childcare*, 44 VILL. L. REV. 355, 376–384 (1999) (summarizing cases in which courts discussed leave for breastfeeding requested by new mothers).

[222] *See, e.g.*, Stephanie Francis Ward, *New Mexico Tosses Restriction that Prevented Parents in Law School from Receiving Child Care Subsidy*, AM. BAR ASS'N (Dec. 15, 2020, 8:47 AM), https://www.abajournal.com/web/article/new-mexico-tosses-restriction-that-prevented-parents-in-law-school-from-receiving-childcare-subsidy [https://perma.cc/EY2L-R4ZA].

[223] *See, e.g.*, Laura D. Lindberg, Alicia Vande Vusee, Jennifer Mueller, & Marielle Kirstein, *Early Impacts of the COVID-19 Pandemic: Findings from the 2020 Guttmacher Survey of Reproductive Survey of Reproductive Health Experiences*, GUTTMACHER INST. (June 2020), https://www.guttmacher.org/report/early-impacts-covid-19-pandemic-findings-2020-guttmacher-survey-reproductive-health# [https://perma.cc/YX7K-PPKJ] (discussing the barriers COVID-19 has imposed on women's access to childbearing preferences, contraceptive use, and other sexual and reproductive health services).

[224] For instance, Justice Ruth Bader Ginsburg, who had children of her own, is well known for her landmark cases challenging the gender roles of the family being proscribed by law and winning protections for women, including mothers, in the workforce under the Equal Protection Clause of the Fourteenth Amendment. *See* Kerry Abrams, *Family, Gender, and*

in improving the quality of life for mothers and women overall,[225] often with the help of a team of support for their own childcare and self-care.

IV. Private and Public Driven Solutions

Women all over the world have borne the brunt of the pandemic.[226] In the United States, regardless of the "non-discriminatory" equality model, women and mothers in the workforce are disproportionately harmed by the pandemic compared to their male counterparts, as explained in Parts I, II, and III. As gender stereotypes and roles, social norms, and systemic inequities snowball to create an insurmountable Covid Ceiling Mother-Scholars struggle to overcome,[227] adaptive capacities that remain must be enlarged and enhanced as part of vulnerability management, forecasting, and prevention.[228] As the U.S. government

Leadership in the Legal Profession, Women & L., 1, 5, n. 6 (2020).

[225] *See generally* Cynthia Grant Bowman, *Women in the Legal Profession from the 1920s to the 1970s: What Can We Learn From Their Experience About Law and Social Change?* 61(1) Me. L. Rev. 1, 22 (2009) ("Most important of all, the lawsuits and breakthroughs of the 1970s and 1980s would not have happened without the reawakening of the women's movement in the 1960s and the activism and feminist lawmaking of the 1970s."); Cynthia Grant Bowman & Elizabeth M. Schneider, *Feminist Legal Theory, Feminist Lawmaking, and the Legal Profession*, 67 Fordham L. Rev. 249 (1998).

[226] *See Impact of COVID-19 on Marginalized Groups: Implications for Policy and Advocacy,* Duke (Apr. 2, 2020), https://web.law.duke.edu/video/impacts-covid-19-marginalized-groups-implications-policy-and-advocacy/ [https://perma.cc/XA8U-USSM]; *Impact of COVID-19 on Minoritized and Marginalized Communities*, Am. Med. Ass'n (Oct. 7, 2020), https://www.ama-assn.org/delivering-care/health-equity/impact-covid-19-minoritized-and-marginalized-communities [https://perma.cc/CPE4-AXLK] (listing articles discussing the pandemic impact, by race or ethnicity).

[227] *See, e.g.*, Keymanthri Moodley & Amanda Gouws, *How Women in Academia Are Feeling the Brunt of COVID-19*, Conversation (Aug. 7, 2020, 4:35 AM), https://theconversation.com/how-women-in-academia-are-feeling-the-brunt-of-covid-19–144087 [https://perma.cc/G6PZ-NEZF]; Mason et al., *supra* note 186, at 38 ("Compared with her childless counterpart, a woman with a child under six is 26% more likely to be employed as a contingent faculty rather than a tenure-track position. Compared with a man with a young child, she is 132% more likely to be working in a contingent position. Conversely a male Ph.D. with a young child is 36% less likely to become a contingent faculty member instead of a tenure-track professor.").

[228] *Vulnerability Management and the Vulnerability Remediation Process With Examples* (May 5, 2022), https://www.ostusa.com/blog/vulnerability-management-and-the-vulnerability-remediation-process-with-examples/ [https://perma.cc/3WMR-SBNR] ("To learn more about their risk profile, organizations perform vulnerability scans (or "vulnerability assessments") annually, semiannually or quarterly, depending on their size, industry and other factors . . . Vulnerability management is a framework that IT professionals can follow to find and remediate vulnerabilities within their organization. While this framework is often related to vulnerability scans and assessments, it can also be utilized in other domains, such as physical, environmental and policy.").

transitions from emergency status to ongoing monitoring of the pandemic, we can now pause to think about how to (1) mitigate the impacts on vulnerable mothers, who have lost or decreased resiliency because of changes to their personal and community adaptive skills, while also (2) preventing vulnerability to the next social disaster or hazard. The remaining adaptive capacities are government policy and institutional or corporate private policies (e.g., self-governing higher education institutions and corporations). Private institutions have an opportunity or, dare I say obligation, to provide greater protections than what is permitted by law if they want to advance progress in workplace equity based on gender, race and ethnicity, and motherhood. Government lawmakers and elected officials in the public sphere have a responsibility to similarly effect widespread change by providing baseline protections for working mothers to enhance their adaptive capacity and lessen their vulnerability.[229]

A. *Academia*

Universities have the option as self-governing entities to change work expectations, such as promotion and tenure review requirements for mothers, but many have not adapted at all.[230] As a result, Mother-Scholars have dealt with the burdens of the pandemic on their own.[231] Expectations

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[229] *See* MCKINSEY REPORT, *supra* note 104, at vi ("Tackling gender inequality will require change within businesses as well as new coalitions. The private sector will need to play a more active role in concert with governments and non-governmental organizations.").

[230] Deryugina et al., *supra* note 171, at 25 (noting that 17 percent of institutions made no policy changes and only 23 percent had explicitly changed research expectations); Heather Antecol, Kelly Bedard & Jenna Stearns, *Equal but Inequitable: Who Benefits from Gender-Neutral Tenure Clock Stopping Policies?*, INST. STUDY LAB. 2, 3–4 (2016) (finding that tenure delay policies have been shown to substantially reduce female tenure rates while substantially increasing male tenure rates).

Other employers have also been slow to adapt. *See, e.g.*, Hertz et al., *supra* note 38, at 2041 (revealing that few employers were compensating for the added burdens for unpartnered mothers); Dana Sumpter and Mona Zanhour, *3 Ways Companies Can Retain Working Mom's Right Now*, HARV. BUS. REV. (Nov. 12, 2020) (noting that working mothers had to take it upon themselves to ameliorate challenges because employers would not get involved); Ellingrud, *supra* note 47 at 10–12 (finding in a global survey of 1,122 executives and 2,656 employees across 11 countries that only around half the companies surveyed have modified performance reviews (49 percent) or provided counseling programs (52 percent), and just over one third have provided parenting and homeschooling resources (37 percent) to ameliorate employees' greatest concerns).

[231] *See* Jillian Kramer, *The Virus Moved Female Faculty to the Brink. Will Universities Help?*, N.Y. TIMES (Oct. 6, 2020), https://www.nytimes.com/2020/10/06/science/covid-universities-women.html [https://perma.cc/ZP7F-AGXF] (discussing the impact COVID-19 has had on

for work productivity have generally remained constant despite unprecedented changes to the work environment during the pandemic. Systemic change is necessary to both restore and enhance resiliency and autonomy for mothers.[232] Systemic changes should be instituted with the goal of decreasing work-family conflict rather than increasing productivity.[233]

Higher education institutions, including law schools, must not make assumptions about the dedication of Mother-Scholars to their work based on the number of children they have, their children's needs, or the need for flexibility in caring for children. Institutions must create environments that recognize and include families and help Mother-Scholars stay connected to their families, networks, and communities who are critical to their success and well-being.[234] For example, children should be included in university-sponsored events. Universities should respect employees that do not wish to take advantage of out-of-home childcare by adjusting workloads and meeting times accordingly. Time away from work to support children's activities should be encouraged.

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several mom faculty and how universities struggle to implement meaningful policies).

[232] Presently, the prohibitions of discrimination against mothers are in Title VII and only extend to pregnant mothers via the Pregnancy Discrimination Act and women generally via the Civil Rights Act. *See* Civil Rights Act of 1964, 42 U.S.C.A. §§ 2000e–2000e-16 (1994); 42 U.S.C. § 2000e(k) (1994)) (amending Title VII to include pregnancy-based discrimination as a prohibited form of sex discrimination). Case law has extended Title VII protections by interpreting them to include protections for women of pre-school aged children from discrimination on the basis of sex. *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971) (per curiam). Less clear are protections for mothers of school-aged children or older, or women of color. Beyond discrimination and bias, the law does not protect women or mothers from the toxicity of working in a place where subtle but significant gender inequities run rampant.

[233] There is a new and developing discourse around "workism," which is the belief that work is "not only necessary to economic production, but also the centerpiece of one's identity and life's purpose; and the belief that any policy to promote human welfare must always encourage more work." Derek Thompson, *Workism Is Making Americans Miserable*, Atlantic, https://www.theatlantic.com/ideas/archive/2019/02/religion-workism-making-americans-miserable/583441 [https://perma.cc/LF6T-N3JA] (Feb. 24. 2019). Workism is problematic because it is based on assumptions about family and gender dynamics, and cultural values. *See, e.g.*, Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C.A. § 601 (describing objectives of act as ending dependence on government benefits, preventing and reducing out-of-wedlock pregnancy, and encouraging formation of two-parent families).

[234] *See generally* Georgiana Bostean, *An Examination of the Relationship between Family and U.S. Latinos' Physical Health*, 2 Migration & Health Field Actions Sci. Rep. (Oct. 1, 2010) (examining health outcomes in the context of complex Latino family relationships, migration, and heterogeneity of cultural, migratory, and historical experiences that shape their trajectories). *See generally* Elaine O. Cheung, Wendi L. Gardner & Jason F. Anderson, *Emotionships: Examining People's Emotion-Regulation Relationships and Their Consequences for Well-Being*, 6(4) Soc. Psych. & Personality Sci. 407, 407 (2015).

Universities must recognize the importance of family to Mother-Scholars. A family-conscious approach must value both commonalities and differences among women of various intersectional identities. Acknowledging multiple aspects of identity and experience—gender, class, disabilities/abilities, sexual orientation, religion—allows women to be more authentic in the workplace and improves their well-being. As Latinas grow in population,[235] family-conscious policies will be necessary to achieve critical mass and retention of Latinas in academia. Without progress, Mother-Scholars will continue to feel the pressure to be super-moms to the point of burnout.

Social distancing and isolation have exacerbated the challenges mothers face at all stages of their careers. It is important that universities reimagine pipelines for all women and minoritized groups by accounting for nonstandard trajectories into academia.[236] Rather than a pipeline, institutions could consider a "revolving door" model, which allows for more "on-ramps" by which Mother-Scholars can return to academia after the "off-ramp" of caring for their young children.[237] Some mothers experience other "downshifts," such as post-partum periods with their children or being steered into lower-ranking positions by their employers.[238] In all cases, women in contingent positions must be provided a sense of permanency.[239]

Additional institutional shifts are necessary to preserve the positions of Mother-Scholars already in academia. Although prior calls for reform focused on stopping the tenure clock and allowing for more

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[235] .*See* Jens Manuel Krogstad, *Hispanics Have Accounted for More Than Half of Total U.S. Population Growth Since 2010*, PEW RSCH. CTR. (July 10, 2020), https://www.pewresearch.org/fact-tank/2020/07/10/hispanics-have-accounted-for-more-than-half-of-total-u-s-population-growth-since-2010 [https://perma.cc/9QLE-YND5] (noting that from 2010 to 2019, the U.S. population increased by 18.9 million, and Hispanics accounted for more than half of this growth reaching a record 60.6 million, or roughly 18 percent of the U.S. population).

[236] *See, e.g.*, MASON ET AL., *supra* note 186, at 40 (criticizing the pipeline model as being outdated); Cardozo, *supra* note 143, at 413 (discussing unorthodox trajectories that inhibit the advancement of women in academia).

[237] *See generally* Caroline Kitchener, '*I Had to Choose Being a Mother': With No Child Care or Summer Camps, Women are Being Edged Out of the Workforce*, THELILY.COM (May 22, 2020), https://www.thelily.com/i-had-to-choose-being-a-mother-with-no-child-care-or-summer-camps-women-are-being-edged-out-of-the-workforce [https://perma.cc/Y9DS-2NGC].

[238] AMANDA HINDIAN ET AL., GOLDMAN SACHS, GLOB. MKTS. INST., CLOSING THE GENDER GAPS: ADVANCING WOMEN IN CORPORATE AMERICA 7–8 (Oct. 21, 2018), https://www.goldmansachs.com/insights/pages/gender-pay-gap-f/gmi-gender-gaps.pdf [https://perma.cc/VNP3-REWA].

[239] Cardozo, *supra* note 143, at 413.

flexible or part-time schedules equally across faculties, none of those solutions are family-conscious.[240] They do not address the root inequities in having a seemingly flexible academic appointment that is simultaneously described as "psychologically difficult."[241]

B. *Corporate entities*

Corporate employers in the private sphere have the autonomy to provide greater protections than what is required by law to preserve a critical part of their workforce. Traditional calls for change attempt to entice employers with justifications such as increases in recruitment or retention, greater profit margins, more team-based innovation, and collaboration, or increased worker productivity.[242] However, this pivot will not rest on employer-centered goals. Framing the call to action as an incentive to increase productivity reinforces the assumption that businesses should only support mothers when it makes financial sense to do so. That framing also excludes the question of support for women who are not formally employed, but nonetheless contribute to society and their families even though it is not considered traditional labor.[243] Mothers need autonomy

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[240] Jessica L. Malisch et al., *In the Wake of COVID-19, Academia Needs New Solutions to Ensure Gender Equity*, 117(27) Proceedings of the National Academy of Sciences 15378, 15380 (July 7, 2020) (calling for gender equity policies rather than gender neutral policies); Kessler, *supra* note 94, at 433–34 (noting that critical scholars and feminists attribute the law's failure to address the work-family conflict to assumptions that the goal of law, above all else, should be to promote efficiency and that the market is neutral).

Like policies that are race-neutral or color-neutral, gender-neutral policies do not change the outcome of gender bias because those policies continue to center White, male norms. *See, e.g.*, Heather Savigny, *Cultural Sexism is Ordinary: Writing and Re-Writing Women in Academia*, 24 Gender, Work & Org. 643, 651 (Nov. 6, 2017), https://onlinelibrary.wiley.com/doi/pdf/10.1111/gwao.12190 [https://perma.cc/XS94–53DY] (discussing merit as an example).

[241] Am. Ass'n U. Professors, *Statement of Principles on Family Responsibilities and Academic Work* 340 (May 2001), https://www.aaup.org/report/statement-principles-family-responsibilities-and-academic-work#24, [https://perma.cc/X3XS-6UYE].

[242] *See, e.g.*, Exec. Off. of the President, Council of Econ. Advisers, Work-Life Balance and the Economics of Workplace Flexibility (2010), https://obamawhitehouse.archives.gov/files/documents/100331-cea-economics-workplace-flexibility.pdf [https://perma.cc/9AJH-6T4T].

[243] Policy proposals must decenter workism and center family. *See* Lyman Stone and Laurie DeRose, *What Workism is Doing to Parents*, The Atlantic (May 5, 2021), https://www.theatlantic.com/ideas/archive/2021/05/what-workism-doing-would-be-parents/618789 [https://perma.cc/5TP5-CA5P] (noting that employment-based policies exclude unemployed parents, and only benefit families that conform to a two-parent norm); Amber Lapp, *Should Mothers' Labor Force Participation Be a Policy Goal?* Institute for Family Studies (Apr. 25, 2017), https://ifstudies.org/blog/should-mothers-labor-force-participation-be-a-policy-goal [https://perma.cc/W8GS-94K9] ("Any effort to encourage women to enter the workforce must also work to create truly 'family-friendly jobs' as opposed to simply engineering 'job-friendly

and flexibility to seek out employment when it makes sense for them and their families, not only when it will generate more profit for employers.

To provide greater protections for mothers and vulnerable people, corporate entities can change measures of "productivity" and success to new, holistic measures. For example, holistic measures of "productivity" could be replaced with measures of employee financial well-being, satisfaction, health and quality of life (including environmental, nutritional, physical, mental, and maternal health), and social stability.[244] Additionally, corporate entities could provide free and accessible mental health resources during working hours. Nearly half of the mothers who reported a negative mental health impact due to the pandemic said there was a time in the past year when they thought they might need mental health services or medication, but did not get them.[245] They reported that the top three barriers were not being able to find a provider, cost, and being too busy or unable to take time off work.[246] Services should be prioritized for young women, mothers of young children, Latinas, and other communities who are experiencing the greatest effects of the pandemic.

C. *Government*

The government must recognize that resiliency is highly dependent on societal structures that provide mothers with the assets and resources in the face of innumerable challenges.[247] In the age of government-mandated social distancing and isolation, the government must find new ways to restore and build up mental and social resiliency for mothers inside and outside the workforce. This historical moment requires a critical pivot from self-care, self-created networks to a model prioritizing government-based social resiliency and cohesion, and governmental protection from vulnerability in the workforce and in the home (*see Figure 6*).[248]

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families,' as Richard Reeves so eloquently put.").

[244] This would not be the first time the federal government sought to provide social stability by connecting people. Examples include the federal government's investment in public works projects such as the U.S. interstate system and the Internet.

[245] Kearney et al., *supra* note 106. For all people, only 32 percent felt the same way. *Id.*

[246] *Id.*

[247] *See* Martha Albertson Fineman, *Vulnerability and Inevitable Inequality*, 4 OSLO L. REV., 133, 146–147 (Dec. 13, 2017); Martha Albertson Fineman, Titti Mattsson, & Ulrika Andersson, *Introduction, in* PRIVATIZATION, VULNERABILITY, AND SOCIAL RESPONSIBILITY: A COMPARATIVE PERSPECTIVE 1, 3–4 (2017).

[248] *See* Ines Smyth & Caroline Sweetman, *Introduction: Gender and Resilience*, 23 GENDER & DEV. 405 (2015) (suggesting approaching resiliency "from a gender perspective" in ways that "support women's rights and gender equality").

Law and policy will require a cultural shift where mothers caring for children are no longer labeled as "unemployed" simply because their home labor is unpaid or occurs in the private rather than the public sphere. Childcare subsidies and child tax credits should not be conditioned on being "gainfully employed" or living in a two-parent married household.[249] Rather, government policy should incentivize people to foster family connections, because care by mothers enhances child development. The government can set baseline protections that facilitate and prioritize employees' *time away* from physical work or outside of working hours to enhance mother-child-family bonding.[250] To effectuate this goal, employers could minimize the degree to which employees are expected to be accessible at home, the after-hours work expected from salaried workers, or timeline flexibility for deadlines. Employers could transition to a 4-day work week, provide mandatory fitness, or enable mental health leave on a weekly basis.

Any extension of work into the home sphere must shift away from increasing productivity or retention of mothers in the workforce and towards increasing quality of life by supporting the authenticity, multiple identities, and holistic well-being of women and their families.[251] The aim must not be for mothers to work longer hours. Rather, it must be to provide mothers with the work conditions that allow them to devote their energies to their family's lives, personal or social endeavors, and/or professional pursuits. The government must account for and anticipate the extra demands on unpartnered mothers and minoritized mothers, and other circumstances related to extended family units.

If the pandemic has taught us anything, it is that industries and economies are fallible. Government "investment" in infrastructure no longer means simply redesigning the workspace or retooling machines or connecting interstate highways. Today, investing in infrastructure

[249] *See, e.g.*, Personal Responsibility and Opportunity Reconciliation Act of 1996, 42 U.S.C.A. § 602.

[250] *See* Caitlyn Collins, *Is Maternal Guilt a Cross-National Experience?* 44 QUAL. SOC. 1, 1 (Apr. 20, 2020), https://doi.org/10.1007/s11133–020–09451–2 [https://perma.cc/7XJE-DPNT] ("I found that public policy has a role to play in reducing maternal guilt in three specific ways: (1) by giving mothers more time outside of work, (2) encouraging fathers to complete more unpaid care work, and (3) distributing the responsibility and costs of childrearing more broadly.").

[251] *See* Horsley, *supra* note 151 (describing two Latinas who do not want to give up their careers but do not want to go back to intense work schedules, focusing instead on "how do I build a life that allows me to spend more time doing the things that I love, being with the people I love?").

means prioritizing individual workers, like mothers, and contributing to community-based social infrastructures. But how? Ask mothers and minoritized mothers;[252] they have been investing in the future workforce, their children, since the beginning of [wo]mankind.

1. *Mental Health Support*

The federal and state governments must adapt to support the mental health needs of super-moms. A meaningful pivot to protect mental health vulnerability will require the government to develop tools to collect and analyze data in order to drive equitable policy shifts at the employer level.[253] Corporate entities and universities can then leverage existing tools to track and address the mental health concerns of their workers. These employers can identify the needs and experiences of mothers in their workplaces (or any vulnerable or intersectional group) and redistribute labor resources, such as flexible work hours, additional paid time off, support and mentorship, and healthcare benefits to the most vulnerable.[254] Because of limited resources and the intersectional impacts of the global pandemic, it will be especially important for the government to require that employers review the data, identify vulnerable sub-groups, and equitably distribute resources accordingly to mitigate those vulnerabilities in a proactive way.

[252] Frye, *supra* note 172 ("While much of the U.S. focus has been on the erratic stock market, steep business losses, stay-at-home orders, and the scope and pace of legislative and administration responses, too little attention has been paid to the daily impacts on communities and the needs of families across the country. Women of color, in particular, play a vital role in maintaining the economic stability of their families and communities—and therefore, understanding COVID-19's impact on this group is critical to overcoming the current crisis.").

[253] *See, e.g.*, Misty L. Heggeness, *Why Is It So Hard to Understand Women and Work?*, SUBSTACK: RANDOM THOUGHTS IMPORTANT THINGS (May 15, 2021), https://mistyheggeness.substack.com/p/why-is-it-so-hard-to-understand-women [https://perma.cc/228F-DLMM] ("We need national estimates broken down monthly not only for women age 20+, but also for women living with own school-age children, women living with own children under age 5, and women living without children . . . so that policymakers can begin making better, more informed decisions.").

[254] For example, working from home has not had universally positive impacts on mothers' mental health, but may provide benefits for other women or people who are disabled. *See* Lyttelton et al., *supra* note 168, at 4, 32 (noting that mothers who are telecommuting are more likely than fathers to report feeling anxious, lonely, or depressed).

2. *Free, Safe, Accessible, High-Quality Childcare and Recognition of Care & Motherwork as Work*

Although we should not reduce our success to work, the income that comes from work is critical to many families' survival. The most common explanation for why women were leaving the workforce during the pandemic was the loss of childcare.[255] The cost of high-quality childcare prices mothers out of the workforce. This is especially true for educated mothers from minoritized communities, who are more likely to carry the burden of greater student loan debt.[256] Childcare is one of the largest expenses in a family's budget.[257] For families with two children, average childcare costs are higher than the average rent in 500 out of 618 surveyed communities across the United States.[258] Childcare costs are significant and thus play a role in determining whether mothers can enter or return to the workforce, or whether mothers take a break or leave the workforce.[259]

In 2016, some families paid up to $22,600 annually for pre-school age daycare.[260] Personally, the cost of full-time childcare for one child

[255] *See generally* Alisha Haridasani Gupta, *Why Did Hundreds of Thousands of Women Drop Out of the Work Force?*, N.Y. Times (Oct. 3, 2020; updated Oct. 13, 2020), https://www.nytimes.com/2020/10/03/us/jobs-women-dropping-out-workforce-wage-gap-gender.html [https://perma.cc/ZG75-VYPX]; Stefania Fabrizio, Diego B.P. Gomes, and Marina M. Tavares, *The COVID-19 She-cession: The Employment Penalty of Taking Care of Young Children*, 72 COVID Econ. 136, 137 (Mar. 10, 2021) ("The main finding is that less educated women with young children were the most adversely affected during the first nine months of the crisis. The loss of employment of women with young children due to the burden of additional childcare is estimated to account for 45 percent of the increase in the employment gender gap."); Claire Cain Miller, *The Pandemic Created a Child-Care Crisis. Mothers Bore the Burden.*, N.Y. Times (May 17, 2021), https://www.nytimes.com/interactive/2021/05/17/upshot/women-workforce-employment-covid.html [https://perma.cc/S3HQ-6U7F].

[256] Am. Ass'n U. Women, Deeper in Debt: Women and Student Loans in the Time of COVID (2020), https://www.aauw.org/app/uploads/2020/05/Deeper_In_Debt_FINAL.pdf [https://perma.cc/SA6T-Y9SW] (explaining that women hold two thirds of the nation's student loan debt with Black women, single mothers, and first-generation students owing amounts greater than their peers).

[257] Elise Gould, Lea J.E. Austin & Marcy Whitebook, Econ. Pol'y Inst., What Does Good Childcare Reform Look Like? (2017), https://www.epi.org/publication/what-does-good-child-care-reform-look-like [https://perma.cc/U23T-9ECA].

[258] Elise Gould & Tanyell Cooke, Econ. Pol'y Inst., High Quality Child Care is Out of Reach of Working Families (Oct. 6, 2015), http://www.epi.org/publication/child-care-affordability [https://perma.cc/ZPK9-CNDN].

[259] *See, e.g.*, Pallavi Gogoi, *Stuck-At-Home Moms: The Pandemic's Devastating Toll on Women*, Nat'l Pub. Radio (Oct. 28, 2020, 7:01 AM), https://www.npr.org/2020/10/28/928253674/stuck-at-home-moms-the-pandemics-devastating-toll-on-women [https://perma.cc/8BRW-3RUV].

[260] Gould et al., *supra* note 257, at 3 (citing Economic Policy Institute, "Cost of Child Care" (last visited April 2, 2022), http://www.epi.org/child-care-costs-in-the-united-states [https://

makes up 35 percent of my annual net income as a law professor after employment taxes, mandatory retirement contributions, and employer-based healthcare premiums are deducted. If my student loan payments had not been temporarily suspended by executive order,[261] my student loan payments and childcare costs together would make up 65 percent of my net income. Even with my spouse's annual income factored in, we do not come close to the U.S. Department of Health and Human Services threshold for affordable childcare, which is 7 percent of family income.[262]

Although need-based programs consider income and help for low-income families, they do not consider one's ability to pay in light of other necessary expenses such as childcare, employer-based healthcare premium costs, or mandatory retirement contributions. Need-based programs must change to consider one's ability to pay. The government must front the difference in cost of a labor-intensive industry under an income-and-expenses-based rate structure.[263]

Fully-funded government childcare is successful abroad.[264] In the U.S., the 1940 Lanham Act provided childcare for young children ages zero to twelve so mothers could enter the workforce while men were at war.[265] When World War II ended, so did government-funded childcare.[266] Although some of the facilities closed without the continual

perma.cc/CR6Q-XZM5)].

[261] Pausing Federal Student Loan Payments, WHITE HOUSE BRIEFING ROOM, (Jan. 20, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/pausing-federal-student-loan-payments [https://perma.cc/F77L-4AL9].

[262] Gould et al., *supra* note 257, at 4 (citing the Child Care and Development Fund Program, 80 Fed. Reg. 80, 466 (Dec. 24, 2015) (to be codified at 45 C.F.R. 98)).

[263] Gould et al., *supra* note 257, at 3–4 (citing CHILD CARE AWARE OF AMERICA, PARENTS AND THE HIGH COST OF CHILD CARE (2017)).

[264] *See e.g.*, Sven Bremberg, *A Perfect 10: Why Sweden Comes Out on Top in Early Child Development Programming*, 14 PEDIATRICS CHILD HEALTH 677 (Dec. 2009); Allison Herrera, *What We Can Learn From Canada's Universal Child Care Model*, WORLD (Feb. 5, 2019, 11:45AM), https://theworld.org/stories/2019–02–05/what-we-can-learn-canada-s-universal-child-care-model [https://perma.cc/2XXL-FZTD] (noting that middle-class families pay $6 a day for the universal childcare program, which has become a model for the rest of the world because its $152 billion cost is paid for by the increased tax revenue earned from having 85 percent of women ages twenty-six to forty-four participating in the workforce).

[265] *See generally* Betsey Stevenson, *An "Experiment" in Universal Child Care in the United States: Lessons from the Lanham Act*, OBAMA WHITE HOUSE ARCHIVES (Jan. 22, 2015, 2:23 PM), https://obamawhitehouse.archives.gov/blog/2015/01/22/experiment-universal-child-care-united-states-lessons-lanham-act [https://perma.cc/58PX-Y8VQ].

[266] *See generally* Harry W. Porter, *The Lanham Act*, 3 HIST. EDUC. J. 1 (1951); Howard Dratch, *The Politics of Child Care in the 1940s*, 38 SCI. & SOC'Y 167 (1974).

stream of federal funding from later presidential administrations, many mothers remained in the workforce.[267]

To an extent, mandatory publicly funded schooling somewhat filled the role of childcare. However, schools end before the end of most workdays, creating a gap that super-moms must fill. In recent decades, government programs have provided childcare to low-income mothers through subsidies[268] and to mothers in college through grants.[269] Presently, all parents receive minimal child support via tax policies.[270] Although helpful, those policies are not enough to fully support many mothers.

In response to the need to fill the shortages of essential health-care workers and teachers, the federal government passed the CARES Act.[271] However, it failed to consider long-term childcare and juggling of mothers working full-time.[272] Perhaps the CARES Act did not consider childcare because the very people who would benefit most from mental health, childcare, and employment support, are at this moment too tired, depressed, busy, or otherwise ill-situated to advocate for it.[273] Certainly, the risk of group childcare in spreading the deadly virus impacts the ability to provide cost-free or low-cost center-based care or private third-party care in the short-term. In the long-term, there are less available childcare spots permanently due to the pandemic. In addition, other respiratory infections and pandemics are anticipated by experts, and children are generally a vulnerable category. Recognizing that the Lanham Act provisions ended with the war, we must pass policies that will outlast the pandemic and the politics of Congress.

The burdens of expensive childcare, unwavering work demands, and lower wages for women will continue to affect families without the

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[267] *Id.*

[268] Sonya Michel, *The History of Child Care in the U.S.*, VCU Soc. Welfare Hist. Project, https://socialwelfare.library.vcu.edu/programs/child-care-the-american-history [https://perma.cc/A79K-HBME] (last visited Mar. 15, 2021).

[269] *Id.*

[270] *Id.*

[271] Off. of Child Care, Summary of Child Care Provisions of Coronavirus Aid, Relief, and Economic Security Act or "CARES Act," (Apr. 6, 2020), https://www.acf.hhs.gov/occ/policy-guidance/summary-child-care-provisions-coronavirus-aid-relief-and-economic-security-act [https://perma.cc/5X8X-U4E7] [hereinafter CARES Summary].

[272] *See generally*, Coronavirus Aid, Relief, and Economic Security Act, 15 U.S.C. § 116 (2020).

[273] Simon Kelly & Adele Senior, *Towards a Feminist Parental Ethics*, 28(2) Gender, Work & Org 807 (Oct. 19, 2020) ("[W]e ask: 'who is caring for the parents?' and we call for an extended idea of parenting beyond the familial as a means of differently organizing our societies, workplaces, and institutions around a shared locus of care.").

resources to exit the workforce or pay for high-quality care programs.[274] Fortunately, lawmakers do not have to start from scratch. They can mirror the Lanham Act and modify new policies after laws currently in place, updating them to reflect the realities of today's working mothers in local and cultural contexts. In collaboration with employees, lawmakers must care for mothers and children in a way that enhances workforce access and resiliency for families *and* reduces their vulnerability to the next individual or global catastrophe. First, Congress must focus on passing a bill that "cares" about mothers and children in childcare, paid leave, *and* mental health support. In the short term, government lawmakers must expand childcare benefits that are offered as part of Congress' CARES Act.[275] Second, government lawmakers must expand paid leave benefits offered by the Families First Act as the pandemic wanes on and beyond.[276]

Third, in the long-term, the Child and Dependent Care Tax Credit, which currently gives taxpayers a tax credit for employment-related childcare expenses for up to $3,000 per year for one child and $6,000 per year for two, must be expanded.[277] An expansion of the Dependent Care Tax Credit would allow a tax credit for the full amount of childcare expenses regardless of the number of children or parental income and account for geographical differences in the cost of care. This would benefit families at all income levels and compensate families for stay-at-home care, even if a parent is not employed.[278]

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[274] For working mothers without a deep, social network or other economic or familial resources, the challenge of managing competing demands that existed before and will continue after the pandemic subsides, until lawmakers pass aggressive policies that acknowledge modern realities. *See* Christensen et al., *supra* note 66, at 77–78.

[275] CARES SUMMARY, *supra* note 271 (appropriating over $3.5 billion to childcare and development).

[276] FAMILIES FIRST CORONAVIRUS RESPONSE ACT: EMPLOYEE PAID LEAVE RIGHTS, U.S. DEP'T OF LABOR WAGE & HOUR DIV. (last visited Apr. 5, 2022), https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave [https://perma.cc/CF7Y-JJER] (describing requirements for employers to provide paid sick leave and paid medical leave, including two weeks for employees to care for themselves or another and up to an additional ten weeks for emergency childcare).

[277] *See generally* Haibin Jiang, *The Effect of the Child Care Tax Credit on Maternal Labor Supply*, AM. ECON. ASS'N 8 (Nov. 12, 2020), https://www.aeaweb.org/conference/2020/preliminary/paper/brzzAN2S[https://perma.cc/3A94–8MD7] (concluding that the Child Care Tax Credit "significantly increases annual work hours for women with young children" with effects "more pronounced in married mothers." *Id.* at 34).

[278] Although beyond the scope of this article, reforms must also expand the definition of "cost" to include financial support and care provided to elders and people with disabilities, mental illness, and chronic illnesses. These modifications would supplement the costs of caring

Fourth, the Child Care Access Means Parents in School program (CCAMPIS) must be expanded. CCAMPIS is a federal program that began in 1999 to support low-income parents enrolling in "post-secondary education through the [provision] of campus-based child-care services."[279] It allows low-income college students to receive subsidies and/or pay on a sliding fee scale for childcare tuition.[280]

CCAMPIS grants are currently awarded for projects supporting or establishing a campus-based childcare program for infants and toddlers, providing before and after-care services for older children, subsidizing the costs of childcare for low-income students, providing support for parents, and providing curricular development programs for faculty and staff.[281] If broadened, it could provide support for all mothers and could boost the recovery of the childcare sector. CCAMPIS grants would have to address the dwindling number of campus-based childcare centers in the United States. For example, in 2000, the National Coalition for Campus Children's Centers reported that there were 2,500 campus-based childcare centers in the United States.[282] By 2009, there were only 1,153 centers.[283] During the pandemic, many childcare centers closed or increased costs to remain open, and childcare closures tend to affect families of color.[284]

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by families for whom *familismo* means providing financial support to extended and aging family members. *See, e.g.*, Nancy R. Hooyman, *Social and Health Disparities in Aging: Gender Inequalities in Long-Term Care*, 38 J. Am. Soc'y on Aging 25, 27–28 (2014–2015) (noting that women are also more likely to engage in and fund long-term care for elders).

[279] U.S. Dep't of Ed. Off. Postsecondary Educ., A Profile of the Federal TRIO Programs and Child Care Access Means Parents in School Program 23 (2008), https://www2.ed.gov/about/offices/list/ope/trio/trioprofile2008.pdf [https://perma.cc/3PXF-9DHZ] [hereinafter CCAMPIS].

[280] *Id.*

[281] *Id.* at 23.

[282] Tracy Boswell, *Campus Child Care Centers*, ERIC Clearinghouse on Higher Ed. 2 (2003), https://files.eric.ed.gov/fulltext/ED480466.pdf [https://perma.cc/BK5G-XN29] (noting that 2500 campus childcare centers existed in 2001, up from almost no childcare centers on campuses in 1975).

[283] Todd Boressoff, *Varieties of Campus Child Care*, Inst. for Women's Pol'y Rsch. 17 (2009), https://www.campuschildren.org/assets/docs/advocacy/varieties%20of%20campus%20child%20care.pdf [https://perma.cc/4XWQ-ZF6Q].

[284] *See generally* Emma K. Lee & Zachary Polin, *The Care Burden during COVID-19: A National Database of Child Care Closures in the United States*, 7 Socius: Sociol. Rsch. Dynamic World 1, 1 (July 21, 2021) (concluding that one-third of all childcare centers remained closed as of April 2021 and non-White families were more likely to be exposed to these closures, "widening inequalities in access to child care and potential inequalities in the pace of labor market recovery after the pandemic subsides.").

Developing additional infrastructure for childcare will require decades of organizing and planning. One shortcut could be the expansion of the CCAMPIS law that was passed in 1998 by Congress as part of the Campus Child Care Supplement to the original Higher Education Act of 1965.[285] Under CCAMPIS, each college was eligible to receive a grant of up to one percent of the federal Pell Grant dollars awarded to its students during the previous fiscal year, renewable every four years.[286] In 2017, the program was estimated to serve 12,600 student parents at campuses nationwide.[287] This program can serve as a model for adapting the current public and private infrastructure for a free, accessible, high-quality childcare program. But, without extra funding, mothers will continue to leave or remain out of the workforce, and shift careers.

Fifth, one concern highlighted by the pandemic is that the protections of the Family Medical Leave Act are far too short and far too narrow in terms of the people who can benefit from the protections. People who are unemployed, newly employed less than one year, or employed part-time at a small business are currently excluded from the protections of leave under the Family Medical Leave Act (FMLA) such as job protections when someone takes medical or caretaker leave.[288] Filling the gap not currently covered by the FMLA would go a long way in decreasing the stress of mothers in the workforce.[289] Most importantly, policy updates must guarantee some paid time off because the FMLA's guarantees of time off without pay are not feasible for low-income and unpartnered mothers.[290]

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[285] CCAMPIS, *supra* note 279, at 1.

[286] *See* Jennifer Yachnin, *Congress Puts More Money Into Aid for Child-Care Centers on Campuses*, 47 CHRON. HIGHER EDUC. A:22 (Feb. 2, 2001).

[287] Andrew Kreighbaum, *More Aid for Student Parents*, INSIDE HIGHER EDUC. (Apr. 6, 2018), https://www.insidehighered.com/news/2018/04/06/congress-puts-more-focus-student-parents-new-funding [https://perma.cc/V628-KHSZ].

[288] *See* 29 U.S.C.A. § 2611(4)(A)(i), (2)(A)(i). During the pandemic, Congress expanded the provisions and eligibility for emergency leave, which did not cover all employees, on a temporary basis for a limited number of days. *See* Pub. L. 116–127, div. C, § 3101, 134 Stat. 189 (Mar. 18, 2020) ("This Act . . . enacting section 2620 of this title, amending section 2612 of this title, and enacting provisions set out as notes under section 2620 of this title] may be cited as [the] 'Emergency Family and Medical Leave Expansion Act'"); *see also* Pub. L. 116–127, § 1, 134 Stat. 178 (Mar. 18, 2020) (providing that "[t]his Act may be cited as the 'Families First Coronavirus Response Act.'").

[289] 29 U.S.C.A. §§ 2601–54 (1993).

[290] *See* 29 U.S.C.A. § 2612(a)–(c) (providing for a maximum of twelve weeks of unpaid leave from work for eligible employees with qualifying life events such as a birth of a child or caring for an ill family member). It is worth noting that Mothers who temporarily or permanently leave their jobs to take care of their pregnancy, child, partner, or aging or ill

This would allow more mothers to take advantage of family and medical leave offered by employers and institutions when they need it.

Sixth, a comprehensive solution would account for *familismo*, in which parents are not the only ones caring for their children and grandparents participate in caring for grandchildren.[291] For instance, Latinas participate in the workforce at a rate lower than any other racial or ethnic group.[292] Although cost and availability of safe, accessible, and high-quality childcare are certainly factors,[293] Latina women may not enter the workforce because they are having children at higher rates than other women, even when accounting for the 47 percent decline in births

family member, during the pandemic or after, also do not qualify for unemployment benefits.

[291] Wendy Wang, Margarita Mooney Suarez, & Patrick T. Brown, *Familia Sí Guardería No: Hispanics Least Likely to Prefer and Use Paid Child Care*, Inst. Family Studies Blog (May 26, 2021), https://ifstudies.org/blog/familia-si-guarderia-no-hispanics-least-likely-to-prefer-and-use-paid-child-care [https://perma.cc/QGK5-W55R] (noting that when it comes to childcare preference, 62 percent of Latina/x/o families preferred parent or relative-provided care over part-time paid childcare or full-time paid childcare, more than any other race or ethnicity polled).

[292] Marlene A. Lee & Mark Mather, *U.S. Labor Force Trends*, 63(2) Population Bulletin 1, 5–6 (June 2008), https://www.prb.org/wp-content/uploads/2008/07/63.2uslabor.pdf [https://perma.cc/8HTT-CR9A]; *see also* U.S. Bureau Lab. Stats., *Labor Force Projections to 2024: The Labor Force is Growing, but Slowly*, Monthly Lab. Rev. (Dec. 2015) https://www.bls.gov/opub/mlr/2015/article/labor-force-projections-to-2024 [https://perma.cc/9453-RQRM] (indicating an overall trend of decreasing workforce participation in the general population from 66.6 percent in 1994 to 62.9 percent in 2014; Latinas actually increased their participation from 52.9 percent to 56 percent during the same time period but remain the second lowest of all racial and ethnic groups by a mere 0.2 percent); U.S. Bureau Lab. Stats., *Labor Force Participation Declines for Mothers and Fathers in 2020* https://www.bls.gov/opub/ted/2021/labor-force-participation-declines-for-mothers-and-fathers-in-2020.htm [https://perma.cc/A9H3-FV85] (last visited June 06, 2021) (noting that generally mothers with children ages six to seventeen years old participated in the workforce at a rate of 72.3 percent in 2019 and 71.2 percent in 2020 compared to fathers who participated at rates of 93.3 percent and 92.3 percent for the same time periods; and noting that mothers of children under age six participated at a rate of 66.4 percent in 2019 and 65.8 percent in 2020 compared to fathers who participated at rates of 95 percent and 93.4 percent for the same time period). *See also* Barroso & Kochhar, *supra* note 151 (noting that partnered Hispanic mothers had the lowest rate of participation in the workforce at a rate of 57.3 percent in September 2019 and 50.8 percent in September 2020; noting that unpartnered mothers and partnered mothers of children five years of age and younger participated at rates of 58.5 percent and 56.9 percent respectively during September 2020).

[293] W. Bradford Wilcox & Margarita Mooney Suarez, *Perspective: President Biden, Let Hispanic Parents Have What They Want—Family Care, not Day Care*, Deseret (June 6, 2021), https://www.deseret.com/2021/6/6/22518865/president-biden-let-hispanic-parents-have-what-they-want-family-care-daycare-american-families-plan [https://perma.cc/LVY4-Z6CW].

from 2007 to 2017 among Latina mothers.[294] That means the M(other) work for Latinas may be more intense.[295]

One way to value care work is to compensate mothers and other caregivers for their currently unpaid care work, either through a reimbursement or salary or tax provision, and allow them benefits that are traditionally available to the workforce (such as healthcare benefits, paid time off when sick, or credit for work experience on their resumes). This model would have positive indirect effects such as providing women and their families with greater financial independence for generations.[296] Latina/x/o grandparents and mothers in other racial and ethnic groups providing unpaid care work must also be compensated for their valuable contributions to the care infrastructure.[297]

Finally, lawmakers must also require employers to provide flexible work schedules and capped work hours for mothers, especially if their children suffer from health conditions or if they are single mothers. Additionally, employers could provide paid family and sick leave and affordable health care.[298] All of this ensures that mothers do not continue to bear a disproportionate burden in the aftermath of the COVID-19 pandemic or in future crises.[299]

Twenty years ago, Professor Lotte Bailyn succinctly described why Mother-Scholars often feel incapable of keeping up with their male colleagues and childless peers: "Time is critical for professors, because there is not enough of it to do all the things their job requires: teaching, research, and institutional and professional service. It is therefore impossible for

[294] Sabrina Tavernise, *Why Birthrates Among Hispanic Americans Have Plummeted*, N.Y. TIMES (Mar. 7, 2019), https://www.nytimes.com/2019/03/07/us/us-birthrate-hispanics-latinos.html [https://perma.cc/N8LX-765H].

[295] Florian, *supra* note 80 ("Research has indicated that [w]hites and, to a lesser extent, Hispanics are influenced by an intensive motherhood ideology that presumes a conflict between motherhood and employment, and expects mothers to prioritize their time investments in child rearing over paid work.").

[296] *See* MCKINSEY REPORT, *supra* note 104, at 12–13 (studying twenty-four countries and concluding that daughters of working mothers were more likely to be employed, have higher earnings, and hold supervisory roles than daughters of mothers who did not work outside the home).

[297] *See generally* Wang, et al. *supra* note 291.

[298] *See generally* Naomi R. Cahn & Linda C. McClain, *Gendered Complications of COVID-19: Towards a Feminist Recovery Plan*, 22 GEO J. GENDER & L. (Oct. 16, 2020 version).

[299] *See generally* UNITED NATIONS CONFERENCE ON TRADE DEVELOPMENT (UNCTAD), IMPACT OF THE COVID-19 PANDEMIC ON TRADE AND DEVELOPMENT: TRANSITIONING TO A NEW NORMAL 34 (2020), https://unctad.org/webflyer/impact-covid-19-pandemic-trade-and-development-transitioning-new-normal [https://perma.cc/LM6W-PP4Z].

faculty to protect other aspects of their lives."[300] As such, Mother-Scholars are particularly deserving of support from universities to ensure their work does not become a barrier to spending meaningful time with their family. A contemporary model must value institutional "care work," which is often unacknowledged, vital to the institution that is done by women and women of color, especially in contingent positions.[301]

In addition, improving social environments, such as by promoting inclusion, connection, and belonging,[302] fostering authenticity, and providing mental health and childcare resources can improve social safety and outcomes for all mothers affected by the COVID Ceiling. However, it is up to public and private entities to commit to action-oriented, equity-based, and family-conscious policies that will enhance the success of mothers in their workplaces and fulfillment in their family life. This includes childcare, mental health care, and policies that protect them from motherhood bias and keep their domestic labor (or deep social networks) from being acknowledged. Without these measures, the COVID Ceiling will compound pre-existing inequities and continue to stunt women in the workforce, especially in academia, for decades to come.

CONCLUSION

Mothers are a necessary and valued feature of the workforce. It is up to universities, government, and corporate entities to now carry the burden of developing the social resilience from which they have benefited for so long. Pre-existing inequities based on gender, race and ethnicity, and motherhood in the workforce coupled with mental health vulnerabilities fueled by the childcare crisis and global pandemic have created the COVID Ceiling. Without deliberate action, the COVID Ceiling threatens the progress and existence of mothers in the workforce, including and especially Mother-Scholars, while also shining light on all of the ways the workplace continues to prioritize productivity over well-being.

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[300] *Id.*

[301] Cardozo, *supra* note 143, at 416 ("Whereas the paternalistic advice of both individuals and institutions has been to 'protect' aspiring academics from 'too much service or teaching,' a contemporary feminist perspective might argue instead for the increased valuation of care work in academe: making it *count* for hiring, retention and promotion and rewarding it accordingly"); Pereira, *supra* note 6, at 504 (arguing for a broader aim of "fighting the fetishization of publication productivity, expanding our ideas of what counts as valuable academic labor, and celebrating slow, caring, and collegial work in academia").

[302] Slavich, *supra* note 126, at 285–87 (listing strategies for promoting social safety in a multi-layered social environment).