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THE COVID CARE CRISIS AND ITS IMPLICATIONS FOR LEGAL ACADEMIA

Cyra Akila Choudhury*

From February 2020, when the SARS COVID virus began to have global effects until now, the world has been in the midst of the worst viral pandemic in recent memory. No country was prepared for the rapid escalation of the spread of the virus worldwide that has taken nearly five million lives globally and over 700,000 in the United States alone. Even in March and April 2020, although cities had begun to quarantine and lockdown, none could have predicted the surges of cases and the longevity of the pandemic. Schools and businesses were closed only to open again and close again as the unpredictable virus took its course and as we all tried to haphazardly change to keep up. For many families, parents working and children learning from home utterly collapsed the private/public distinctions that allowed for some semblance of work-life balance. Others who were deemed “essential workers” like medical professionals, grocery store workers, delivery and postal workers, earning a livelihood literally meant risking one’s life and the lives of near family to earn a wage and to provide critical services. It is safe to say that the pandemic upended most of our lives.

As the turbulence unfolded, it became apparent that women were being particularly gravely affected by the pandemic. Professor Meera Deo, Dean Shruti Rana, and I, all scholars of race, gender, and inequality, began discussing the coming impact on women faculty which we began worrying about as early as April 2020. We had already noted that the closure of schools and childcare centers had forced women faculty with children—like many other women workers—to shuffle their lives to cover care duties. Moreover, because of the rapid and unpredictable spread of the without a cure or vaccine, people were left with social distancing and isolation as the only way to mitigate the risks. This made reliance on family or paid help difficult if not impossible.

During the first four months of the pandemic, our chief concern, as academics but also as two of us were caregivers, was the lack of time for research and the added burdens of student care that fell to women faculty—particularly minority women. We could predict that this would have follow-on effects in terms of scholarly productivity. In June, we collaborated with a group of women law professors to draft a letter to law schools and to law

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review editors to warn of the impending crisis that would lead to fewer submissions and publications for women faculty. We urged law review editors and law schools to take mitigating actions. That letter is included in this essay and is the founding document of a year-long effort to raise awareness about the care crisis. Dean Rana and I then followed up with an article in *Above the Law* reiterating these points to the broader academic community.¹ We argued that women were bearing the brunt of the pandemic because they continued to do a disproportionate amount of care work.

By November 2020, the care crisis had become alarming. Children continued to be out of school and the lack of external help with both elder and childcare and the added care responsibilities shouldered by families coping with health issues including the symptoms and lingering effects of COVID-19 led to over two million women leaving the paid workforce.² To make matters worse, most of the jobs lost were lost by Latina and Black women already underrepresented in the workforce. For legal academics, the situation was not so immediately dire. But the challenges were clear: clinical and writing faculty with high student interaction had to learn very quickly how to deliver materials online. Doctrinal faculty had to shift from classroom methods and the interactions to online methods with new technology and often very little support that were now used to deliver education synchronously and asynchronously. Furthermore, all our homes had been conscripted by universities, out of necessity, into workplaces requiring faculty to reorganize and refit their home spaces into virtual classrooms.

In an effort to document and share the gendered experience of the care crisis, Professor Deo, Dean Rana, and I sent out a call for papers for a symposium on the topic. While some skeptics opined that no one would have time to write about these issues, we found that many faculty members and students, men and women caregivers on three continents were, in fact, eager to share their experiences, their fears, and their frustration. The articles and essays in this volume are a selection from that two-day event hosted by the Hamilton Lugar School of Global and International Studies at Indiana University, Bloomington and co-sponsored by the Law School Survey of Student Engagement (LSSSE) and the Critical Legal Academics and Scholars International Collective (CLASIC).³ They reflect on and document the varied yet shared experiences of teaching and writing while managing

¹ Cyra Akila Choudhury, *The COVID-19 Fears of 2020 Were Realized*, ABOVE THE L. (Feb. 18, 2021, 11:49 AM), <https://abovethelaw.com/2021/02/the-covid-19-fears-of-2020-were-realized/>.

² Megan Cerulo, *Nearly 3 Million U.S. Woman Have Dropped Out of the Labor Force in the Last Year*, CBS NEWS (Feb. 5, 2021, 10:24 AM), <https://www.cbsnews.com/news/covid-crisis-3-million-women-labor-force/>.

³ *Symposium on the COVID Care Crisis and its Implications for Legal Academia*, IND. UNIV. BLOOMINGTON: HAMILTON LUGAR SCH. OF GLOB. AND INT'L STUD., <https://hls.indiana.edu/covid-symposium/>.

caregiving and family life during a global event that completely shuffled not only our schedules but what we thought we knew about work and family life.

In a number of articles and essays, we see the recurring theme of how surreal it has been to try and manage work and family in collapsed space and time. By this I mean, that the family home became the office, and it became impossible to cordon off work time from caregiving requiring people to combine both. Beyond the Potemkin Village, a façade of professionalism that many tried to maintain within the frame of the Zoom camera field, lay the always possible and sometimes real intrusions of family, children, partners, and pets.⁴ Many of us noted how the pandemic has sharpened our perceptions about what matters in life as we could no longer cordon off work from home life. With little spare time or energy, some of us realized that we could no longer ignore the racism and sexism of the workplace and in our public lives. The presidential election involving one of the most overtly divisive incumbent presidents in recent history coincided with the pandemic and the horrendous murder of George Floyd and Ahmaud Arbery and Breonna Taylor led to a summer of protests as people of color took to the streets and were met with police violence and counter-protests. Under what felt like an existential threat starting with the 2017 Unite the Right rally in which white supremacists murdered one counter-protestor until the January 6, 2021 violent insurrection by Trump supporters denying the epic loss of the election by 7 million votes, many of us were forced to pare down our engagements with those who actively support the subordination of racial, sexual, and religious minorities.⁵ Curiously, Minority faculty noted that the quarantine and isolation came with at least one benefit: not having to constantly perform professionalism in the face of ongoing sexist and racist micro-and macroaggressions from colleagues.

Yet even if we were able to avoid negative interactions, the sexist expectations of work followed many of us into our quarantined and locked down work lives. As a several participants shared, the continued expectations of “doing it all” were impossible for women faculty and students in particular.⁶ We theorized that the usual assumptions that women faculty would handle all their care work and compete with faculty without care duties were slow to shift and that the pressure cooker of the pandemic literally blew the lid off these myths.⁷ Without the outsourcing of care to underpaid child

⁴ Hadar Aviram, *The Center Cannot Hold: Zoom as a Potemkin Village*, 16 FIU L. REV. 75 (2021).

⁵ Nadia Ahmad, “Blood, Sweat, and Tears:” *A Muslim Woman Law Professor’s View on Degenerative Racism, Misogyny, and (Internal) Islamophobia from Preeclampsia and Presumed Incompetent to Pandemic Tenure*, 16 FIU L. REV. 13 (2021).

⁶ Allie Robbins, *Everything I Know About Teaching Was Reinforced by Auditing Remote Kindergarten*, 16 FIU L. REV. 159 (2021).

⁷ Teneille Brown, *Stereotypes, Sexism, and Superhuman Faculty*, 16 FIU L. REV. 83 (2021).

care workers, teachers, and extended family that many two-earner professional families relied on, doing it all became disastrous for women.

Some legal employers and schools handled it better, making room for parenting while working.⁸ Others were not only less accommodating but even punitive and had to be resisted.⁹ Law students and those starting their legal careers were particularly vulnerable to the mental stress produced by both the lack of institutional support and economic precarity and this resulted in negative effects in their schooling and careers.¹⁰ Finally, the pandemic did have some unexpected positive effects in addition to partially removing minority faculty from their regular experiences of subordination in the workplace as mentioned above. For international collaborations, faculty were able to use the pandemic itself as a lesson in international community building. Conferences that had previously been resistant to online sessions went completely online allowing scholars from the Global South to participate without the costs of travel. In addition, the social isolation, the clear mental and physical effects, and the forced slowing down in some cases, allowed for a more careful observation of the lives around us and the structural changes that are possible and necessary to survive in an altered work landscape.¹¹

A month after the symposium, I wrote in *Above the Law* about the continued effects on law faculty and what we had learned nearly one year in.¹² While many schools continued to remain online or hybrid, others returned to business as usual. Many schools rushed to return to the pre-pandemic normal even as the pandemic and the variants of the virus ebbed and surged. As more of us return to the classroom, it remains to be seen if administrations have taken the effects of the pandemic into account in the promotion and remuneration of their faculty and in terms of flexibility. Have law schools taken stock of the other economic and health effects? Certainly, no institution I know of has considered counting the substantial costs borne by faculty in reorganizing their spaces, purchasing additional technology to

⁸ Stephanie M. H. Moore, *The Foundational Care Crisis*, 16 FIU L. REV. 101 (2021).

⁹ Jacey Fortin & Derrick Bryson Taylor, *Florida State University Child Care Policy Draws Backlash*, N.Y. TIMES (July 2, 2020), <https://www.nytimes.com/2020/07/02/us/fsu-telecommute-remote.html>; Jeffrey R. Young, *U. of Florida Asks Students to Use App to Report Profs Who Don't Teach in Person*, EDSURGE (Jan. 14, 2021), <https://www.edsurge.com/news/2021-01-14-u-of-florida-asks-students-to-use-app-to-report-profs-who-don-t-teach-in-person>.

¹⁰ Michele Okoh & Ines Ndonko Nnoko, *The Need for Social Support from Law Schools During the Era of Social Distancing*, 16 FIU L. REV. 117 (2021).

¹¹ Shruti Rana & Hamid Ekbia, *Crisis, Rupture and Structural Change: Re-imagining Global Learning and Engagement While Staying in Place During the Covid-19 Pandemic*, 16 FIU L. REV. 133 (2021); Katyayani Suhrod, *Archiving the Pandemic: What it Has Meant to Chronicle What We Wish to Forget*, 16 FIU L. REV. 177 (2021).

¹² Choudhury, *supra* note 1.

do their jobs, or of the mental strain of juggling all these demands including extra training and time spent learning to teach online. For this reason, faculty must consider how to document and make visible the many burdens that the pandemic has brought and to think of ways in which work can and should change.

While faculty bore a great deal of the burden of delivering education, students were the ones who were perhaps the most adversely affected in law schools. Some began their law school careers and survived IL year online. Others had their studies disrupted by switching modalities. Those who graduated during the pandemic faced taking the bar exam in differing conditions with some jurisdictions adding to the high stress by mismanaging the technology and forcing students to take the exam in person. The Law School Survey of Student Engagement documents the difficulties, the increased economic precarity, and the adverse physical and mental health effects of the pandemic on students.¹³ It is safe to say that the pandemic made law school very hard on almost all of us and particularly on students and pre-tenure, and contract faculty. Law schools would do well to take stock of these experiences and build contingency plans rather than breathing a sigh of relief that the worst is over. It may be that the worst is yet to come.

Should there be another pandemic, as scientists suggest, what can we do to prevent the disastrous effects from the current one? One of the most important truths that became unavoidable in 2020 and into 2021 is that the United States has had a low simmering care crisis from the 1970s when women began entering the workforce in numbers and the two-earner family became more of the norm.¹⁴ Unlike other industrialized states and many developing countries, the US did not meet this change with more family-friendly policies. The country continues to force families to internalize the costs of childcare. Families must pay for childcare if both parents do waged work, and women must do the lion's share of care in the second shift in heterosexual families.¹⁵

Women are the social safety net, picking up when paid care becomes unavailable or economically unviable. As this issue goes to press, the Biden administration has been working on passing a spending bill that will

¹³ MEERA E. DEO ET AL., LSSSE 2021 ANNUAL REPORT: THE COVID CRISIS IN LEGAL EDUCATION 4, 6, 11 (2021), <https://lsse.indiana.edu/wp-content/uploads/2015/12/COVID-Crisis-in-Legal-Education-Final-10.28.21.pdf>.

¹⁴ Julie Sullivan, *Comparing Characteristics and Selected Expenditures of Dual- and Single-income Households with Children*, U.S. BUREAU OF LAB. STAT.: MONTHLY LAB. REV. (Sept. 2020), <https://www.bls.gov/opub/mlr/2020/article/comparing-characteristics-and-selected-expenditures-of-dual-and-single-income-households-with-children.htm>.

¹⁵ Sarah Jane Glynn, *An Unequal Division of Labor*, CTR. FOR AM. PROGRESS (May 18, 2018), <https://www.americanprogress.org/article/unequal-division-labor/>.

dramatically increase support for families.¹⁶ However, a significant portion of lawmakers consider this spending to be “benefits” or “entitlements” rather than critical and long overdue investments in American families and children: in the future. The same lawmakers complain of the lack of workers willing to work under any conditions dictated by employers. The disconnect is astonishing. Women have left the workforce in record numbers. Their labor is an economic loss to the country and contributes to the worker shortage. The pandemic made clear that without support, many women simply cannot “do it all” for their families and their employers and this includes women academics. Many have chosen their children over the job, resulting in the loss of critical women’s voices and perspectives in professional work and in the increased economic independence and well-being of working women in general. In January 2021, the workforce participation of women hit a 33-year record low.¹⁷ And yet, the policies that would address this loss and bring the country in line with other industrialized nations have been extremely hard to enact: paid maternal and family leave, universal, free kindergarten, and the expansion of tax credits for families with children. Opponents have suggested that the plan will both prevent Americans from “hard work” while also preventing them from staying home with their children.¹⁸ The reality is that without support, many women cannot return to work because of the cost of childcare makes it an irrational choice and yet, their families struggle without two incomes in an economy in which wages for almost all working people have stagnated.¹⁹

The pandemic has demonstrated that without a rehaul of the family leave and support policies, economically vulnerable families are likely to continue to live in precarity rather than thriving. For decades, families and caregivers have internalized the costs of raising the next generation while working to support themselves often relying on credit to make ends meet. No other industrialized country has been so unwilling to invest in its citizens particularly its most vulnerable citizens. The lesson from the care crisis cannot be clearer: women cannot do it all. They cannot work and provide the

¹⁶ Alana Wise, *Paid Family Leave Gets Slashed as Democrats Try to Reach Consensus on Spending Plan*, NPR (Oct. 29, 2021, 5:00 AM), <https://www.npr.org/2021/10/29/1050294669/paid-family-leave-gets-slashed-as-democrats-try-to-reach-consensus-on-spending-p>.

¹⁷ Courtney Connley, *Women’s Labor Force Participation Rate Hit a 33-year Low in January, According to New Analysis*, CNBC MAKE IT (Feb. 8, 2021, 8:36 PM), <https://www.cnbc.com/2021/02/08/womens-labor-force-participation-rate-hit-33-year-low-in-january-2021.html>.

¹⁸ Marie Fishpaw et al., *5 Things You Need to Know About Biden’s \$1.8 Trillion American Families Plan*, THE HERITAGE FOUND.: COMMENT. BUDGET AND SPENDING (May 11, 2021), <https://www.heritage.org/budget-and-spending/commentary/5-things-you-need-know-about-bidens-18-trillion-american-families>.

¹⁹ *Work & Family*, INST. FOR WOMEN’S POL’Y RSCH., <https://statusofwomendata.org/explore-the-data/work-family/#section-b> (last visited Nov. 8, 2021).

majority of the care for both elders and children. Forcing this choice has resulted in record job loss and the effects are both economic and social as women lose economic independence and their families lose resources and opportunities.

In the next section, the full text of the letter drafted by seven women law professors is reproduced to document the start of this effort. It was signed by over three hundred professors, deans, and administrators and was sent in the summer of 2020. While the letter was the start of the effort to raise awareness for faculty and students in law school, we must continue to keep in mind that the pandemic is not over. As the essayists in this volume and the participants in the symposium document, the effects have been severe and ongoing. We cannot return to “normal” without first taking account of them.

CODA: A LETTER TO LAW REVIEW EDITORS AND PROMOTION AND TENURE COMMITTEES AT LAW SCHOOLS

We write to apprise you of the likely negative professional effects of the COVID-19 pandemic on women law professors and urge you to consider them strongly while reviewing promotion and tenure matters and law review submissions this fall. Because of the need to socially distance and isolate, and the reality of working from home with added care responsibilities, women are likely to have lower scholarly submission rates than men, and possibly lower publication rates. Consequently, these outcomes may have serious negative effects if ignored. Left unaddressed, these disparities also have the potential to alter the landscape of legal academia and further marginalize both women scholars and the perspectives they bring to legal scholarship, education, and public dialogue.

We address this letter to law review editors so that you can be aware of the possible lower rates of submission and work to balance your issues for the upcoming cycles.

We also address this to law administrators and promotion and tenure committees who are in a position to evaluate scholarly output and attach consequences to it so you can make necessary policy changes to avoid intensifying gender inequities.

1. Gendered Effects of the COVID-19 Pandemic

It has been five months since the novel Coronavirus pandemic disrupted much of academic life in the United States. During these months, we have seen a steady stream of evidence about how the ensuing shutdown has affected women. Our colleagues with children and elder care

responsibilities report that it has been very difficult to juggle between those obligations and work. Many of us have experienced this for ourselves. The division that separates work from home has collapsed, threatening the very notion of “work-life balance.” And, increasingly, some employers have begun to reshape what used to be the private domain of family and home through “work at home” requirements that disregard the ways in which care work happens. These requirements add to the burdens on workers already struggling to accommodate new working arrangements.

A preliminary study, “The Impact of COVID-19 on Gender Equality,” by researchers at the National Bureau of Economic Research states:

An even more important channel for differential impacts on women and men is that in the course of the pandemic, most US states along with other countries have decided to close schools and daycare facilities. Worldwide more than 1.5 billion children are out of school right now. This has dramatically increased the need for childcare. In addition, grandparent-provided childcare is now discouraged due to the higher mortality rate for the elderly, and given social distancing measures, sharing childcare with neighbors and friends is very limited also. Thus, most families have no choice but to watch their kids themselves. Based on the existing distribution of child-care duties in most families, mothers are likely to be more affected than fathers. Single mothers, of which there are many in the United States, and who are often in a disadvantaged economic position to begin with, will take the biggest hit.

In the same study, the authors report that among women who work full-time and are in heterosexual marriages with children, 86% of their spouses also work full-time. (Among men who work full-time and are in heterosexual marriages with children, only 52% of their spouses also work full-time. A married working father is three times more likely to have a stay-at-home spouse than a married working mother.) In these families, typically one caregiver provides more care. In heterosexual couples, that person is generally the mother. According to the study:

It appears likely that much of this uneven distribution of the burden of childcare will persist during the current crisis; the factors that initially led to this arrangement (which could include relative income, relative bargaining power, and the influence of traditional social norms and role models [...]) will continue to apply, and “retraining” one spouse on short notice may not be practical. If we assume that the relative distribution of the burden stays at 60-40 and childcare needs rise by 20 hours/week during the crisis, full-time working women would need to increase their childcare hours by 12 hours vs. 8 for men.

The 60-40 allocation is for childcare alone. We note that women do twice as much domestic labor of all kinds even in dual-earner families.

With the requirements of isolation, and with access to family, institutional, and social support systems cut off, this workload is likely to rise.

For single parents who are mostly women the impact is even more dramatic: “21 percent of all children live only with their mother, compared to 4 percent living with their father only. Thus, the current crisis will affect mothers very disproportionately.” In addition, rates of family violence have risen sharply, creating greater instability and stress on the women who are the vast majority of victims of intimate partner violence (IPV).

2. Professional Effects on Women Academics

Professors are not exempt from unequal distributions of domestic labor. Nor are they immune to IPV. Empirical research from before the pandemic has revealed a pattern of gender bias in legal academia, including greater expectations that women provide “academic caretaking” and other forms of service work to students, colleagues, and the institution as a whole. These workplace responsibilities have only intensified in recent months with classes online, more frequent private remote student appointments, and additional meetings on needed policy changes to address the pandemic.

Consequently, the result of the gendered effects of COVID-19 are now becoming apparent in academia. An article in *Inside HigherEd* states that evidence is emerging that single author journal article submissions by women have fallen during the pandemic. This article has led to further examination of the rate of women’s submission to journals. *The Lily* reports that in some fields, since the shutdowns began, the rate of submission by men has risen by 50% while women’s submission rates have fallen. As most summer camps have remained closed and plans for fall reopening of daycares/schools remain uncertain, women who have shouldered the childcare burden have had little time to produce academic scholarship.

In addition to the stress of the pandemic, the killing of Breona Taylor, Ahmaud Aubery, George Floyd, and others and the ongoing nation-wide protests against police violence have profoundly affected and increased the demands on African American faculty and other faculty of color. We urge law reviews and administrations to consider the multiplier effect that these events have had on women faculty of color.

Women law professors in heterosexual family arrangements and single parents are likely to have similar decreases in productivity to that seen in other academic fields. The pandemic lockdown struck in the middle of Spring 2020. It is likely now that we will see decreasing journal article

submissions by women in August 2020 and stretching into the next several cycles.

3. The Need for Awareness and Action

We ask that law journal editors be aware of the gendered impacts of COVID-19 on legal scholarship and academia and take proactive measures to include women scholars in all their issues. Furthermore, women may submit essays and shorter work, which journals should weigh carefully. Journals should publicize their interest in shorter works, as well as work that is at an earlier stage of development than is typical for submission. Deadlines and schedules should be flexible to accommodate the needs of women shouldering multiple burdens.

We urge promotion and tenure committees to also be aware of these effects. A delay of the tenure clock may be insufficient to address the ongoing effects of the pandemic on women faculty, though we urge schools to offer this delay as a threshold. Schools should proactively provide ways for isolated faculty members to engage in scholarly collaborations and avail themselves of support systems.

Law school administrations should also provide as much flexibility as possible, working with affected faculty to identify how the institution can support them. The pandemic, which has required social distancing and isolation, makes it difficult to seal off the “work-day” from family care when daycare and schools are unavailable. While it has been unavoidable that our homes have become, in some measure, our workplace and our children’s classrooms, this does not give employers leave to unilaterally reconfigure these spaces.

COVID-19 has been a stressful ordeal. And it is ongoing. We continue to struggle with the uncertainties of our private and work lives. At this moment, we ask that law review editors, deans and other administrators, and promotion and tenure colleagues understand and accept that women are facing an unequal burden and respond accordingly to support gender equity.

Sincerely,

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