

2022

Stereotypes, Sexism, and Superhuman Faculty

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Online ISSN: 2643-7759

Recommended Citation

Teneille R. Brown, *Stereotypes, Sexism, and Superhuman Faculty*, 16 FIU L. Rev. 83 (2021).
DOI: <https://dx.doi.org/10.25148/lawrev.16.1.8>

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STEREOTYPES, SEXISM, AND SUPERHUMAN FACULTY

Teneille R. Brown*

1.	The Feedback Loop of Stereotypes, Dehumanization, and Discrimination.....	83
2.	The Pitied, Admired, Envied and Condemned	86
3.	Ambivalent and Benevolent Sexism: women are wonderful but weak	87
	A. Debunked Motherhood Myths Are Still Widely Believed	90
	B. To “Have it All” as a Working Mom, You’d Better be Wealthy	91
4.	A Dramatic Pivot: The COVID-19 Crisis and the SCM.....	92
5.	Law Schools Have Ignored the Needs of Their Faculty Who are Parents.....	93
6.	Stereotypes of Superheroes.....	96
7.	Explaining the Disconnect Between Protected Students and Ignored Faculty.....	97
8.	Faculty Do Not Wear Capes	98

1. THE FEEDBACK LOOP OF STEREOTYPES, DEHUMANIZATION, AND DISCRIMINATION

I come at this topic from my research into the dehumanization of people with substance use disorders. My perspective might therefore seem a bit far afield from the expertise of those who have spent decades focusing on employment and gender discrimination. But stick with me. The psychology of dehumanization actually has much to say about how society in general and law schools in particular have failed to respond to the COVID-19 care crisis.

In my previous research, I explored the crushing stigma people with substance use disorders experience, which leads to, and is fed by, the criminalization of addiction.¹ Society condemns this group in part because

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¹ Teneille R. Brown, *The Role of Dehumanization in Our Response to People with Substance Use Disorders*, 11 FRONTIERS PSYCHIATRY 1, 1 (2020); Teneille R. Brown, *Treating Addiction in the Clinic Not the Courtroom: Using Neuroscience and Genetics to Abandon the Failed War on Drugs*, 54 IND. L. REV. (forthcoming, 2021).

their negative outcomes are perceived to be under their control and avoidable.² As a result, they are denied many of the mental attributes that make us uniquely human. This is essentially the mechanism for dehumanization—denying groups the capacities to have complex thoughts and feelings.³

In some cases, the dehumanization is extreme and grotesque, and in others it can be much more subtle or even superficially viewed as complimentary. Either way, when groups are dehumanized, their individuality is ignored in favor of crude group stereotypes that are treated as immutable or even hereditary. These stereotypes are in fact almost always socially constructed to maintain power hierarchies.⁴ Indeed, this is likely why stereotypes exist—to justify discrimination against the less powerful, but potentially competitive, outgroups.⁵ Once a group is dehumanized through stereotypes, it experiences the stigma of social distancing, shame, and blame that is used to justify its disparate policy treatment. Stereotypes, prejudice, discrimination, and stigma thus all sit in a complicated feedback loop, reinforcing the idea that the marginalized deserve to be where they are. Breaking down this feedback loop is the common purpose of social justice work.

Powerful people dehumanize outgroups by claiming they have minds that are deficient in either one or both of two domains. These two domains are referred to as *warmth* and *competence*.⁶ How a group is classified on warmth and competence depends on their prestige and ability to control resources and occurs as a result of learned and reinforced cultural

² Amy J.C. Cuddy et al., *When Professionals Become Mothers, Warmth Doesn't Cut the Ice*, 60 J. SOC. ISSUES 701, 703 (2004).

³ Kurt Gray et al., *Mind Perception Is the Essence of Morality*, 23 PSYCH. INQUIRY 101, 103–04 (2012). “[P]eople perceive minds along two independent dimensions. The first dimension, *experience*, is the perceived capacity for sensation and feelings (e.g., hunger, fear, pain, pleasure, and consciousness). The second, *agency*, is the perceived capacity to intend and to act (e.g., self-control, judgment, communication, thought, and memory). . . . Ascriptions of rights were correlated with perceptions of experience, whereas ascriptions of responsibility were correlated with perceptions of agency.”

⁴ John T. Jost & Mahzarin R. Banaji, *The Role of Stereotyping in System-Justification and the Production of False Consciousness*, 33 BRIT. J. SOC. PSYCH. 1–27 (1994); Rachel A. Connor & Susan T. Fiske, *Warmth and Competence: A Feminist Look at Power and Negotiation*, in APA HANDBOOK OF THE PSYCHOLOGY OF WOMEN 1, 5 (C. Travis & J.W. White eds. 2018).

⁵ See generally John T. Jost et al., *Fair Market Ideology: Its Cognitive-Motivational Underpinnings*, 25 RSCH ORGANIZATIONAL BEHAV. 53 (2003).

⁶ Depending on the research team or specific model employed, warmth and competence might be referred to as experience/community and agency, sociality and intelligence, or human nature and human uniqueness. While there are fine-grained distinctions between these models, they have considerable overlap and for the purpose of this article the differences are not significant. See Mengyao Li et al., *Toward a Comprehensive Taxonomy of Dehumanization: Integrating Two Senses of Humanness, Mind Perception Theory, and Stereotype Content Model*, 21 TPM 285, 288–89 (2014).

stereotypes.⁷ The primary model that explores how ratings of warmth and competence predict social prejudice and dehumanization is called the Stereotype Content Model (SCM). The SCM was developed by Amy Cuddy and Susan Fiske. It has been globally and extensively researched, and has provided insights into how groups with some positive attributes can nonetheless be negatively stereotyped.⁸

The warmth dimension of the SCM captures a group's perceived *intentions* with regard to society—their compassion, feelings, experience, cooperation, or trustworthiness. The competence dimension, on the other hand, measures a group's perceived *capacity* to carry out these intentions—their intelligence, agency, autonomy, or dominance.⁹ Most disadvantaged outgroups are classified as low in either warmth or competence, but “drug addicts”¹⁰ and the homeless have the misfortune of being deemed extremely low in both. Drug addicts are considered untrustworthy and cold (low warmth), as well as lazy and irrational (low competence). Unfortunately, these classifications have real-world consequences. People with substance use disorder are condemned and consistently treated as the “lowest of the low” on social scales. This explains why their health, housing, and employment needs have so often been ignored, and why stigma continues to be the biggest obstacle to treatment.

Like other condemned groups, people experiencing homelessness and people with substance use disorder are clumped together in popular culture as a mindless and monolithic bunch. A heterogeneous and large group cannot possibly be described as universally sharing characteristics of low warmth and low competence. But the point of the SCM is not to validate stereotypes. It is to explain how inaccurate assumptions about a group's warmth and competence maintain the status quo.

Most groups are not as negatively stereotyped as individuals with substance use disorder. At the opposite end of the spectrum are the most beautifully realized and individuated specimen of human. Unlike the many marginalized groups who are tokenized—in that individual examples are perceived to represent their entire group—this powerful, admired group is

⁷ Thomas Eckes, *Paternalistic and Envious Gender Stereotypes: Testing Predictions from the Stereotype Content Model*, 47 *SEX ROLES* 99, 99 (2002).

⁸ Susan T. Fiske, *Stereotype Content: Warmth and Competence Endure*, 27(2) *CURRENT DIRECTIONS PSYCH. SCI.* 67, 71 (2018).

⁹ See generally Susan T. Fiske et al., *A Model of (Often Mixed) Stereotype Content: Competence and Warmth Respectively Follow from Perceived Status and Competition*, 82 *J. PERSONALITY & SOC. PSYCH.* 878 (2002).

¹⁰ The term “addict” itself is dehumanizing, and thus should be avoided when referring to people with substance use disorder or problem drug use. However, as the psychology research attempts to capture the experience of stigma and dehumanization, the more humanizing language is not used in the studies. I will use “addict” when the research does.

allowed to experience the full range of complex, individuated human emotion and thought.¹¹ In the United States, this influential group has historically been narrowly circumscribed: heterosexual, educated, middle-class, Christian, male, white, Anglo-Americans.¹² This is the ingroup standard against which everyone else in society must be compared. It is their gaze that has been prioritized, their stereotypes that trickle down through every level of society to create social, institutional, and self-stigma.

With drug addicts on one end, and powerful white men at the other, there is tremendous room in the middle for more subtle degrees of dehumanization. Rather than representing a one-dimensional construct of antipathy, the SCM reveals how prejudice can be more nuanced, even ambivalent. That is, most groups can be rated as average or high in one domain, and low in another. This is the real insight of the SCM model. Ambivalent stereotypes facilitate punishing those who do not cooperate with the dominant men, or who pose threats of resource competition. However, those who cooperate and assist the powerful men are valued and protected for their warmth. This is how powerful groups gain the backing of the less powerful.

2. THE PITIED, ADMIRER, ENVIED AND CONDEMNED

Because humans love false dichotomies, it turns out that an enormous amount of the variance between groups can be explained by ratings of warmth and competence.¹³ Multiple research teams have plotted social perceptions of groups on these two scales, with surprising consistency between participants and studies. Only powerful men and some student groups can be both high in warmth and competence. The rest of us must experience gains in one domain only by countervailing reductions in the other (i.e., ambivalence).

Asians, Jewish people, technology experts, the uber-rich, lesbians, and professional women are respected for their perceived competence, but are then viewed as lacking in warmth.¹⁴ These groups are envied, and subgroups may even be the targets of seemingly positive labels like “model minority.” This label is nonetheless dehumanizing in that it engenders prejudice while assuming homogeneity between heterogeneous minds. On the flipside, people

¹¹ Sharon Fries-Britt & Kimberly Griffin, *The Black Box: How High-Achieving Blacks Resist Stereotypes About Black Americans*, 48 J. COLL. STUDENT DEV. 509 (2007).

¹² Cuddy et al., *supra* note 2, at 703.

¹³ “The basic dimensions of warmth and competence account for 82% of the variance in perceptions of everyday social behaviors.” Susan T. Fiske et al., *Universal Dimensions of Social Cognition: Warmth and Competence*, 11 TRENDS COGNITIVE SCIS., 77, 77 (2007).

¹⁴ Monica H. Lin et al., *Stereotype Content Model Explains Prejudice for an Envied Outgroup: Scale of Anti-Asian American Stereotypes*, 31 PERSONALITY AND SOC. PSYCH. BULL. (2005).

with disabilities, children, Italians, the elderly, and housewives are valued for their perceived warmth, but are considered to be lacking in competence.¹⁵ These groups are not a threat, but they need protection because they are considered to lack agency and autonomy. Where groups fall on these two dimensions explains our default social response to them.

3. AMBIVALENT AND BENEVOLENT SEXISM: WOMEN ARE WONDERFUL BUT WEAK

*“Man is, or should be, woman’s protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.”*¹⁶

Stereotypes of women typically fall into the ambivalent sections of the SCM model, in that they are neither universally negative nor positive.¹⁷ Bluntly, women tend to be either respected or liked, but never both.¹⁸ Women who fit traditional gender roles of nurturing and warmth are extended protection and love. This is the benevolent part of ambivalent sexism. Those who are seen as expressing their agency and self-determination are viewed as competing with men, which generates hostility. Ambivalent sexism theory contends that hostile and benevolent sexism are “complementary ideologies that present a resolution to the gender relationship paradox.”¹⁹ What *is* this relationship paradox?

In modern times, dominant men do not always harbor absolute hostility toward women. They depend on heterosexual women for their sexual and domestic relationships. Men therefore praise women for traditional femininity and warmth, which protects the patriarchy and their sexual access.²⁰ Older, one-dimensional models of antipathy toward women failed to explain this interdependence. To be sure, sexism rooted in pure hostility still exists. But as society has become more egalitarian, more ambivalent forms of sexism and gender stereotypes have developed.

¹⁵ Cuddy et al., *supra* note 2, at 703.

¹⁶ *Bradwell v. State*, 83 U.S. 130, 141 (1873) (Bradley, J., concurring).

¹⁷ Connor & Fiske, *supra* note 4, at *6.

¹⁸ Peter Glick & Susan T. Fiske, *The Ambivalent Sexism Inventory: Differentiating Hostile and Benevolent Sexism*, 70 J. PERSONALITY AND SOC. PSYCH. 491, 507 (1996).

¹⁹ Rachel Connor et al., *Ambivalent Sexism in the Twenty-First Century*, in THE CAMBRIDGE HANDBOOK OF THE PSYCH. OF PREJUDICE 295 (Sibley & F. K. Barlow eds., Cambridge Univ. Press 2017).

²⁰ See Dorothy Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 AM. U. J. GENDER & L. 1, 16 (1993). Because this operates due to heterosexual interdependence, ambivalent sexism offers unique protections to traditional, dominant-group (white) women, and denies protection to women of color, lesbians, or those who are non-binary. See also Connor, *supra* note 19.

Benevolent sexism explains the ostensibly positive side of gender differentiation, where traditional women are revered and may even be evaluated more favorably than men.²¹ However, this affection is deeply sinister. Women are idealized exclusively as caretakers—as wives and mothers. This benevolence also demeans mothers and wives as being in need of male protection, and polices women by rewarding only those who play supporting roles to cis-men.²² As one team put it, “stereotypes provide the ‘script’ for the performance of gender with negative consequences for those who fail to ‘learn their lines’ or ‘stick to the script.’”²³

The condescension of benevolent sexism can be witnessed in many cultures and religions, and reflects the idea that women are wonderful, but weak. This maintains male dominance by suggesting women are not serious competitors for prestige, leadership, or control of resources, and can be kept in inferior, low-status roles. Justice Brennan echoed these concerns in *Frontiero v. Richardson*, when he wrote that a certain “‘romantic paternalism’ . . . in practical effect, put women, not on a pedestal, but in a cage.”²⁴ Unfortunately, traits associated with warmth have traditionally been considered low-status. Lest we think that only the dominant men can perpetuate these monolithic views, anyone may be complicit in furthering the stereotypes that women are high in warmth and low in competence, especially if they desire to view the world and their place in it as just.²⁵

If it is important for people to believe that the world they inhabit is fair, they will find ways to rationalize it as such. This is called “system justification theory,” and it is related to myths of meritocracy and conservative political ideologies.²⁶ Relatedly, those who seek order and hierarchy tend to believe that the hierarchies that have developed are natural and just, and should stay the way they are.²⁷ As a result, individuals who are high in system justification often ignore the role of stereotypes in discrimination. They fail to see the positive feedback loop between socially-constructed stereotypes, dehumanization, and discrimination, instead seeing

²¹ Glick & Fiske, *supra* note 18, at 493.

²² Connor & Fiske, *supra* note 4, at *7.

²³ Thekla Morgenroth & Michelle K. Ryan, *Gender Trouble in Social Psychology: How Can Butler's Work Inform Experimental Social Psychologists' Conceptualization of Gender?*, 9 FRONTIERS PSYCH. 1, 4 (2018).

²⁴ *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973).

²⁵ See generally John T. Jost et al., *A Decade of System Justification Theory: Accumulated Evidence of Conscious and Unconscious Bolstering of the Status Quo*, 25 INT'L SOC'Y POL. PSYCH. 881 (2004).

²⁶ See John Jost & Orsolya Hunyady, *The Psychology of System Justification and the Palliative Function of Ideology*, 13 EUR. REV. SOC. PSYCH. 111 (2002).

²⁷ This is related to the “social dominance orientation” construct, whereby an individual supports group-based hierarchies and believes one’s own group should socially dominate other groups.

the resulting hierarchy as fair and inevitable.²⁸ They find support for male dominance in ambivalent sexism and the fact that empirically so few women have risen to the top to be leaders.²⁹

When women began entering the workplace in large numbers in the middle of the last century, there had to be a corresponding sanction to buck this trend. The stereotype of working women as cold and less competent than men immediately surfaced to punish women who began earning their own incomes. While traditional, nurturing women who raise children and stay at home are considered warm but not competent, professional women are still viewed as more competent than warm, but still less competent than men.³⁰

Research shows the dark side of benevolent sexism. While it can lead to support for gender equality policies, this only applies to hiring women in traditionally female jobs. Benevolent sexism undermines true equality because it leads to occupational gender segregation. It can also lead to complacency in promoting women to authority positions, or in male-dominated industries.³¹ Finally, employers who fail to promote true gender equity can point to their benevolent attitudes toward women as some sort of defense.

Importantly, ambivalent sexism does not operate identically across subgroups of women. Lesbians and Black women are considered more masculine and dominant, and thus more competent, but at greater expense to their warmth dimensions.³² Older women are considered competent and cold, with words like “unapproachable” and “angry” often being used to describe spontaneous impressions from their faces.³³ Insufficient research to date has studied stereotypes that attach to gender as a non-binary construct.³⁴ More research must be done on how professional stereotypes apply to those who pose more radical challenges to gender differentiation. Trans and gender fluid

²⁸ This is why diversity, equity, and inclusion efforts are so important, but also insufficient. Not only do there need to be diverse voices that can speak to the unfairness of the system, but the stereotypes of women and people of color as poor leaders must be smashed by examples. We have to halt the feedback loop, and can only do this when we stop penalizing displays of warmth.

²⁹ John T. Jost & Aaron C. Kay, *Exposure to Benevolent Sexism and Complementary Gender Stereotypes: Consequences for Specific and Diffuse Forms of System Justification*, 88 J. PERSONALITY & SOC. PSYCH. 498, 499 (2005).

³⁰ Connor & Fiske, *supra* note 4, at 6.

³¹ See Ivona Hideg & D. Lance Ferris, *The Compassionate Sexist? How Benevolent Sexism Promotes and Undermines Gender Equality in the Workplace*, 111 J. PERSONALITY & SOC. PSYCH. 706, 722 (2016).

³² See Susan T. Fiske, *Intergroup Biases: A Focus on Stereotype Content*, 3 CURRENT OP. BEHAV. SCIS. 45 (2015).

³³ See Clare A.M. Sutherland et al., *Face Gender and Stereotypicality Influence Facial Trait Evaluation: Counter- Stereotypical Female Faces are Negatively Evaluated*, 106 BRIT. J. PSYCH. 186 (2015).

³⁴ Fiske, *supra* note 8, at 70.

individuals likely experience even stronger forms of prejudice and dehumanization.³⁵ Despite important differences between how subgroups of women, and even career women, are stereotyped, research suggests what we all know to be true—that *all* professional women encounter the “tightrope problem.”

The tightrope problem is where women must consistently navigate the tradeoffs between warmth and competence to dodge the negative stereotypes thrown their way. Too competent, and you might be seen as an ice queen. Too warm, and you will not be taken seriously as a leader. Importantly, while warmth might be valued generally as a low-status trait, in the workplace, and particularly in law schools, competence is king. This makes it very difficult for women who identify as compassionate or empathic to maintain their authentic selves in professional legal settings, which makes walking the tightrope even harder. And if women happen to veer into the entirely normal, but deeply unprofessional world of being emotional, then this can negatively affect their careers for decades. Quite simply, many professional women must deny the complexity and richness of our humanity to be taken seriously by our peers.

A. Debunked Motherhood Myths Are Still Widely Believed

The tightrope professional women must navigate becomes even harder if they become moms.³⁶ Indeed, research shows that when professional women become mothers, they trade perceived competence for perceived warmth. Frustratingly, working men are not required to make this sort of trade; professional fathers gain in warmth while maintaining their perceived competence.³⁷ Because of this, men can discuss their children and be perceived as both increasingly warm and maximally competent. However, women have learned that discussing child care too much will prompt questions like, “Can you really manage the profession at the same time as raising [your] children?”³⁸

Working moms face contradictory norms in modern society.³⁹ While they are more likely than women fifty years ago to be applauded for their

³⁵ Morgenroth & Ryan, *supra* note 23, at 6.

³⁶ The research here focuses on motherhood, though it is quite likely the same stereotypes exist for women who care for others, parents, friends or partners. This essay will focus on the role of professional mothers.

³⁷ Cuddy et al., *supra* note 2, at 701.

³⁸ *Id.*

³⁹ While working fathers can experience contradictory norms, they are not punished with lower competence ratings when they become fathers. Thus, while policies that fail to accommodate working parents negatively impact all parents, it is women who take the most significant career hit.

agency, they are still expected to take on a greater share of the child-care and domestic duties at home. These attitudes rely on false but oft-circulated motherhood myths that men and women adopt, which stem directly from ambivalent sexism. You have likely heard these myths, and perhaps you once believed them to be true. They include the assumption that at-home mothers are better bonded with their children, that children are healthier and more well-adjusted when the mother stays home, that men are inferior caregivers, and that mothers who work outside of the home are neglecting their children in some way.⁴⁰ Despite considerable empirical evidence to the contrary, these myths serve to justify gender discrimination and inequities in societies that superficially permit women to work.⁴¹ Women can perpetuate these myths just as well as men. However, when women reinforce the motherhood myths, the sexism is more likely to “go undetected due to the reluctance of women to recognize that they might be harmed by a member of their own gender group.”⁴²

B. To “Have it All” as a Working Mom, You’d Better be Wealthy

These myths circulate invisibly around working mothers, forcing them into unwinnable binds of guilt and shame. For those who are financially privileged enough to afford childcare, they can perhaps manage to keep their heads above water by cobbling together an expensive and intricate network of preschool, elementary school, in-home care, after-school programs, camps, and sitters. But what they gain in mental health, they lose in social derision. Women who are financially well off are more likely to be punished for appearing not to *need* to work, but instead doing so for purely selfish reasons.⁴³

If working parents make enough money or have enough family support, they just might make it work. But the resulting patchwork of childcare is delicate, and only works when everyone is exactly on time and *no one* is sick. Even this might not be enough, if parents are expected to attend evening talks or dinners, or if they like their houses to be clean, their kids fed, or their laundry washed. To be sure, “having it all” often requires significant financial privilege. Even then, any semblance of “work-life balance” may be rickety and ephemeral. If any piece of this puzzle disappears, the whole thing falls apart.

⁴⁰ Catherine Verniers & Jorge Vala, *Justifying Gender Discrimination in the Workplace: The Mediating Role of Motherhood Myths*, 13 PLOS ONE 1, 2 (2018).

⁴¹ *Id.*

⁴² *Id.* at 3.

⁴³ Cuddy et al., *supra* note 2, at 706.

4. A DRAMATIC PIVOT: THE COVID-19 CRISIS AND THE SCM

The year 2020 was a year of dramatic pivots. We pivoted quickly to online teaching. We pivoted to wearing masks and ordering groceries online. We pivoted to our children being home with us, to no museums, no aquariums, no playdates. So we, too, now make a sharp turn from theory to real life. This next section will transition to explaining how the SCM model, with depressing precision, predicts the crisis so many working parents, but particularly mothers, are experiencing.

The global pandemic has shattered the fragile balance working moms had carefully coordinated, blowing it over like the flimsy house of cards that it was.⁴⁴ Many of our hard-fought wins evaporated, as 80% of the whopping 1.1 million workers who left the labor force in September 2020 were women.⁴⁵ It is believed that many women stopped looking for work because schools were restarting, with districts deciding to remain entirely online. At the same time, workplaces were no longer permitting many employees to work from home. The unavailability of affordable and safe child and elder care forced many women to leave the labor market entirely.

If women had male partners who worked, we might ask why it is that women were much more likely to be the ones to stay home. There seem to be two main reasons for this—both resulting from sexism. The first is the sad reality that women are more often working in jobs that are paid less, and so their lost income would be easier to lose. And the second reason is the deep social stereotype that women are better caretakers, and that it is their primary job to nurture their children. Together, these pressures resulted in many, many more women than men exiting the workplace in the fall of 2020.

When the lockdowns went into effect, and our schools and daycares closed and in-home care services stopped, for many of us the jig was up. It was no longer possible to pretend that we had found that magical balance between mothering, caring for our parents, and professional duties. Some of us struggled to find in-home care providers on a moment's notice. Some had partners who could stay at home with us to shoulder these new burdens, but with inadequate workspace or privacy. Some of us were completely alone.

⁴⁴ Kim Brooks, *Feminism Has Failed Women*, N.Y. TIMES (Dec. 23, 2020), <https://www.nytimes.com/2020/12/23/opinion/coronavirus-women-feminism.html> (“If the pandemic undid three decades of progress on gender equality, one has to wonder: How real was that progress in the first place?”).

⁴⁵ Claire Ewing-Nelson, *Four Times More Women Than Men Dropped Out of the Labor Force in September*, NAT'L WOMEN'S L. CENTER (Oct. 2, 2020), <https://nwlc.org/resources/four-times-more-women-than-men-dropped-out-of-the-labor-force-in-september/> (“Over 1.1 million workers ages 20 and over dropped out of the labor force last month – meaning they are no longer working or looking for work. Of the workers who left the labor force, 865,000 (80.0%) were women, including 324,000 Latinas and 58,000 Black women.”).

Many of us now had to become full-time elementary teachers, playmates to preschool kids, and in-home support for our parents, while also juggling our full-time faculty careers. The dishes piled up. The monotony of what to make for lunch sometimes felt like too much. The stress of having no child care during a global pandemic was understandably mounting.

This is the COVID-19 care crisis.

Social media groups were flooded with judgment for whatever awful “choice” working mothers made. Send your kid to school in-person so you can put food on the table and stay sane, and you’re cold and callous. Keep your children home and you’re smothering your kids and keeping them from necessary social interaction. Sound familiar? Competence or warmth. Cold or smothering. We could never possibly be both.

5. LAW SCHOOLS HAVE IGNORED THE NEEDS OF THEIR FACULTY WHO ARE PARENTS

Despite our relative privilege, lawyers are not immune to the pandemic’s breathtaking ability to expose gender inequality. While working moms in other industries are afforded far fewer supports, and often cannot work from home, the lack of support offered by law schools and law firms has still been appalling. We risk losing much of the fragile equality we have won, as women scale back their pursuit of leadership positions, and have less focused time to spend researching cases, preparing for class, giving talks, or writing. The data are in: women lawyers’ productivity plummeted during the pandemic.⁴⁶ This carried over to academic writing generally, where women’s submissions nosedived in the spring and summer.⁴⁷ Women with children have lost 500 hours of research time, which makes them “disproportionately less likely to be promoted in rank and perhaps even more likely to drop out of academia altogether.”⁴⁸

⁴⁶ Cynthia L. Cooper, *Work-Life Imbalance: Pandemic Disruption Places New Stresses on Women Lawyers*, ABA (Dec. 18, 2020), <https://www.americanbar.org/groups/diversity/women/publications/perspectives/2021/december/worklife-imbalance-pandemic-disruption-places-new-stresses-women-lawyers/>; Tracy Thomas, *No Room of One’s Own: Data Suggest Covid-19 Is Negatively Impacting Women’s, but not Men’s, Research Productivity*, GENDER & L. PROF BLOG (Apr. 27, 2020), https://lawprofessors.typepad.com/gender_law/2020/04/no-room-of-ones-own-data-suggest-covid-19-is-negatively-impacting-womens-but-not-mens-research-produ.html.

⁴⁷ Colleen Flaherty, *Something’s Got to Give*, INSIDE HIGHER ED (Aug. 20, 2020), <https://www.insidehighered.com/news/2020/08/20/womens-journal-submission-rates-continue-fall>.

⁴⁸ Andrew Van Dam, *We’ve Been Cooped Up with Our Families for Almost a Year. This Is the Result.*, WASHINGTON POST (Feb. 16, 2021, 6:53 AM), <https://www.washingtonpost.com/road-to-recovery/2021/02/16/pandemic-togetherness-never-have-so-many-spent-so-much-time-with-so-few/>.

Without reading anything about ambivalent sexism or the SCM, law professors who are moms already knew this would happen. We know the rules, which apply to even the most powerful women among us. When female faculty hire many sitters or rely on their partners to pick up more of the household slack, they are considered bad mothers. When female faculty miss meetings and functions to stay at home with their children, they just aren't taking their jobs very seriously.

Thus, when a public health emergency developed, it is no wonder that we stuck to the script. We picked up the pieces and made our households function in the face of a radically new normal. We also instinctively knew that we should keep quiet about these new responsibilities, and only share frustrations with sympathetic working parents. This is what many of us did. If faculty must complain, it should be about how busy we are with work, and only work. Never about child care, not even during a global pandemic where child care has disappeared. This might be why many moms have pretended that everything is ok, and that they are managing just fine during the pandemic. If we complain, and specifically reference the glaring child care inequities this pandemic has exposed, we risk losing the respect for which we have fought so hard. We risk appearing incompetent.

Historically, law is a male-dominated profession (and still is in many markets). The history of male power, bravado, and aggressiveness has perhaps made it even less accommodating of warmth and compassion than other professions. While warmth traits might provide the invisible scaffolding that keeps law schools together, this is typically not rewarded as an important contribution. Not only is service notoriously undervalued in every objective way, but emotional displays, especially by women, are often treated by law professors as pathetic spectacles.

Working parents were expected to keep our composure during this pandemic, despite faculty being expected to attend lengthy online meetings in the middle of the day. Stuck at home, some faculty were lonely and reasonably wanted to chat a bit more before and after Zoom meetings. They craved connection. Some of the working parents did too, but had no time for it. For those of us overseeing online education and daycare, we grew impatient when meetings veered off of the agenda for too long. We had spelling tests to grade and parent portals to check. We had four-year-olds who had finally grown tall enough to reach the garage door opener, and who were walking into the middle of the street while we were teaching.

While we did not risk failing the bar exam or a class, many of us were still being held to absurd pre-pandemic standards. With budget cuts looming and salary freezes in place, we worried about our institution's financial futures. Yet we were still being asked to submit memoranda explaining why we deserved merit-based pay increases. We were prompted to submit updates

on the papers we had completed, panels we had spoken on, and any media we had done. We were never told that our teaching evaluations would be taken with a large grain of salt given that we were being pulled in new directions, or that our research productivity would be interpreted in light of the heavy toll the pandemic may be taking on us. For several months, there was no indication from anyone at the top that they understood how we were struggling. No one was throwing a life raft, and the faculty parents, mothers *and* fathers, were drowning. Even if the SCM explains why women are the ones who will be dinged as incompetent for mentioning this struggle, or advocating for accommodations, the lack of accommodations was certainly hurting everyone. Meanwhile, many of our colleagues without care obligations were ferociously publishing—taking advantage of fewer work interruptions and travel to write, and write, and write.

As my mental health began to decline, I decided to do the bare minimum to help my first-grader stay on her school schedule. We spent more time outside, playing. I ignored the decade of advice I had been given to keep my kids off of screens. I was staying up until 1:00 a.m., but still not getting everything done. No one was giving me any permission to focus on my kids, but I had the privilege to just seize it and suffer the consequences later. This was survival. Things eased up a bit when I threw my hands in the air and admitted defeat. But I really worried that there *would* be costs in the future—when I would be passed up for all of the goodies that come from productivity: faculty rewards, pay raises, endowed professorships, research stipends. I was already feeling my colleagues passing me by in productivity. While the choice was obvious to me, I remained worried about the impending setbacks to my career. I had only just crawled out of the post-maternity slump and patched together childcare that was working. How many more years would this pandemic set me back? How would this affect faculty who, unlike me, did not yet have tenure?

Periodically, the expectations (and desire!) to be productive would creep back in, and I would panic. In these moments, I tried comforting myself by realizing how relatively privileged I was. There were children in my daughter's class who had to stay home *alone*. Millions have lost their jobs and homes. Our pantry was full. I was lucky. I could work from home; we had terrific high-speed internet and lots of workspace. I even got to enjoy delicious Italian coffee every morning, with my dog by my side. How could *I* possibly complain? While all of this is true, this sort of toxic positivity can anesthetize us to inequality we do not need to experience. There will always be someone who has it worse, and someone whose disadvantage we must publicly prioritize. But within our private backyards, in our own realms, gender inequality is still unfair. This is particularly true given the relative power and resources of law schools to offer workplace accommodations.

Most law schools have the capacity to scale back expectations of working parents. Coordinating with other schools could have eased any consequences for individual schools. Deans could have rather easily changed faculty policies to ease the burden on working parents, such as permitting faculty to opt-out of requirements to report on productivity, messaging to faculty that their struggles were real, or even removing the teaching evaluations from a professor's tenure file. None of these things happened—not at my institution or the institutions of my peers.

6. STEREOTYPES OF SUPERHEROES

Meanwhile, a very different conversation was playing out for our students. Like several of you, our law school has engaged in multiple thoughtful conversations about how best to accommodate them during the pandemic. We were understandably worried about the many ways that the pandemic would be hurting our most vulnerable, by exposing the fault lines in our shaky social structures. Countless hours were spent discussing whether and how to move to mandatory pass/fail grading so that students without caregiving obligations would not be able to exploit this catastrophe to break ahead of their peers. We reached out to students to explore providing internet for them. We emphasized the need to check in on them more. We offered free mental health counseling. Faculty were encouraged to extend greater flexibility on class assignments, and to be as compassionate as possible. Most of our faculty were also admirably quick to support a proposed diploma-privilege for our recent graduates. The care nearly universally shown to our students was a thing of beauty, and I was proud of our faculty for its compassion.

But the fact that these efforts were focused completely on the needs of our students was not lost on me. It was oddly puzzling that a case had to be made that the faculty were struggling too. Indeed, some of the very arguments used to accommodate students applied with equal force to our faculty colleagues, but no one, *absolutely no one*, was talking about this. There was a huge disconnect in our response: charity being shown to students, callousness shown to faculty. Our childless peers were using the pandemic to get a leg up on publishing and classroom innovations, which was terrific for them. But we knew our relative performance would, or merely could, one day be used against us. Some faculty were getting “A’s” during the pandemic, and some of us desperately just hoped to pass.

It took me a few months to find the strength for a mere whisper of advocacy. I harnessed the courage to ask our deans to change the way they communicated with us about expectations, and to include a caveat in the monthly requests for scholarly updates that merely recognized that some of

us were struggling. To their credit, they responded well and complied. But I wasn't asking for policy change, just a token acknowledgment that some faculty were barely keeping their heads above water. At various moments when I dared to suggest to my colleagues that perhaps we could extend as much grace to our colleagues as we were extending to our students, I was mostly met with blinking faces, confused stares, and radio silence. Why would we need to support our faculty *in any way*?

7. EXPLAINING THE DISCONNECT BETWEEN PROTECTED STUDENTS AND IGNORED FACULTY

Stereotypes can operate within social subgroups, such that even within the high-status community of law schools, there can be a hierarchy of the admired, the envied, the condemned and the pitied. As Kurt Gray puts this in terms of dehumanization and mind perception, social groups often cast people as either moral agents or moral patients.⁴⁹ This corresponds to competence and warmth, as the highly competent agents get to act upon the less competent, the vulnerable patients.

The patients here are undeniably our law students. They have capacity but lack relative competence, and are not in competition with us for jobs or prestige. Following the SCM ambivalence model, they are thus permitted to be more warm, emotional, and protected. It is ok if they complain about how hard things are. It is ok if they describe in detail how the lack of childcare is wreaking havoc on their work. We adopt a benevolent role of assistance toward them, which perpetuates the hierarchy while allowing the faculty to appear magnanimous.⁵⁰

Fellow faculty, on the other hand, are not afforded this same compassion. Law faculty are not viewed as proper targets for accommodations because they are not allowed to have the full range of emotions that students are permitted to experience. They appear, and are expected to appear, immune to emotional vulnerability. As the law school culture rewards displays of competence, goal-oriented people like law professors do what is rewarded. In our artificially constructed workplace, we tend to then only see displays of competence. This mistakenly reinforces the

⁴⁹ Kurt Gray & Daniel M. Wegner, *Moral Typecasting: Divergent Perceptions of Moral Agents and Moral Patients*, 93 J. PERSONALITY & SOC. PSYCH. 505, 505 (2009).

⁵⁰ Indeed, even the two primary roles of law faculty, teaching and research, are woefully gendered. Teaching, associated more with warmth and nurturing, often takes a backseat to the higher-status goals of faculty research, as scholarship is aligned more with the competence domain. This might be why in some schools, career-line faculty who primarily teach are not considered as prestigious as those who do more research.

idea that nothing lies beneath the surface, and faculty are capable of muting their emotional reactions with their competence, resources, or both.

In the absence of proactive measures by deans or university administrators, professors who are parents must often suffer in silence or face professional consequences. Administrators, who are professors themselves and may even be parents, may fail to recognize the gender inequality that results from treating all faculty, especially professional women, as invulnerable to anxiety, stress, or emotions.⁵¹ Our cis-masculine stereotypes have been so deeply engrained. Women likely further our own dehumanization by self-censoring any content that depicts us as warm or feeling.⁵² We are law faculty, after all. We are agents, not patients. Most of us did not get where we are by flouting the script.

8. FACULTY DO NOT WEAR CAPES

As it might be clear by now, treating people as superhuman is an insidious and hollow form of adulation. Even though it seems positively valenced, it nonetheless reflects a form of dehumanization. Take for example the way elite Black athletes are described. Studies have documented how animal metaphors are often used to portray elite Black athletes as possessing superhuman strength and an incapacity to feel pain.⁵³ A thorough review of ESPN's College Game Day broadcasts revealed how Black players were much more likely to be mentioned for their physicality and toughness—their use of “muscle” to “take a beating.”⁵⁴ For example, one commentator said of a Black football player, he “personifies the toughness it takes to play this sport at a high level. Knocked unconscious in the Tigers' last game at Wake Forest. Cleared his concussion protocol, good to go.”⁵⁵ These are dehumanizing ways of describing individuals, as they desensitize us to their pain or injuries, which may spill over into other contexts.⁵⁶ Importantly,

⁵¹ While the discrimination might have its roots in ambivalent sexism, the blind spot can certainly negatively affect professional fathers as well.

⁵² Jost & Kay, *supra* note 29, at 499–500.

⁵³ See Siduri Haslerig et al., *Invincible Bodies: American Sport Media's Racialization of Black and White College Football Players*, 55(3) INT'L. REV. SOCIO. SPORT 272, 275, 280–81 (2020) [hereinafter Haslerig et al., *Invincible Bodies*]; Siduri Haslerig et al., *Rationalizing Black Death: Sport Media's Dehumanizing Coverage of Black College Football Players*, in MARGINALITY URBAN CENTER 77, 97 [hereinafter Haslerig et al., *Rationalizing Black Death*] (P. Brug et al. eds., 2019).

⁵⁴ Haslerig et al., *Invincible Bodies*, *supra* note 53, at 281; Haslerig et al., *Rationalizing Black Death*, *supra* note 53, at 90, 94.

⁵⁵ Haslerig et al., *Invincible Bodies*, *supra* note 53, at 281; Haslerig et al., *Rationalizing Black Death*, *supra* note 53, at 94.

⁵⁶ See Haslerig et al., *Invincible Bodies*, *supra* note 53, at 275; Haslerig et al., *Rationalizing Black Death*, *supra* note 53, at 79.

studies have also shown that when college athletes are praised for the strength of their bodies, this makes them appear less agentic, or competent, which leads to reduced empathy for Black people as a group.⁵⁷ This notion of Black people as invulnerable to pain is pervasive. One study found that even medical students believed Black people have thicker, tougher skin.⁵⁸ This led them to think that Black people required lower quantities of prescription pain medication. To this day, Black people are much more likely to be denied prescription pain medication in the face of significant pain.⁵⁹

The idea that Black bodies possess superhuman strength has no doubt resulted in gross injustice. Outwardly positive comments about invincible Black athletes “further a dominant narrative that has dire real-world consequences in terms of reinforcing stereotypes that may lead to Black people being unreasonably considered a lethal threat and jailed or killed for it.”⁶⁰ Erroneous beliefs about invulnerability to pain are associated with greater acceptance of racial disparities, as disparate treatment is not just natural, but now seemingly biologically required.⁶¹

The experience of Black people historically cannot be equated with the experience of law professors, and it would be irresponsible to suggest otherwise. However, the way Black people are praised for their superhuman strength sheds light on how we, too, are praised for our emotional invulnerability, and how this can lead to negative consequences. Being “invulnerable” is no compliment—it renders us *less* human, not more. Praising working parents for juggling childcare and work obligations during a global pandemic without blinking an eye represents a subtle form of dehumanization.

Law faculty are not superhumans, and there is no virtue in regarding ourselves as such. We are individuals—empowered with the full range of complex thoughts and emotional vulnerabilities. This is not to say that all humans experience emotions to the same degree, or that we all draw from the same emotional depth or complexity. But for some, denying our emotional experience is a rejection of the self. Further, treating faculty as superhumans leads to workplace environments that are cold, uncaring, and discriminatory.

Unfortunately, the depth and complexity of the problem is disheartening, and there are no easy solutions. It is not enough to have women

⁵⁷ Mark H. White II & Ludwin E. Molina, *Infracolonizing Praise: Athletic Admiration Decreases Perceptions of Agency and Support for College Athletes' Rights*, 47(4) SOC. PSYCH. 187, 196 (2016).

⁵⁸ Kelly M. Hoffman et al., *Racial Bias in Pain Assessment and Treatment Recommendations, and False Beliefs About Biological Differences Between Blacks and Whites*, 113 PNAS 4296, 4298 (2016).

⁵⁹ *Id.* at 4296.

⁶⁰ See Haslerig et al., *Invincible Bodies*, *supra* note 53, at 286; Haslerig et al., *Rationalizing Black Death*, *supra* note 53, at 96.

⁶¹ Hoffman et al., *supra* note 58, at 4296.

in leadership roles if those women espouse ambivalent sexism in their speech or policies. And it is not enough to respond to requests by working moms for accommodations, as those requests will often render those asking for them less competent. Research does suggest that women take less of a hit to their competence if they frame requests as advocating for others, and when they explicitly draw attention to sexist stereotypes.⁶² Thus, by making colleagues and administrators aware of the SCM and the deep social psychological roots of ambivalent sexism, we can begin to open their eyes. But because of the blow we take to competence when we mention our caregiving roles, professional women cannot make systemic change alone.

⁶² ALICE F. STUHLMACHER & EILEEN LINNABERY, *Gender and Negotiation: A Social Role Analysis*, in HANDBOOK OF RESEARCH ON NEGOTIATION 221, 243 (Mara Olekalns & Wendi L. Adair eds., 2013).