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INSTITUTIONAL SERVICE, STUDENT CARE-WORK,  
AND MISOGYNY: NAMING THE PROBLEM  
AND MITIGATING THE HARM

MARY A. LYNCH & ANDREA A. CURCIO\*

Misogyny “may pursue its targets not in the spirit of hating women but, rather, of loving justice.”<sup>1</sup>

INTRODUCTION

**S**TUDY after study finds that higher education female faculty,<sup>2</sup> and particularly women faculty of color,<sup>3</sup> carry a disproportionate share of student care and institutional service work, much of which remains invisible and uncredited.<sup>4</sup> The time and emotional labor costs of these tasks, which fall asymmetrically on women faculty members’ shoulders, may impede advancement of women in higher education, inhibit their scholarly productivity, and make it more difficult to achieve reputational status and monetary rewards equivalent to comparably situated male faculty.<sup>5</sup>

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\* We write this Article as two women who have each served over twenty-five years in the legal academy. We are grateful to those who assisted us in researching, Fanny Chac and Candace White, as well as those who provided extremely helpful feedback which improved the Article: Melissa Breger, Ray Brescia, Fanny Chac, Christine Chung, Candace White, and Deborah Young. We also thank the *Villanova Law Review’s* annual Norman J. Shachoy Symposium for its support.

1. KATE MANNE, *DOWN GIRL: THE LOGIC OF MISOGYNY* 20 (2018) (emphasis added).

2. The references to female and women faculty in this Article refer to those faculty members who self-identify as such.

3. We recognize that this Article focuses on binary gender groups (men and women) and acknowledge that intersectional identities in terms of race, sexual orientation, and gender identity or expression, create additional challenges and issues that warrant more in-depth analysis. While we don’t discuss all intersectionality issues, we do note that the issues discussed herein are amplified for women of color, *see infra* text accompanying notes 63–65, 72, 149 and we note that mitigation of gender workload inequities must address the particularly heavy service and student care work burdens shouldered by women faculty of color, *see infra* text accompanying note 149.

4. *See infra* Part II (discussing studies).

5. “It is well documented in the literature that female faculty take longer to advance from associate to full professor, or never reach the rank of full professor during their academic careers in research universities.” Courtney Lennartz & KerryAnn O’Meara, *Navigating a Foggy Climate*, in *SUCCESS AFTER TENURE: SUPPORTING MID-CAREER FACULTY* 287 (Vicki L. Baker et al. ed., 2019) (citations omitted); KerryAnn O’Meara et al., *Department Conditions and Practices Associated with Faculty Workload Satisfaction and Perceptions of Equity*, 90 J. HIGHER EDUC. 744, 746 (2019) [hereinafter O’Meara et al., *Department Conditions*] (citing studies demonstrating that inequitable workloads lead to negative career consequences for women and underrepresented minorities).

(1119)

As we discussed in a previous article, current market conditions have led law schools to ask faculty to increase their commitment to service work and student learning.<sup>6</sup> In today's world, it is particularly important that law schools not assume that disparate service and student care workload burdens operate in a gender-neutral manner and by individual choice.<sup>7</sup> Thus, in this Article, based on knowledge gained from moral philosophical analysis and statistical data, we argue that gender disparities in service and care work should be identified as a likely *institutional problem* for every law school,<sup>8</sup> and one that requires *institutional consideration for remediation*.

In this Article, we argue that the policing norms of misogyny, as defined by Professor Manne in her iconic 2018 book, *Down Girl: The Logic of Misogyny*,<sup>9</sup> help explain why higher education institutions and, in particular, law schools, have failed to systematically address and resolve gender disparities in institutional service and care work. Using Professor Manne's analysis, we posit that gender-biased myths reinforce embedded gender disparities in student care and service work and that the myths themselves act as misogynistic enforcement mechanisms. We explore how common institutional explanations for gender disparities are, in fact, gendered *victim-blaming* narratives that discount and may punish those who question patriarchal power structures existent in academic and legal education culture.<sup>10</sup> For example, traditional advice to women faculty, such as "just say no," masks and entrenches long-standing disparities in expectations for women faculty and ignores the harsh realities women face when they seek to upend caregiving norms.<sup>11</sup> We also note that misogyny, as played out on an institutional level, often takes the form of what has been named "soft misogyny," i.e., behaviors by those who espouse a belief in equity and yet make decisions, often subconsciously, that appear fair and driven by individual choice but in fact perpetuate patriarchal structures.<sup>12</sup>

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6. Andrea A. Curcio & Mary A. Lynch, *Addressing Social Loafing on Faculty Committees*, 67 J. LEGAL EDUC. 242, 245–48 (2017) (discussing at Part I changes in legal education that likely will result in increased service and teaching responsibilities as well as fewer full-time faculty available to do the work); Amy C. Bushaw, *Humanizing the Delivery of Legal Education*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 73–89 (Deborah Maranville et al. eds., LexisNexis 2015) (identifying, in a section titled "An Effective and Welcoming Environment for Learning," the need for faculty to devote more time to teaching).

7. Philosopher Kate Manne argues that misogyny is a cultural backdrop that supports a patriarchal social order—both publicly and privately—and we have internalized that misogyny to the point that what appears as "choice" is really obedience to the misogynistic norms. MANNE, *supra* note 1, at 45–48.

8. See *infra* Part I for Professor Kate Manne's cogent cultural analysis and *infra* Part II for the statistical data.

9. MANNE, *supra* note 1.

10. See *infra* Part II.

11. See *id.*

12. Justine A. Dunlap, *Misogyny: The Subtle Perversion of Domestic Violence "Reform"*, 46 SETON HALL L. REV. 775, 778 (2015).

In Part I, we discuss Manne’s conceptualization of misogyny and discuss how that framing plays out when it comes to institutional service and student care work. We posit that while long-standing patriarchal structures have fostered workload gender disparities, misogyny has been the *policing force* that institutionalizes those disparities. In Part II, we review data-based studies that dispel victim-blaming myths, such as “women just volunteer more often” or “women can do less if they just say no,” and explore how these studies intersect with misogynistic policing enforcement mechanisms that ensure continuation of the status quo. In Part III, we argue that law schools need to acknowledge when and how misogyny operates in academic culture and facilitate *institutional* mitigation for this *institutional* problem. This includes upending norms by naming the problem and creating new education and accountability structures, some of which we describe in this Part.

In this Article, we are not advising women faculty to reject wholly their instinct to care or loyally serve the communal enterprise. Nor are we suggesting that student care and community service endeavors cannot be personally rewarding for any faculty member. Rather, we believe that all humans—male and female—possess the capacity to care and serve, and all educators should be aware of the patriarchal norms and sexist cultural myths that tip the scales towards over-care and over-serving by women faculty. Moreover, even for instinctive servers and caregivers, too much of a good thing can turn a joy into a begrudging burden. Thus, we conclude by noting we must recognize both the patriarchal structures and misogynistic enforcement mechanisms at play if we truly want to decrease gendered workload disparities and facilitate the advancement of women faculty.

#### I. MANNE, MISOGYNY AND HIMPATY

In *Down Girl: The Logic of Misogyny*, author, scholar, and philosopher Kate Manne offers a “wholesale rethinking of what misogyny is and how it works.”<sup>13</sup> Manne rejects (as distracting and unhelpful to those who are subject to it) the dominant but “naïve conception of misogyny,”<sup>14</sup> which focuses on individuals who hate “women *qua* women,” or “simply because they are women.”<sup>15</sup> “Misogynists can love their mothers—not to mention their sisters, daughters, wives, girlfriends, and secretaries,”<sup>16</sup> she in-

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13. Clio Chang, *A Man’s World, Reckoning with Misogyny in the Age of #Me Too*, NATION (Sept. 23, 2019), <https://www.thenation.com/article/kate-manne-down-girl-misogyny-book-review/> [permalink unavailable]. The measure of misogyny, in other words, should no longer depend only on the words of men but instead focus on the unequal and often hateful systemic experience foisted on women. “Agents,” Manne says in the second chapter, “do not have a monopoly on the social meaning of their actions.” MANNE, *supra* note 1, at 61.

14. MANNE, *supra* note 1, at 18–19.

15. *Id.* at 18, 32 (emphasis added).

16. *Id.* at 52.

sightfully reminds. Manne explains that misogyny is not about individual men who hate women, but instead is “a social-political phenomenon with psychological, structural, and institutional manifestations” and “a system of hostile forces that by and large *makes sense* from the perspective of patriarchal ideology.”<sup>17</sup>

Manne distinguishes between sexism as the “branch of patriarchal ideology that *justifies* and *rationalizes* a patriarchal social order,” and misogyny as “a name for whatever hostile force field forms part of the backdrop to [a woman’s or group of women’s] actions, in ways that differentiate her from a male counterpart.”<sup>18</sup> She suggests that misogyny primarily actualizes as an expectation that “good” women will naturally desire to provide care to others and valorizes those women who fit the gendered expectation.<sup>19</sup> Conversely, it pushes back against particular “*kinds*” of women—those who challenge gendered norms requiring women to gratefully provide moral goods and resources to men without any expectation for receiving such goods from men.<sup>20</sup> Misogyny also pushes back against “*particular*” women—those who have or take “masculine-coded goods *away* from dominant men.”<sup>21</sup>

Misogyny surfaces in our culture as a systemic and often reflexive enforcement of patriarchal norms, especially the sexist norm that “good” women provide attention, support, service, and care to others,<sup>22</sup> and particularly to privileged men.<sup>23</sup> To maintain a gendered social order, misogyny operates as hostility that arises within all (or almost all) of us when a woman or a group of women defect from the role of “loving subordinate.”<sup>24</sup> When women seek advancement in a masculine-coded and highly prestigious role,<sup>25</sup> unexamined societal expectations for female care-bestowing *obligations* and male *entitlements for receiving* such care can create hostile and uncomfortable reactions against such women.<sup>26</sup> Because of this unexamined and internalized cultural logic, “misogyny is still

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17. *Id.* at 27.

18. *Id.* at 19–20. Manne notes “[s]he may or may not actually *face* these hostile potential consequences, depending on how she acts.” *Id.* at 19.

19. *Id.* at 46–48.

20. *Id.* at 33, 129–30.

21. *Id.* at 33–34, 130 (alterations in original).

22. *Id.* at 46.

23. *Id.* at 11.

24. *Id.* at 49–50, 57–58.

25. In a section of her book entitled “Losing to Misogynists,” Manne examines the research demonstrating discriminatory ranking of equally competent women and men competing for prestigious masculine-coded positions, as well as the effective misogynistic rhetoric used by men competing against women for powerful political positions. *Id.* at 250–67.

26. *Id.* at 49–51. While privileged men may pursue their personal projects without moral censure, misogyny allows the following:

[It] subjects women to what I have come to think of as a kind of tyranny of vulnerability—by pointing to any and every (supposedly) more vulnerable (supposed) person or creature in her vicinity to whom she might

with us.”<sup>27</sup> Manne reminds us that we all have internalized—to a greater or lesser degree—the gender coding of behavioral norms and expectations.<sup>28</sup> Misogyny is how we enforce those norms.

Manne describes misogynistic “norm enforcement mechanisms”<sup>29</sup> which can create disparate harm for women while at the same time masking disparate burdens as choice. What does she mean by a “norm enforcement mechanism?” It is a set of beliefs or practices that “enforces . . . social roles[ ] and extract[s] moral goods and resources from . . . women”<sup>30</sup> either in theory or in practice<sup>31</sup> “while “jealous[ly] hoarding” those goods and resources with moral and collective “approval and admiration” for the “presumptive . . . historical beneficiaries.”<sup>32</sup> When women step out of the social order role, these beliefs or practices also “protest[ ] her nonappearance or supposed negligence or betrayal.”<sup>33</sup>

Manne invites others to use her framing to help explain phenomena that undergird or enforce the patriarchal social order. She suggests doing this by “taking a given set of the social norms to which a particular class of girls and women are subject, and considering not only their content and how they are enforced (or over-enforced), but their specific subsequent impact and interaction with other socially mediated systems of privilege and vulnerability.”<sup>34</sup> This Article responds to that invitation and opens the discussion by naming the policing force of misogyny in the academy: resistance to upending patriarchal norms developed around student care and institutional service work. We suggest Manne’s framing of misogyny as the enforcement mechanism of a patriarchal social order helps explain why academic cultures have tolerated sexist norms that privilege male faculty members’ time to engage in scholarship and have failed to remediate the disparate treatment.<sup>35</sup>

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(again, supposedly) do better, and requiring her to care for them, or else risk being judged callous, even monstrous.

*Id.* at 28. For a discussion of how this manifests in the legal academy, see Sahar Aziz, *Identity Politics is Failing Women in Legal Academia*, 69 J. LEGAL EDUC. (forthcoming 2020).

27. MANNE, *supra* note 1, at xii.

28. *Id.* at 47.

29. *Id.* at 13, 20, 46–47, 68–69.

30. *See generally id.* at xiv.

31. *Id.* at 13.

32. *Id.* at xiv.

33. *Id.*

34. *Id.* at 13.

35. While this Article discusses those norms in context of institutional service and student care work, others have addressed patriarchal norms in context of status issues. *See, e.g.*, Renee Nicole Allen et al., *The “Pink Ghetto” Pipeline: Challenges and Opportunities for Women in Legal Education*, 96 U. DET. MERCY L. REV. 525 (2019); Lorraine Bannai, *Challenged x 3: The Stories of Women of Color Who Teach Legal Writing*, 29 BERKELEY J. GENDER L. & JUST. 275 (2014); Kristen K. Tiscione & Amy Vorenberg, *Podia and Pens: Dismantling the Two-Track System for Legal Research and Writing Faculty*, 31 COLUM. J. GENDER & L. 47 (2015).

Academia is a historically gendered institution in which men have traditionally held higher academic ranks and have had their time for scholarship protected, while they have “failed to recognize, let alone alter, gendered institutional practices that block women faculty’s advancement.”<sup>36</sup> Advancement in academia hinges largely on scholarly productivity.<sup>37</sup> Time is a key “good” that leads to prolific scholarship.<sup>38</sup> Traditionally, male faculty have hoarded this time and have been rewarded for that, while female faculty have been expected to spend their time first in service to the institution and its students, hence, serving her male colleagues by freeing up their time to engage in scholarship.<sup>39</sup> Using Manne’s framework, we suggest that misogynistic enforcement mechanisms perpetuate this system.

One enforcement mechanism involves victim blaming via treating inequity as a matter of choice. Patriarchy needs the “hierarchical nature of gendered social relations” and women’s adherence to caregiving social roles.<sup>40</sup> The caregiving tasks need to be embraced with enthusiasm and to appear as “natural” and “freely chosen” as possible.<sup>41</sup> Manne explains that the “coercive quality” of patriarchy is “better left implicit” or to operate on the “down-low” by being presented as a woman’s preference or choice.<sup>42</sup> Here again, Manne’s insights ring true for female caring and service work, often characterized in the academy as an individual preference, thereby masking the lack of real choice.<sup>43</sup> *Why are women whining when they could change this just by saying no or asking for the same benefits as their male counterparts?* But, as we discuss in Part II, those theoretical choices come with negative consequences that create a double bind when women insist on equal time for individual scholarship pursuits.

Another policing mechanism which Manne contributes to our analysis is the concept of unequal empathy. Manne and her partner coined the

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36. Karen Pyke, *Faculty Gender Inequity and the “Just Say No to Service” Fairy Tale*, in *DISRUPTING THE CULTURE OF SILENCE: CONFRONTING GENDER INEQUALITY AND MAKING CHANGE IN HIGHER EDUCATION* 84 (Kristine De Welde et al. ed., 2014).

37. Whether the primacy of scholarship is itself the result of patriarchy’s influence on the development of the University and hence of modern legal education is itself a separate question. See, e.g., George Critchlow, *Beyond Elitism: Legal Education for the Public Good*, 46 U. TOL. L. REV. 311 (2014); Paula A. Monopoli, *Gender And The Crisis In Legal Education: Remaking The Academy In Our Image*, 2012 MICH. ST. L. REV. 1745; Carlo Pedriol, *Constructing Modern-Day U.S. Legal Education With Rhetoric: Langdell, Ames, and the Scholar Model of the Law Professor Persona*, 66 RUTGERS L. REV. 55 (2014).

38. Lennartz & O’Meara, *supra* note 5, at 288.

39. *Id.* at 289. For a discussion of the disparate time spent on institutional service, see *infra* notes 59–72 and accompanying text.

40. MANNE, *supra* note 1, at 46.

41. *Id.* at 46–67.

42. *Id.* at 46–47.

43. See *infra* Part II (discussing how data belies myths about women faculty’s preference for service); MANNE, *supra* note 1, at 46–47 (describing how misogyny needs to characterize female caring as a healthy choice in order to enforce the patriarchal order).

term “*himpathy*” as the “mirror image” of misogyny.<sup>44</sup> *Himpathy* is a matter of *focused* sympathy toward powerful men in *alignment with the status quo* and the patriarchal power systems that sustain it, as well as *a lack of empathy toward women* who make claims against these men.<sup>45</sup> *Himpathy* happens when we overly sympathize with a man’s need for moral resources and goods while discounting the effect of his actions or omissions on women. That oversympathy or *himpathy* does not work in reverse. We may even blame a woman for taking away from his “goods” or not meeting gendered expectations.<sup>46</sup>

We maintain that law schools have long “*himpathized*” with male colleagues’ needs<sup>47</sup> for scholarship space, time, and energy *and* the associated salary, benefits, and titles while *depending* disproportionately on the uncompensated “goods” of female time, effort, and energy to keep the institutional ship afloat.<sup>48</sup> Traditionally, male faculty rely upon a system of entitlements to free time to engage in scholarship while depending upon their female colleagues to do the student care and institutional service work that keeps the institution running but fails to advance careers.<sup>49</sup>

We also suggest that *himpathy* intersects with another enforcement mechanism: the social dominance penalty. Manne reminds us that the research conducted on high-status employees in male-dominated industries (think law faculties) demonstrates that asking confidently for what you are *due* may well backfire. She notes that the psychologist L.A. Rudman explains this as a “social dominance penalty.”<sup>50</sup> People are often “unwittingly” motivated to maintain gender hierarchies by applying social penalties to “women who compete for, or otherwise threaten to advance to, high-status, masculine-coded positions.”<sup>51</sup> Moreover, women who are “agentive”—competent, confident, or assertive—are perceived as “arro-

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44. MANNE, *supra* note 1, at 197.

45. *Id.* at 197–200. For purposes of this Article, call to mind one example of *himpathy* only, that of Brock Turner, convicted after a jury trial of three sexual assault felonies and sentenced only to 6 months in jail. Liam Stack, *Light Sentence for Brock Turner in Stanford Rape Case Draws Outrage*, N.Y. TIMES (June 6, 2016), <https://www.nytimes.com/2016/06/07/us/outrage-in-stanford-rape-case-over-dueling-statements-of-victim-and-attackers-father.html> [<https://perma.cc/M4S4-QWMC>]. The sentencing judge “*himpathized*” with Turner, a Stanford student athlete, exercising enormous leniency despite the obvious evidence of the helplessness and unconsciousness of the victim. Instead of focusing on the *effects* of male behavior on the female survivor, the court worried that prison time could have a “severe” impact on Turner’s future. That is *himpathy*. *Id.*

46. MANNE, *supra* note 1, at xiv, 49–50, 110–14, 129–32.

47. *Id.* at 197.

48. Lennartz & O’Meara, *supra* note 5, at 302 (noting that when women faculty take on more teaching and service work, it leaves more time for men to do research; thus perpetuating an “ideal worker” model which is “premised on the concept that there will be workers underneath the star performers in the hierarchy to pick up institutional housework”).

49. *See generally infra* Part II.

50. *See* MANNE, *supra* note 1, at 253–54.

51. *Id.* at 253.

gant” and “aggressive.”<sup>52</sup> She points to studies that find that when women are rated as “stellar” with respect to competence, they are more likely to be found to be “less likable” than their male colleagues, and “interpersonally hostile” (abrasive, manipulative, conniving, and/or untrustworthy).<sup>53</sup> Manne concludes, “*So agentic women competing with men for male-dominated roles*” (for purposes of this Article, think faculty scholar with associated title and compensation unburdened by biased expectations for service and care work) “*are doubly likely to be punished and rejected in light of these mechanisms.*”<sup>54</sup> Thus, when they seek equality in care and service workloads, women often face hostility.<sup>55</sup>

Care-mongering bias is also an enforcement mechanism and a term that Manne coins to describe the “moralistic take-down” or “unforgiving shaming” of women for failing to meet their patriarchal care duties.<sup>56</sup> This policing is particularly relevant in academia where women face pushback for not appeasing care-mongering needs. Research demonstrates that women faculty, unlike their male peers, are penalized for “seeming cold, uncaring, or not developing a personal relationship with each and every student.”<sup>57</sup> On the other hand, attempts to meet gender-biased, care-mongering expectations of students or colleagues cut sharply into available time for scholarship. And, as in the case of service work, the option of “just say no” carries consequences with it.<sup>58</sup> In sum, when it comes to women faculty organizing their time as a resource, misogynistic policing mechanisms described above create the proverbial “double bind.”<sup>59</sup>

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52. *Id.* at 253–54.

53. *Id.* at 253.

54. *Id.* at 254 (emphasis added).

55. *See infra* text accompanying note 103.

56. “I call this ‘care-mongering.’ A woman perceived as insufficiently loving, caring, nurturing & giving to the designated, privileged recipients of sympathy are subject to aggression and consternation, and punished accordingly. This misogynistic mechanism remains under-recognized.” Kate Manne (@kate\_manne), TWITTER (Oct. 23, 2019, 9:29 PM), [https://twitter.com/kate\\_manne/status/1187179308298702848](https://twitter.com/kate_manne/status/1187179308298702848) [permalink unavailable]; *see also* MANNE, *supra* note 1, at 28, 267–69.

57. MANNE, *supra* note 1, at 267–68 (citing Joey Sprague & Kelly Massoni, *Student Evaluations and Gendered Expectations: What We Can’t Count Can Hurt Us*, 53 SEX ROLES 779, 793 (2005)).

58. *See infra* text accompanying notes 109–12, 115–22 (discussing the penalties for refusing to take on service and care work).

59. MANNE, *supra* note 1, at 19–20, 28, 49–51. For further description of the tyranny of vulnerability, *see supra* note 26.

II. DATA-BASED STUDIES<sup>60</sup>A. *Disproportionate Student Care and Service Work Expectations*

Numerous studies document gender disparities in faculty service workloads.<sup>61</sup> These disparities often result in significantly less time for women faculty members to engage in scholarship and reap the rewards the academy showers on prolific scholars.<sup>62</sup> Time spent on these activities can create barriers to promotion, tenure, and other rewards that come with high scholarly productivity.<sup>63</sup> Women faculty of color face even greater service

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60. The studies we cite in this Part relate to higher education generally and not to legal education specifically. We know of no comparable studies for law faculty, but we have no reason to believe the results for law faculty would be markedly different than results at the undergraduate level, especially given the cross-disciplinary nature of many of those studies.

61. See, e.g., Cassandra M. Guarino & Victor M. H. Borden, *Faculty Service Loads and Gender: Are Women Taking Care of the Academic Family*, 58 RES. HIGHER EDUC. 672 (2017) (discussing results from a national survey finding women spend about 31.2 more hours per year in institutional service, not counting invisible service than their male counterparts); Joya Misra et al., *The Ivory Ceiling of Service Work*, ACADEME, Jan.–Feb. 2011; (finding that at the associate professor rank, while men and women both worked about sixty-four hours a week, over the course of two semesters, women faculty spent over 200 more hours on teaching, mentoring and service than their male counterparts and male faculty spent over 200 more hours on research than their female counterparts); see also KerryAnn O’Meara, *Whose Problem Is It? Gender Differences in Faculty Thinking About Campus Service*, 118 TCHRS. C. REC. 1, 4 (2016) [hereinafter O’Meara, *Whose Problem Is It*] (citing numerous studies finding that women spend more time on institutional service than men). O’Meara also notes that a few studies have found limited differences in service workloads. O’Meara, *Whose Problem Is It*, *supra*, at 4. She suggests these different results, “seem to be the outcome of scholars using different methods, controlling for different variables, and methods not accurately capturing all kinds of service.” *Id.* at 4; for observations of faculty behavior in the legal academy, see Nancy Levit, *Keeping Feminism in Its Place: Sex Segregation and the Domestication of Female Academics*, 49 KAN. L. REV. 775, 784–90 (2001) (discussing observational and anecdotal information about disparate service workloads among male and female law faculty).

62. O’Meara, *Whose Problem Is It*, *supra* note 61, at 2 (noting that numerous studies show that greater time spent on service and teaching results in fewer research products, which means fewer rewards because in academia rewards rest largely on scholarly productivity).

63. Curcio & Lynch, *supra* note 6, at 249 (noting that prolific scholarship “often results in a wide range of internal and external rewards: course releases, merit raises, national reputations, and additional job prospects”); Linda Babcock et al., *Gender Differences in Accepting and Receiving Requests for Tasks with Low Promotability*, 107 AM. ECON. REV. 714, 715 (2017) (reporting survey data finding “that there is broad agreement that promotion is more likely when more time is spent on research and less time is spent on service”).

workload disparities<sup>64</sup> because of identity taxation<sup>65</sup> so schools can tout having “diverse” committees.<sup>66</sup>

Not only do women carry a heavier service work burden, patriarchal structures control how the work is distributed and credited. Women faculty are asked for less prestigious and more labor-intensive tasks than their male counterparts.<sup>67</sup> Gendered norms also affect which types of service is recognized and credited.<sup>68</sup> Work that is more “relational” (i.e., feminized work), such as mentoring students who are not one’s advisees, counseling students facing personal crises, nominating students for awards, writing recommendation letters, mentoring colleagues, attending brown bags, attending admissions recruitment events, picking up job candidates from the airport, etc., takes significant time, yet remains largely invisible and receives little institutional credit.<sup>69</sup> On the other hand, chairing a committee, serving on a university senate, or serving on a journal editorial board—i.e., work that can be quantified, is time- and task-oriented, fits the “masculine” conception of work, and receives institu-

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64. Benjamin Baez, *Race-Related Service and Faculty of Color: Conceptualizing Critical Agency in Academe*, 39 HIGHER EDUC. 363, 366–67 (2000) (discussing studies demonstrating heavy institutional service demands placed upon faculty of color). Intersectionality issues of race and gender result in even greater service workload inequities. Laura E. Hirshfield & Tiffany D. Joseph, *We Need a Woman, We Need a Black Woman’: Gender, Race and Identity Taxation in the Academy*, 24 GENDER & EDUC. 213, 218–19 (2012) (discussing studies of service overloads on women, people of color, and particularly women of color); O’Meara et al., *Department Conditions*, *supra* note 5, at 750–51 (discussing additional service and student care work demands placed upon faculty of color).

65. “Identity taxation occurs when faculty members shoulder any labour—physical, mental, or emotional—due to their membership in a historically marginalised group within their department or university, beyond that which is expected of other faculty members in the same setting.” Hirshfield & Joseph, *supra* note 64, at 214.

66. KerryAnn O’Meara et al., *Asked More Often: Gender Differences in Faculty Workload in Research Universities and the Work Interactions that Shape Them*, 20 AM. EDUC. RES. J. 1, 7 (2017) [hereinafter O’Meara et al., *Asked More Often*]; see also Tiffany Joseph & Laura Hirschfield, *Why Don’t You Get Somebody New To Do It, Race, Gender and Identity Taxation in the Academy*, in FACULTY IDENTITIES AND THE CHALLENGES OF THE TEACHING IN HIGHER EDUCATION 121–41 (Mark A. Chesler & Alford A. Young ed., 2016) (discussing cultural and identity taxation in context of faculty committees and student care work for faculty members of color).

67. Misra et al., *supra* note 61; Sara McLaughlin Mitchell & Vicki L. Hesli, *Women Don’t Ask? Women Don’t Say No? Bargaining and Service in the Political Science Profession*, 46 POL. SCI. & POL., 355, 362 (2013); O’Meara et al., *Asked More Often*, *supra* note 66, at 24.

68. Lisa K. Hanasono et al., *Secret Service: Revealing Gender Biases in the Visibility and Value of Faculty Service*, 12 J. DIVERSITY HIGHER EDUC. 85 (2019).

69. *Id.* at 87–88.

tional recognition and credit.<sup>70</sup> Data supports the conclusion that men are more likely to perform the type of service that gets credited.<sup>71</sup>

Emerging research also finds female higher education faculty members shoulder a disproportionate share of working with students with serious personal and mental health issues, and this student care work takes both time and emotional labor.<sup>72</sup> Advising and mentoring expectations are particularly disproportionately high for female African-American faculty, especially at primarily white research higher education institutions.<sup>73</sup> These demands require emotional labor and time, thus, cutting into time to engage in scholarship, and hence potentially limiting women faculty members' advancement.

### B. *Misogynistic Enforcement Mechanisms*

To the extent institutions even recognize gender disparities in service and student care workloads, those disparities are often dismissed with gendered explanations and sexist justifications such as:

“Women prefer and enjoy service,”<sup>74</sup>

“Women should learn to say no,”<sup>75</sup>

“Women should stop doing favors for students.”<sup>76</sup>

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70. *Id.* at 87–90.

71. Mitchell & Hesli, *supra* note 67, at 361–62 (finding women political science faculty tend to have a higher number of advisees and to perform more service of a “token” nature than their male counterparts).

72. See, e.g., Jennifer Dengate et al., *Gender and the Faculty Care Gap: “The Obvious Go-To Person” For Canadian University Students’ Personal Problems*, 49 CANADIAN J. HIGHER EDUC. 104 (2019).

73. See generally Kimberly A. Griffin & Richard J. Reddick, *Surveillance and Sacrifice: Gender Differences in the Mentoring Patterns of Black Professors at Predominantly White Research Universities*, 48 AM. EDUC. RES. J. 1032 (2011). One group of researchers note:

Although many scholars have revealed the burden and negative career consequences of additional service, advising, and mentoring . . . , others have simultaneously observed aspects of mentoring and service to URM [underrepresented minority] groups by URM faculty as a form of critical agency . . . . The additional service and mentoring completed by faculty of color may be both an exercise of commitment and a tax, but remains an equity issue worthy of attention and concern.

O’Meara et al., *Department Conditions*, *supra* note 5, at 751 (citations omitted).

74. For a discussion of the fallacy of this argument, see *infra* text accompanying notes 84–99.

75. See Rena Seltzer, *To Find Happiness in Academe, Women Should Just Say No*, CHRON. HIGHER EDUC., July 19, 2015. *But see infra* text accompanying notes 102–04 (discussing why this is not a viable solution).

76. See generally Amani El-Alayli et al., *Dancing Backwards in High Heels: Female Professors Experience More Work Demands and Special Favor Requests, Particularly from Academically Entitled Students*, 79 SEX ROLES 136 (2018) (discussing students’ higher expectations of women faculty and the presumption that those expectations will be met). Beyond the reasons listed in the bullet points, other explanations for disparate service workloads include assumptions that women are better at service than men; gendered conceptions of who should serve the institution and students; and beliefs that women want to serve because they care deeply about the activities be-

These victim-blaming, gendered explanations conveniently allow institutions, and males averse to communal work, to duck responsibility. They are the enforcement mechanisms sustaining patriarchal systems that protect many male faculty members from work that does not further their careers, shifting the burden of that work onto female colleagues. The narratives also are unsupported by recent research that finds that women faculty:

- do not *willingly* say “yes” more often,<sup>77</sup>
- are *asked* more often to engage in service-related activities, advising/mentoring, and other student care work,<sup>78</sup>
- do not *prefer* service work,<sup>79</sup>
- are responding to social *expectations* in *mixed gender* groups,<sup>80</sup>
- receive more requests for “special favors” from students,<sup>81</sup> and
- have greater expectations thrust upon them by students.<sup>82</sup>

In Section I.C, we briefly discuss these research studies and how they illuminate the gender-coded myths<sup>83</sup> used to enforce the patriarchal order.

### C. *Victim-Blaming Myths of Volunteerism, Preference, and Choice*

Researchers have found that it’s not an issue of volunteerism: instead, women are *being asked* more often.<sup>84</sup> In a national study, Dr. KerryAnn O’Meara and colleagues used work diaries, a work survey, and documentation of new work requests of 111 full and associate professors. Analyzing that data, they found that women faculty received 3.4 *more* requests for *new* work activities than their male colleagues.<sup>85</sup> The researchers also found no statistically significant difference in how often each gender said “yes” to requests. Instead, they found women simply had more requests and differ-

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ing pursued. O’Meara et al., *Asked More Often*, *supra* note 66, at 7. While we don’t directly address all these justifications for disparities, we argue that faculty should consider them in context of the issues raised in this Article and ask themselves whether these justifications are part of the “down girl” moves that this Article discusses throughout.

77. *See infra* text accompanying notes 84–101.

78. *See infra* text accompanying notes 84–93.

79. *See infra* text accompanying notes 94–100.

80. *See infra* text accompanying notes 96–100.

81. *See infra* text accompanying notes 113–15.

82. *See infra* text accompanying notes 112–16.

83. MANNE, *supra* note 1, at 60–61 (describing patriarchy’s reliance on feminine-coded work).

84. Babcock et al., *supra* note 63, at 743 (finding both genders ask women to “volunteer” more often than they ask men); O’Meara et al., *Asked More Often*, *supra* note 66.

85. O’Meara et al., *Asked More Often*, *supra* note 66, at 24.

ent kinds of requests.<sup>86</sup> It was the volume of requests, not the acquiescence rate, that led to higher service levels.<sup>87</sup>

The researchers also found women received more requests from women students and colleagues while men received more requests from men.<sup>88</sup> They note that this is not that surprising because it is well-documented that:

[W]omen . . . hold implicit biases toward other women as helpful and communal and hold expectations that women will play organizational housekeeping roles. Therefore it should not be a surprise that women are gendering their organizations through workload requests to other women, even as they are burdened by such requests in their own careers.<sup>89</sup>

This finding corresponds to Manne's theory that misogyny is a cultural rather than an individual phenomenon,<sup>90</sup> and women may be as invested in upholding the cultural expectations as men.<sup>91</sup>

The study also found a difference in the type of requests made. Male faculty members more frequently received requests from off-campus colleagues who can help their career advancement and involve them in more research activities. Female faculty members' requests were more related to teaching and campus service—requests that do not count much toward career advancement.<sup>92</sup> Additionally, male faculty members reported spending twice as much time as women in “professional conversations” with colleagues.<sup>93</sup> Thus, while men are spending time engaging in professional conversations and career-building professional service, women are asked to take care of the students and the institutional household.

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86. *Id.* at 25.

87. To put this another way, if one person has 100 new requests for work and another has 30 new requests, if each person says yes to 10% of those requests, one person will have 10 new projects and the other will have three. In fact, in O'Meara et al.'s study, women “volunteered” for only 72% of the requests received while men said yes to 82% of the requests received. *Id.* at 26. *But see* Mitchell & Hesli, *supra* note 67, at 362–63. The Mitchell and Hesli study found that women were asked more often and served more often. This data led them to conclude that women must therefore be saying “yes” more often. The O'Meara study suggests that disparate workloads may not be due to saying “yes” more often but may be attributable, at least in large part, to the volume of “asks.” O'Meara et al. note that the two studies also used different research methods (cross-sectional survey versus time diary). O'Meara et al., *Asked More Often*, *supra* note 66, at 25.

88. O'Meara et al., *Asked More Often*, *supra* note 66, at 25.

89. *Id.* at 25.

90. MANNE, *supra* note 1, at 79.

91. *Id.* at 146–47.

92. O'Meara et al., *Asked More Often*, *supra* note 66, at 26.

93. *Id.* at 23.

Research also demonstrates women are not “biologically wired” to *prefer* service work.<sup>94</sup> Rather, social *expectations* appear to determine volunteering behavior.<sup>95</sup> One study found that all participants, regardless of gender, were reluctant to volunteer for “non-promotable” work tasks.<sup>96</sup> When divided by gender, in a single gender group, women were *no more likely* to volunteer than men.<sup>97</sup> However, when women and men were in “mixed-gender” groups, women were *48% more likely to volunteer*, primarily in the final seconds of the simulated experiment time frame.<sup>98</sup> The researchers concluded that these results suggested,

[T]he real driver was a shared understanding or expectation that women would volunteer more than men. In a mixed-sex group, men will hold back on volunteering while women in turn will volunteer to ensure the task is done. But in single-sex groups . . . men know they have to step forward . . . .<sup>99</sup>

The researchers also found it noteworthy that when the groups were divided into single gender groups, in the “women’s groups the volunteering ends up being shared equally across 10 rounds, while in men’s groups it tends to fall on the same men each time.”<sup>100</sup>

This research provides interesting information about how mixed gender groups—think law faculties and faculty committees—replicate gendered expectations about service volunteering. While some women do volunteer happily for extra service work,<sup>101</sup> volunteerism free choice is a myth when the cultural norm enforcement mechanism dictates that the work will get done *only* when women *finally* agree to “volunteer.”

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94. See generally Babcock et al., *supra* note 63; see also Misra et al., *supra* note 61 (finding both genders express a preference for spending their time on research and dispelling the myth that women prefer service while men prefer research).

95. Babcock et al., *supra* note 63, at 743–44; see also Misra et al., *supra* note 61 (reporting female focus group participant’s comments about feeling guilty about burdening other faculty and graduate students if she declines service requests).

96. Babcock’s research team defined non-promotable tasks as those that benefit the organization but likely don’t contribute to someone’s performance evaluation and career advancement such as “writing a report, serving on a committee, planning a holiday party, etc.” Babcock et al., *supra* note 63, at 719.

97. *Id.* at 722, 743.

98. *Id.* at 721–22.

99. Linda Babcock et al., *Why Women Volunteer for Tasks that Don’t Lead to Promotions*, HARV. BUS. REV. (July 16, 2018), <https://hbr.org/2018/07/why-women-volunteer-for-tasks-that-dont-lead-to-promotions> [https://perma.cc/YXZ9-ADP5] (explaining the results of the researchers’ 2017 study).

100. *Id.*

101. Researchers have found women sometimes volunteer for campus service because of a desire to enhance the communal enterprise, support constituencies important to them, and change institutional race and gender related norms. See KerryAnn O’Meara et al., *Constrained Choices: A View of Campus Service Inequality From Annual Faculty Reports*, 88 J. HIGHER EDUC., 672, 679 (2017) [hereinafter O’Meara et al., *Constrained Choices*] (reviewing studies which show women engage in race or gender related service in the hope of changing institutional norms).

Another victim-blaming and “women have a choice” enforcement mechanism is the idea that women can simply refuse to perform service work. Research suggests that women face penalties for “just say no” behaviors due to gender prescribed beliefs that dictate women should engage in altruistic (helping) behaviors at work without complaint. When they fail to do so, they face negative judgments—although men who behave similarly suffer no penalty, and in fact, when men behave altruistically, they are rewarded.<sup>102</sup> Research also suggests that women who choose to be individualistic or competitive rather than collaborative suffer consequences in terms of colleagues’ perceptions and reward structures.<sup>103</sup> Thus, women who “just say no” face consequences their male colleagues do not. As Professor Sahar Aziz argues, when female faculty fail to accommodate and sacrifice their time so that male colleagues can focus on their research, they often are held in violation of gendered civility codes. She notes that those codes not only impede women who call foul, but also reward women who comply with social acceptance and individual material rewards such as research support and good teaching schedules.<sup>104</sup>

In sum, the myths of volunteerism and choice enforce the patriarchal status quo. As Professor Pyke notes, “[w]hen women faculty internalize the myth that they have the power and responsibility to limit their service loads, they can likewise blame themselves rather than structural inequities, and regard their lower wages and stalled careers as their own fault.”<sup>105</sup>

#### D. *Himpathy/Lack of Empathy and Social Dominance Penalty*

Another enforcement mechanism that perpetuates the patriarchal status quo is the empathy afforded to male faculty when service work takes up too much of their time and the lack of empathy towards women who are overburdened by service and care work. This manifests in how administrators credit and reward service work. For example, in one study, male faculty members reported benefits including compensation, a lighter workload, and extra time to compensate for time spent on institutional service, while female faculty were surprised those benefits were even an option.<sup>106</sup> Administrators’ acquiescence to male faculty members’ de-

102. Madeline E. Heilman, *Gender Stereotypes and Workplace Bias*, 32 RES. ORGANIZATIONAL BEHAV. 113, 125 (2012).

103. *Id.*; see also Aziz, *supra* note 26 (noting women faculty experience backlash when acting in ways that conflict with assigned gender roles); O’Meara et al., *Constrained Choices*, *supra* note 101, at 692 (discussing studies on the backlash for women faculty who act contrary to gendered expectations that they will be amenable to extra work requests); Laura A. Rudman & Julie E. Phelan, *Backlash Effects for Disconfirming Gender Stereotypes in Organizations*, 28 RES. ORGANIZATIONAL BEHAV. 61, 64–67 (2008) (discussing backlash effects for women who fail to conform to gendered stereotypes in the workplace).

104. Aziz, *supra* note 26.

105. Pyke, *supra* note 36, at 89 (citations omitted).

106. O’Meara, *Whose Problem Is It*, *supra* note 61, at 29.

mands for time and money,<sup>107</sup> in contrast to the social expectations and penalties for women when they resist doing more than their fair share, illustrates how himpathy may be at work on law faculties.

Why can't women just ask for the same benefits? First, we note that often, women don't know the benefits exist.<sup>108</sup> Second, some studies suggest that requests for equal treatment may not be well received.<sup>109</sup> One group of researchers reviewed multiple studies that indicate that "[s]elf-advocating behaviors, particularly those dealing with manly issues like money, are not consistent with gender stereotypes and not favorably regarded."<sup>110</sup> The requests for equal treatment also may prompt negative reactions from colleagues and administrators for "lack of collegiality." Perceptions of lack of collegiality can translate into an unpleasant work atmosphere, limit access to social networks, result in negative, year-end merit raise evaluations, and may affect career opportunities.<sup>111</sup> Himpathy thus converges with the victim-blaming myth that women can ask for, and can receive, equivalent benefits with no penalty. Research, and the Denver litigation experience discussed in this Symposium,<sup>112</sup> suggests that simply asking is often not a viable option. Himpathy, along with the social dominance penalty, are "down girl" moves that police and enforce existing patriarchal structures that provide goods to men while resisting women's attempts to access those same goods.

#### E. Care-Mongering Bias

Student care-mongering is another gendered cultural norm that creates time and workload disparities. Students have gendered *expectations* for women faculty in terms of mentoring and emotional support as well as in

107. Ruth Anne Robbins, Kristen K. Tiscione, & Melissa H. Weresh, *Persistent Structural Barriers to Gender Equity in the Legal Academy and the Efforts of Two Legal Writing Organizations to Break Them Down*, 65 VILL. L. REV. (forthcoming 2020).

108. See O'Meara, *Whose Problem Is It*, *supra* note 61, at 29; LINDA BABCOCK & SARA LASCHEVER, *WOMEN DON'T ASK: NEGOTIATION AND THE GENDER DIVIDE* 24–25 (2003).

109. See, e.g., Heilman, *supra* note 102, at 125; Hannah Riley Bowles et al., *Social Incentives for Gender Differences in the Propensity to Initiate Negotiations: Sometimes It Does Hurt to Ask*, 103 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 84 (2006).

110. Heilman, *supra* note 102, at 124. We do not suggest that women never ask. In fact, in one study, researchers analyzed national survey data of political science faculty and found that, amongst faculty who reported receiving benefits such as research assistants, course releases, and discretionary funds, women faculty reported a higher "ask" rate for the benefits than their male counterparts and also reported a higher rate of unasked for benefits flowing from the university for female than for male faculty. The authors posit several potential explanations for why their results differ so markedly from the other studies, including the fact that the survey asks only about benefits received and their sources, thus, it fails to capture data from faculty who did not ask for or who asked and did not receive the benefits. Mitchell & Hesli, *supra* note 67, at 361.

111. Aziz, *supra* note 26; Heilman, *supra* note 102, at 127.

112. Robbins, Tiscione, & Weresh, *supra* note 107.

the context of teaching expectations. Students disproportionately seek out women faculty to help them work through non-academic crises.<sup>113</sup> They also ask women faculty for more requests for “special favors” such as the chance to re-do assignments, raise their grade, and work with them one-on-one.<sup>114</sup> Additionally, students (and especially academically privileged students) have greater expectations that women faculty will say yes to their requests for special favors.<sup>115</sup> Women must devote time to meet gender-biased student expectations or face negative student reactions.<sup>116</sup> Whichever route taken, simply dealing with the requests takes an emotional labor toll.<sup>117</sup> These gendered student expectations create a hostile backdrop and policing mechanism for women faculty that do not exist for their male counterparts.

In addition to different expectations outside the classroom, multiple studies demonstrate gender bias in student teaching evaluations<sup>118</sup>—with student care-mongering expectations of women faculty playing a significant role in the evaluative process. For example, one study of law student faculty evaluations found that women were four times more likely than men to be criticized for not being empathetic or supportive enough.<sup>119</sup> In a study of undergraduate online courses, instructors taught the “same material[ ] and assignments were returned at the same time.”<sup>120</sup> Despite faculty returning graded assignments at exactly the same time, students rated the women faculty lower on criterion such as how promptly assignments were graded, leading the authors to conclude “bias affects how stu-

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113. See Dengate et al., *supra* note 72, at 109.

114. El-Alayli et al., *supra* note 76, at 146; see also Shiri Noy & Rashawn Ray, *Graduate Students’ Perceptions of Their Advisors: Is There Systematic Disadvantage in Mentorship*, 8 J. HIGHER EDU. 876 (2012) (finding that women doctoral students ask women to be their secondary dissertation advisors (a less prestigious role) and do so because they perceive that women are more nurturing, caring and supportive).

115. El-Alayli et al., *supra* note 76, at 145–46; see also Kristina M.W. Mitchell & Jonathan Martin, *Gender Bias in Student Evaluations*, 51 POL. SCI. & POL. 645 (2018) (finding that undergraduate students attempting to negotiate grades were more aggressive with women faculty, and when negotiations with women faculty failed, they complained more on course evaluations).

116. El-Alayli et al., *supra* note 76, at 142. Manne herself notes this phenomenon. See *supra* text accompanying note 57.

117. *Id.* at 145–46.

118. Many studies identify gender biases in teaching evaluations, with women faculty receiving lower ratings. See, e.g., L. MacNell et al., *What’s in a Name: Exposing Gender Bias in Student Ratings of Teaching*, J. COLLECT BARGAIN ACAD., Apr. 2015, at 1; L.L. Martin, *Gender, Teaching Evaluations, and Profession Success in Political Science*, 49 POL. SCI. & POL. 313 (2016).

119. Christine Haight Farley, *Confronting Expectations: Women in the Legal Academy*, 8 YALE J.L. & FEMINISM 333, 339 n.31 (1996). Professor Farley found that women law professors faced a double bind when it comes to student evaluations: they are criticized for not being sufficiently “male” in terms of controlling the classroom, etc., and for not being sufficiently “female” in terms of empathy, concern, and approachability.

120. Anne Boring et al., *Student Evaluations of Teaching (Mostly) Do Not Measure Teaching Effectiveness*, SCI. OPEN RES., Jan. 2016, at 3.

dents rate even putatively objective aspects of teaching, such as how promptly assignments are graded.”<sup>121</sup> By not holding male faculty to the same care-mongering standards, and by penalizing women faculty who fail to meet those standards of “enthusiastic” care, student evaluations serve as a policing mechanism to enforce patriarchal norms by requiring time and creating emotional labor drains not experienced by male colleagues. Women unwilling to accede to care-mongering requests face negative evaluations that may affect raises, tenure, and promotion decisions.<sup>122</sup>

### III. MITIGATION

#### A. *Identifying and Naming the Problem*

We begin this discussion with the following belief: to create greater equity, we need to recognize the misogynistic enforcement mechanisms that create and sustain our historical and current academic culture. That requires naming the problem.

Why not just use the term “inequity” and avoid explaining the roots of that inequity as stemming from misogyny? Why ruffle feathers by calling out misogyny? The reason we adopt Manne’s framing is because naming matters.<sup>123</sup> As Dr. Shirley Smoyak notes,

[s]talking provides a wonderful example of how important language is. The behaviors involved in stalking experiences may be called by many names—advances, approaches, flirting, pursuing, harassment, bothering, persisting, annoying, courting, and so on. The stalker may see what he or she is doing as one thing, while the person being stalked has quite another view.<sup>124</sup>

When we name the act as stalking rather than flirting, we change how we interpret and react to the conduct. When we name the problem as one of misogyny, we identify its roots and tentacles. Naming facilitates norm-shifting. This is particularly true because the practices embedding and upholding expectations that women faculty will do the heavy lifting on

121. *Id.* at 1.

122. Deborah J. Merritt, *Bias, The Brain and Student Evaluations of Teaching*, 82 ST. JOHN’S L. REV. 235, 237 (2007) (noting that teaching evaluations are increasingly relied upon in salary, promotion, and tenure decisions); Roger W. Reinsch et al., *Student Evaluations and the Problem of Implicit Bias*, 45 J. COLLEGE & UNIV. L. 114, 114–16 (2020) (discussing the role of student evaluations in faculty performance evaluations).

123. See, e.g., Andrea Orwell, “Pregnant Persons”: *The Linguistic Defanging of Women’s Issues and the Legal Danger of “Brain Sex” Language*, 17 NEV. L.J. 667, 669 (2017) (noting that language plays a powerful role in shaping how we think, act, and react); Mark Poirier, *Name Calling, Identifying Stigma in the Civil Union/Marriage Distinction*, 41 CONN. L. REV. 1425 (2009) (discussing how the term civil unions can reinforce longstanding biases and can result in cognizable harms flowing from those biases).

124. Shirley A. Smoyak, *Stalking: Ambiguous Language Can Mask a Crime*, J. PSYCHOL. NURSING & MENTAL HEALTH SERV., Apr. 2000, at 6, 6.

student care work and unrewarded institutional service may be a product of what some call “soft misogyny”—i.e., behaviors by those who espouse a belief in equity and yet make decisions, often subconsciously, that perpetuate patriarchal structures.<sup>125</sup> Naming the problem tears the veil off.

### B. *Building a Collective Commitment for Changing Norms*

To upend the norms that enforce the status quo, we must build a collective faculty commitment to workload equity,<sup>126</sup> with support from administrative leaders.<sup>127</sup> In the following Sections, we discuss some practices that researchers have found build faculty consensus for change and create positive change in workload distribution and outcomes. We point to work done by Dr. KerryAnn O’Meara and colleagues as part of the National Science Foundation Faculty Workload and Rewards project,<sup>128</sup> as well as ideas grounded in other studies and literature.

Data-based research suggests the first step in creating momentum for change requires educating faculty, staff, and administrators<sup>129</sup> about implicit gender biases<sup>130</sup> and using research such as that discussed in Part II, to help faculty understand how those biases shape the division of labor in academia.<sup>131</sup> We believe that key discussion points include:

- how women are asked significantly more often to engage in student care work and service,<sup>132</sup>

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125. Dunlap, *supra* note 12, at 778.

126. O’Meara et al., *Department Conditions*, *supra* note 5, at 746 (discussing the need for a collective commitment to equity).

127. O’Meara et al., *Department Conditions*, *supra* note 5, at 749 (noting that “leaders signaling to employees or colleagues that something is important can be persuasive in shifting others’ perceptions”).

128. The project webpage is: <https://facultyworkloadandrewardproject.umd.edu/> [<https://perma.cc/3KS5-BW64>]. This Article highlights just some of the amazing work being done by this project; and the project work is continually evolving. We encourage readers to review the website regularly as a resource for concrete ways to address workload inequities.

129. While researchers focus on faculty education, we suggest there is a need for community-wide education given that administrative staff often are the ones making request for “invisible” service, such as attendance at admissions, career and alumni events.

130. For reasons discussed throughout this essay, we suggest framing the discussion as one identifying misogyny as a status quo policing enforcement mechanism while most research frames the discussion in context of education about biases. KerryAnn O’Meara et al., *Undoing Disparities in Faculty Workloads: A Randomized Trial Experiment*, PLOS ONE, Dec. 2019, at 1, 6, <https://journals.plos.org/plosone/article/file?type=printable&id=10.1371/journal.pone.0207316> [<https://perma.cc/5SAL-NTHV>] [hereinafter O’Meara et al., *Undoing Disparities*]. We suggest the approaches are complimentary although we recognize some will prefer to limit the framing to exploring implicit biases and how those operate.

131. O’Meara et al., *Undoing Disparities*, *supra* note 130, at 6.

132. See *supra* Part II.

- how those requests cut into a key resource for professional advancement—i.e., research time,<sup>133</sup> and
- how the data contradicts the myth that most women say “yes” to service and student care work because they have a greater preference for this type of work.<sup>134</sup>

Faculty education should also include review of the research about steering women into work roles that support the dominant group but do not lead to their own advancement,<sup>135</sup> the invisibility of gendered service work,<sup>136</sup> and the potential consequences women face if they “just say no” to service and student care work requests.<sup>137</sup> As Professor O’Meara notes, these data-based conversations can move us from the old framework—that *disparities are unintentional*, thus, we have no accountability—to a new framework of *collective accountability* for institutionalized practices that systematically disadvantage particular groups.<sup>138</sup>

To motivate change, we suggest naming the problem as misogyny to help faculties understand the structural issues that support the status quo. However one frames the faculty education conversations, the conversations are simply a starting point. To effectuate meaningful change, they must be accompanied by concrete practices designed to upend norms and create equitable workloads.

### C. *Creating Transparency*

Most schools do not have public data on allocations of student care work and institutional service.<sup>139</sup> Similarly, there is no transparency about who is asked to do this work or how often they are asked.<sup>140</sup> Nor do schools have data on what are appropriate levels of institutional service or benchmarks for looking at one’s service in the context of comparable colleagues’ service.<sup>141</sup>

Lack of transparency creates “foggy conditions,”<sup>142</sup> fosters inequities, and leads to uninformed decision making that perpetuates biased decision

133. See *supra* Part II.

134. See *supra* text accompanying notes 81–99; see also Misra et al., *supra* note 61 (finding both men and women had a preference for research, not service).

135. See *supra* text accompanying notes 61–73.

136. See *supra* text accompanying notes 61–104.

137. See *supra* text accompanying notes 107–10.

138. See O’Meara et al., *Asked More Often*, *supra* note 66, at 28.

139. O’Meara et al., *Whose Problem Is It*, *supra* note 61, at 3.

140. O’Meara et al., *Department Conditions*, *supra* note 5, at 745.

141. O’Meara et al., *Whose Problem Is It*, *supra* note 61, at 30.

142. See Dina Banarjee & Alice L. Pawley, *Gender and Promotion: How Do Science, Technology, Engineering and Mathematics [STEM] Faculty Members Survive a Foggy Climate*, 19 J. WOMEN & MINORITIES SCI. & ENGINEERING 329 (2013) (coining the term “foggy climate” for the inadequate information and lack of clarity often found in academia when it comes promotion, tenure and advancement in academic careers).

making, particularly disadvantaging women and underrepresented minority groups.<sup>143</sup> These conditions can shelter male faculty from service obligations or allow them to offset the cost of service time by negotiating other benefits.<sup>144</sup> O’Meara et al. suggest gathering and publishing data via dashboards that make visible previously invisible work.<sup>145</sup>

Exactly what goes into a faculty dashboard is a matter of individual faculties’ collective choice about what to measure and publish. However, at a minimum, the dashboards should include traditionally recognized areas of service such as committee service,<sup>146</sup> student advisement work, and administrative roles.<sup>147</sup> Additionally, dashboards should account for what currently is “invisible” work, such as mentoring, career guidance, letters of recommendation, and social support to students and colleagues.<sup>148</sup> Data also should account for unseen workload differences that may affect time available to engage in scholarship, such as time spent teaching intensive experiential learning courses.<sup>149</sup> Finally, it is important to consider the extra mentoring and counseling work often asked of faculty of color.<sup>150</sup> This kind of broad identification of “invisible work” ensures that the dashboards do not institutionalize gendered ways of conceptualizing service and provides a way to address, at least peripherally, care-mongering bias.

O’Meara et al. note that data collection and publication allows faculty to benchmark their own workload against those in comparable positions, create performance benchmarks that can be used in annual reviews, and allow administrators and faculty to monitor for equity issues.<sup>151</sup> We suggest that publicly available data also brings himpathy into the open, highlights inequities, and creates a basis for changing misogynistic enforcement norms. When transparent data is used to create conditions in which everyone does their share, misogynistic enforcement norms hold less power because they are no longer able to be used to justify women carrying the lion’s share of the institutional care and housework.

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143. Lennartz & O’Meara, *supra* note 5, at 287–88.

144. O’Meara et al., *Whose Problem Is It*, *supra* note 61, at 22.

145. *Id.* at 31.

146. All committees are not created equal. Dashboards should identify the more time-intensive committees. O’Meara et al., *Department Conditions*, *supra* note 5, at 763.

147. KerryAnn O’Meara, *Undoing the Can of Worms*, *INSIDE HIGHER ED* (June 27, 2018), <https://www.insidehighered.com/advice/2018/06/27/how-make-faculty-service-demands-more-equitable-opinion> [<https://perma.cc/PGD4-4UQU>] [hereinafter O’Meara, *Undoing Can of Worms*].

148. *Id.* For a discussion of the invisible “relational” service and care work, see *supra* text accompanying notes 68–71.

149. O’Meara et al., *Undoing Disparities*, *supra* note 130, at 3.

150. O’Meara et al., *Department Conditions*, *supra* note 5, at 751.

151. O’Meara, *Undoing Can of Worms*, *supra* note 147.

D. *Norm Changing Via Clear Expectations and Accountability*

Institutional service and student care work, essential functions within academia, seldom have any type of performance benchmarks.<sup>152</sup> Researchers have found that lack of clarity and accountability, as well as ambiguity in expectations create foggy conditions—conditions that disproportionately harm women and underrepresented minority groups.<sup>153</sup> Lack of clear expectations and structured accountability systems also contribute to male faculty members' normative beliefs that it is *acceptable, and even advisable*, to avoid institutional labor in order to achieve individual career advancement.<sup>154</sup>

We also suggested in an earlier article that lack of accountability makes conditions ripe for social loafing on committees.<sup>155</sup> To counter that phenomenon, we suggested smaller committees and evaluative rubrics to assess committee work participation—covering everything from “did you show up at meetings” to “was your work timely and usable.”<sup>156</sup> Distributing the rubrics at the start of the academic year makes expectations clear. This alone can be norm changing; if expectations are clearly stated and faculty know they will be evaluated, shirking committee work is no longer seen as normatively acceptable. Research confirms that evaluative tools and paying attention to equity issues itself sends a message about expectations and equity issues.<sup>157</sup>

Victim-blaming and preference myths rely on the belief that inequities are a matter of choice, yet the reality is that choice is illusory and a misogynistic enforcement mechanism for an inequitable system. If transparency, clarity, and accountability reforms are used to create and administer clear and consistent policies for mitigating overload of service and teaching responsibilities, those reforms could create both perceived and actual procedural and distributive justice.<sup>158</sup>

E. *Other Reforms*

In addition to the reforms discussed above, O'Meara et al. suggest rotation systems of time-intensive service work roles to help create more equitable workloads, to send the message that the institution's work is everyone's responsibility, and to inform faculty that everyone needs to carry

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152. O'Meara et al., *Department Conditions*, *supra* note 5, at 745 (noting that “[s]ome work is not counted within reward systems, so there are no benchmarks for performance”).

153. *Id.* at 748.

154. O'Meara, *Whose Problem Is It*, *supra* note 61, at 1 (finding more men than women believed that campus service needed to be avoided or minimized in order not to hurt their careers).

155. Curcio & Lynch, *supra* note 6, at 250–52.

156. *Id.* at 260–61.

157. See O'Meara et al., *Undoing Disparities*, *supra* note 130, at 11.

158. See O'Meara et al., *Department Conditions*, *supra* note 5, at 19–20; O'Meara et al., *Undoing Disparities*, *supra* note 130, at 747–49.

their weight. “Such practices can change the conversation from, ‘why would I agree to do that?’ to ‘why should I alone not have to do this?’”<sup>159</sup> Rotating time-intensive, but largely unrewarded, committee work also helps ensure that everyone does their fair share and facilitates equity and social responsibility norms.<sup>160</sup> It avoids repeatedly asking the same people to do time-consuming, institutional service work while giving some a pass.<sup>161</sup>

Additionally, schools should develop clear and consistent policies for rotating benefits, such as preferred class times, that allow more time for scholarship. This can help administrators fend off repeat player requests for low work committees, preferred scheduling of courses, or release time. These types of changes upend norms, reveal unearned empathy, and counter victim-blaming myths that justify women carrying a heavier service burden load.

Involving faculty and administrators is important in mitigating gender disparity. But in order to address care-mongering bias, students need to be involved in the conversation too. Student organizations, particularly those focused on gender issues, often ask faculty to appear on panels addressing equity issues. Faculty members can introduce discussions of Manne’s work and of the higher education research on gender bias and workplace equity. Exposing male and female students to the theory and data has the added benefit of preparing them for issues that may arise in the legal workplace.

#### F. *Barriers to Mitigation*

Administrators may resist change because they believe the status quo “plays to people’s strengths” and creates economic efficiencies.<sup>162</sup> Faculty may resist change because of fears about how changes to the status quo may impact their own workloads, might affect collegiality, or might ask faculty to stretch out of their comfort zones.<sup>163</sup> Additionally, as O’Meara and colleagues note, some faculty will resist change because they believe

159. O’Meara et al., *Undoing Disparities*, *supra* note 130, at 3.

160. *See id.*

161. At one of our institutions, a former dean clearly stated her expectation that each tenured faculty member would chair a substantial committee every other year. She established a chair/vice-chair system for all committees that put that plan into place. That system set clear expectations, and so far, has been successful in helping create more equitable faculty committee service workloads.

162. Curcio & Lynch, *supra* note 6, at 249 (discussing fears that the work won’t get done); KerryAnn O’Meara et al., *The Faculty Workload and Rewards Project, Equity Minded Workload Practices*, UNIV. MD. <https://facultyworkloadandrewardproject.umd.edu/importance.html> [<https://perma.cc/P5BW-D2JH>] (last visited Dec. 14, 2020) (noting that a barrier to change includes fear that if the prolific scholars are asked to participate in more service, they will leave the institution).

163. *Id.* (noting that barriers include a desire to keep the status quo; a desire to avoid the conflict and discomfort that comes with both change and transparency; fear of being devalued by the metrics; fear that benchmarks will mean

that the status quo is a matter of individual choice rather than identity taxation.<sup>164</sup>

O'Meara et al. suggest addressing barriers in various ways such as: using data to understand past practices and their implications so as to create and reinforce a collective commitment to fairness, building in flexibility and creating individualized plans within the context of accountability, using incrementalism, and building bottom up consensus-driven change.<sup>165</sup> They also note that while the faculty buy-in is critical, administrative leadership is necessary to incentivize communitarian work visibly and equally for all faculty, and to ensure implementation of accountability structures.<sup>166</sup>

We also suggest that when confronted with resistance, faculties ask ourselves whether these are actual barriers or unchallenged assumptions that exist to prop up the status quo. Will the work really “not get done” if we rely on all faculty and not just the “usual suspects?” Will scholars really leave if you ask them to carry their fair share on a rotational basis? Are these “barriers” just a way to “DOWN GIRL” women, traditional “givers,” when they ask to be receivers of community moral goods?<sup>167</sup> Are the “obstacles” simply a part of what Manne calls counterfactual, latent, and dormant misogyny?<sup>168</sup> We agree that we should use concrete mitigation practices such as those suggested above, but we also believe that we should question and examine the entrenched misogynistic structural systems and beliefs that make mitigation necessary.

#### CONCLUSION

Continuing with “business as usual” regarding institutional service and student care work incentivizes discrimination in perpetuity, further embeds misogynistic enforcement mechanisms into academic culture, and reinforces the gendered care-mongering which props up the current dynamics. It also models for students and budding legal professionals an acceptance of gender inequities in legal culture. We suggest that we cannot turn a blind eye to the problem and must take active steps to address it. As Professor Kerry Anne O'Meara cogently opines, “*a can of worms is already open, and pretending there is not a problem only protects the privileged. The status quo structurally disadvantages women and underrepresented minorities, and*

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everyone just has to do more; and insistence that the decision to do more is one of choice rather than identity taxation).

164. *Id.*

165. *Id.*

166. We also note leaders can help create better workload distribution via smaller committee sizes which reduce the opportunity to engage in social loafing. Curcio & Lynch, *supra* note 6, at 250–51.

167. MANNE, *supra* note 1, at 107–13; *see also id.* at 70, 71.

168. *Id.*

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*if we don't rethink our rules of engagement, we will just continue disadvantaging them.*"<sup>169</sup>

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169. KerryAnn O'Meara, *The Hallway Ask*, INSIDE HIGHER ED. (May 10, 2018) (emphasis added), [https://www.insidehighered.com/advice/2018/05/10/ensuring-equity-service-work-opinion?utm\\_source=inside+Higher+Ed&utm\\_campaign=24362e9c4e-DNU20180111&utm\\_medium=email&utm\\_term=0\\_1fcbc04421-24362e9c4e-198228137&mc\\_cid=24362e9c4e&mc\\_eid=0e307ffb34](https://www.insidehighered.com/advice/2018/05/10/ensuring-equity-service-work-opinion?utm_source=inside+Higher+Ed&utm_campaign=24362e9c4e-DNU20180111&utm_medium=email&utm_term=0_1fcbc04421-24362e9c4e-198228137&mc_cid=24362e9c4e&mc_eid=0e307ffb34) [https://perma.cc/Q9CY-SDQM].