LAW, NORMS, AND THE
MOTHERHOOD/CARETAKER PENALTY

Catherine R. Albiston, University of California, Berkeley†

Shelley J. Correll, Stanford University

Christina Stevens, University of California, Berkeley

Traci Tucker, Stanford University

ABSTRACT

A growing body of empirical research finds that mothers and caretakers experience significant workplace penalties, including negative evaluations, lower pay, and reduced prospects for promotion. Can law reduce these workplace penalties for mothers and caretakers? We present recent theoretical developments and research that uncover the social psychological mechanisms producing these disadvantages. We then discuss our theory and the results of an experimental laboratory study that show how laws prohibiting discrimination against workers who take family leave can eliminate these biases. Drawing on theories from law and society scholars, we contend that law affects society not only through punitive sanctions but also by changing moral judgments. This argument is confirmed by our finding that when the FMLA was made salient to evaluators, the law eliminated not only wage and promotion penalties for mothers and caretakers, but also negative normative judgments of these workers. In contrast, voluntary organizational policies made salient in the same manner produced mixed results, and in some instances increased discriminatory evaluations. These findings indicate that law can mitigate workplace penalties by changing normative judgments about mothers and caretakers, and that the law is more effective than voluntary policies in counteracting the disadvantages caretakers experience.

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I. INTRODUCTION

Mothers who work and parents who take family leave pay a significant price in the workplace. Mothers earn less than childless women, and also earn less than men whether or not those men have children. These wage penalties persist even after controlling for human capital investments, job differences, and hours worked. Similarly, workers who take family leave have lower salaries and are less likely to be promoted than workers who do not take leave, regardless of their gender. Mothers and caretakers also suffer biased judgments of their competence, commitment, and personal characteristics. Experimental laboratory studies show that evaluators rate mothers as less competent than other workers, and report less interest in hiring, promoting, and training working mothers relative to other workers with the same qualifications and productivity. Workers who take family leave are similarly disadvantaged. Evaluators view leave takers as less committed and less deserving of organizational rewards than other workers whose qualifications are equivalent by experimental design. Interestingly, men who use family leave are evaluated more negatively than all other workers, including women who take family leave. These findings suggest that employers penalize workers who defy prescriptive stereotypes that women should be family caretakers and men should be family breadwinners.

This article asks whether laws protecting leave takers can change these negative outcomes and normative judgments about working mothers and leave takers. In theory, an antidiscrimination law such as this will reduce the discrimination that produces biased outcomes by penalizing bias so that rational actors who wish to avoid these penalties will no longer discriminate. Scholars roundly criticize antidiscrimination laws for failing to eliminate discrimination, however. Much of this criticism adopts the rational actor perspective, observing that lax enforcement, competing incentives, second-generation discrimination, and statistical discrimination render antidiscrimination laws ineffective.

In addition to imposing sanctions on discriminatory behavior, antidiscrimination laws communicate that discrimination is illegitimate and morally wrong. This suggests a second theoretical mechanism of change: by expressing a collective moral judgment, these laws may both discourage discriminatory behavior and change the negative normative judgments that produce biased outcomes. Yet critiques of antidiscrimination law seldom examine whether law can reduce discrimination and biased outcomes by changing normative judgments.
In this paper, we develop and evaluate an argument that antidiscrimination law has an expressive influence, affecting moral judgments and behaviors by conveying a social consensus that certain actions are improper or wrong. We do so by asking whether “family friendly” laws can mitigate the biases that mothers and other caretakers experience in the workplace. This question is important for understanding how to address the systematic, stereotypic biases that lead to lower wages and diminished chances of hire and promotion for these workers.\(^1\) If law conveys consensus that discrimination against caretakers is morally wrong, family friendly laws may reduce the biases, and accompanying wage penalties, that mothers and caretakers experience at work.

We first review the evidence that mothers and other caretakers experience penalties in the workplace. We then describe recent attempts to understand the social psychological mechanisms contributing to these disadvantages. Next we develop our argument about the role of law in reducing these disadvantages. We then describe a laboratory experiment designed to evaluate our argument. After describing our results, we conclude by discussing the policy implications for reducing the stereotypic biases experienced by caretakers in the workplace.

II. THE MOTHERHOOD/CARETAKER PENALTY

Ample research documents the significant wage penalty for motherhood. Mothers earn less than men, whether or not those men have children.\(^2\) Mothers also earn less than childless women.\(^3\) Over time, mothers’ wages have grown more slowly than those of women without children.\(^4\) Between 1980 and 2009, women’s median full time annual

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earnings rose from 60 percent to 77 percent of men’s full time earnings.\(^5\) In contrast, in 1980 mothers’ full time earnings were only 48 percent of fathers’ full time earnings, and by 2010 that figure was still only 69 percent.\(^6\) Indeed, the sociologist Jennifer Glass concluded that the gender wage gap is almost entirely explained by the large lag in wage growth for mothers.\(^7\)

This wage penalty makes motherhood expensive for working women. Estimates of the motherhood wage penalty are as high as ten percent for one child, and thirteen percent for two or more children.\(^8\) For a professional woman with two children, this penalty amounts to more than one million dollars over the course of her career.\(^9\) Although the penalty may be smaller in dollar figures for nonprofessional women, it still represents a significant loss of income relative to the resources of their families. Moreover, as more families come to be headed by single working women,\(^10\) the motherhood penalty leaves more families managing on one discounted wage.

Wage penalties for mothers cannot be fully explained by differences between mothers and other workers. Studies show that controlling for human capital investments does not eliminate the wage disparity.\(^11\) Instead, employed mothers experience a wage penalty of about a five percent per child even after controlling for the usual human capital investments.

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\(^6\) Current Population Survey data, *supra* note 2. This wage gap results not only from mothers’ depressed wages but also because fathers receive a wage premium relative to other workers.


\(^8\) Anderson et al., *supra* note 3, at 274.


\(^11\) See Anderson et al., *supra* note 3, at 291 (finding that while controls for human capital inputs and unobserved heterogeneity accounted for 55-57% of the wage gap, a wage penalty of 3-5% still remained for mothers); Waldfogel (1997), *supra* note 3, at 216 (finding a persisting motherhood wage penalty even after controlling for actual labor market experience); Joyce Jacobsen & Laurence Levin, *The Effects of Intermittent Labor Force Attachment on Women’s Earning*, 118 MONTHLY LAB. REV. 14, 18 (1995) (finding that while employment gaps reduced the wage differential, controlling for this and other human capital variables did not fully erase the wage penalty).
capital and occupational factors that affect wages. 12 Similarly, controlling for “mother friendly job characteristics,” such as part time work or flexible schedules, that might compensate for lower pay does not eliminate the penalty.13

In addition to mothers, caretakers pay a wage penalty regardless of their gender. Although fathers generally do not experience a wage penalty, both men and women who take family leave earn lower salaries and have lower likelihood of promotion and lower performance evaluations than workers who do not take leave. 14 Some evidence suggests that these disadvantages result from taking family leave in particular, rather than simply taking time away from work. For example, one study of university faculty found that assistant professors who took advantage of a “stop the [tenure] clock” policy because of the arrival of a new child experienced lower salary growth than their counterparts who stopped the clock for non-family reasons such as personal illness or unplanned research interruptions. 15 In addition, women who change jobs after taking family leave suffer smaller wage penalties than women who take leave and return to the same job, further suggesting that it is the act of taking family leave, rather time away from work, that leads to lower wages.16

III. THEORETICAL EXPLANATIONS FOR THE MOTHERHOOD/CARETAKER PENALTY

Given that motherhood/caretaker penalties persist even with extensive controls for human capital and workplace factors, scholars contend that these penalties stem from workplace bias against mothers and caretakers. Until recently, the empirical support for bias largely consisted of showing that a residual wage penalty persists after statistically controlling for differences between mothers, caretakers, and others. A residual wage penalty can be interpreted in many ways, however—as the result of bias, or, conversely, as the result of unmeasured differences between mothers/caretakers and others.17

Recently, laboratory experiments, audit studies, and qualitative research have identified and consistently found evidence for mechanisms

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12 Anderson et al., supra note 3, at 291; Budig & England, supra note 1, at 213-214.
14 Judiesch & Lyness, supra note 1, at 247.
15 Colleen F. Manchester et al., Stop the Clock Policies and Career Success in Academia, 100 AM. ECON. REV.: PAPERS & PROCEEDINGS 219 (2010).
16 Glass, supra note 7, at 382-383.
17 See Budig & England, supra note 1, at 209, 220.
of discrimination against mothers and caretakers in the workplace.\textsuperscript{18} In particular, two mechanisms of discrimination have been shown to produce these biases: status-based discrimination and normative discrimination.\textsuperscript{19} The first, status-based discrimination, involves descriptive stereotypes, which are widely shared beliefs about the nature and characteristics of groups of people. For example, mothers are believed to be less committed to paid work than are childless women.\textsuperscript{20} The second, normative discrimination, focuses on the role of prescriptive stereotypes, which are widely shared beliefs about how groups of people \textit{should be}, whether or not they conform to those expectations. Mothers, for example, are expected to be warm and nurturing and to prioritize family over work, whereas fathers are expected to be breadwinners who prioritize work over care giving.\textsuperscript{21}

\textbf{A. Status based discrimination}

Theories of status discrimination focus on status characteristics, a “categorical distinction among people based on a personal attribute (e.g., race, gender) or role (e.g., motherhood, manager) that has attached to it widely held beliefs in the culture that value one category of the distinction above others.”\textsuperscript{22} In this view, motherhood or caretaking operates as a devalued status characteristic, meaning that employers have lower expectations of the workplace competence and commitment of mothers or caretakers, as a group, compared with other types of workers. The theory predicts that as a result of these expectations, employers will apply higher performance standards\textsuperscript{23} and consequently give fewer

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\item Correll et al., \textit{supra} note 1, at 1301-1307; Stephen Benard \& Shelley J. Correll, \textit{Normative Discrimination and the Motherhood Penalty}, 24 \textit{Gender \& Society} 616, 618-622 (2010).
\item \textsc{Joan Williams}, \textit{Unbending Gender: Why Family and Work Conflict and What to Do About It}, 1-3, 20-39 (2000).
\item Correll et al., \textit{supra} note 1, at 1301; see also \textsc{Joseph Berger} et al., \textit{Status Characteristics and Social Interaction} (1977).
\item Correll et al., \textit{supra} note 1, at 1301-1302. When salient, status characteristics shape evaluations of a target according to differential performance expectations, such that high-status individuals are expected to perform with greater competence than low-status individuals. These performance expectations have a self-fulfilling tendency since cognitive beliefs and behaviors directed at a status
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organizational rewards (e.g., pay, promotion) to those with devalued characteristics.24 As Williams argues, workers who are believed to be less than fully committed to work violate the so-called “ideal worker” norm that good workers prioritize work above competing demands and are “always there” for their employer.25

There is growing evidence in support of status-based discrimination. Perhaps the most compelling comes from experimental studies in which evaluators evaluate job applicants whose qualifications, productivity, and employment backgrounds are equivalent by experimental design. These studies find that that mothers are offered lower starting salaries and are less likely to be recommended for hire and promotion compared with equivalently qualified childless women.26 Mothers are also held to harsher performance and punctuality standards,27 and they are judged to be less competent and less committed to their jobs.28 Consistent with the status-based discrimination mechanism, Correll and colleagues find that it is the lower competence and commitment ratings of mothers that lead mothers to earn fewer organizational rewards than childless women.29 Fathers, by contrast, are often advantaged over childless men because they are seen as more committed to their jobs and, as a result, receive higher starting salaries.30

Although these laboratory experiments rely on undergraduate evaluators, other research indicates that they have external validity beyond the laboratory setting. For example, Correll and colleagues conducted an audit study that sent out resumes from their laboratory study in response to actual job advertisements. Childless women received more than two times as many callbacks as equivalently qualified mothers target tend to be distorted systematically to be more in line with existing high or low performance expectations. This often results in high-status targets benefiting from more positive evaluations, and being given more opportunities to participate and have influence over others. Because actual performance is viewed in light of these pre-existing performance expectations, inconsistencies between the two receive greater scrutiny. This means that when low-status actors perform well, they are more heavily scrutinized, resulting in a stricter standard than the one applied to an equally-well performing high-status actor. See also Diane Kobrynowicz & Monica Biernat, Decoding Subjective Evaluations: How Stereotypes Provide Shifting Standards, 33 J. EXPERIMENTAL SOC. PSYCHOL. 579 (1997).

24 Correll et al., supra note 1, at 1305-1307.
25 Williams, supra note 21, at 69-75.
26 Correll et al., supra note 1, at 1316, 1320-1323.
27 Id. at 1320.
28 Id. at 1317-1319; Amy J. Cuddy et al., When Professionals Become Mothers, Warmth Doesn’t Cut the Ice, 60 J. SOC. ISSUES 701, 709 (2004).
29 Correll et al., supra note 1, at 1324-1326.
30 Id. at 1317.
did. In contrast, fathers were called back at a higher rate than childless men, although this difference was not statistically significant. Other research also documents how employers rely on descriptive stereotypes about employed mothers. In her analysis of discrimination cases, Schultz found that employers did not consider women with children for promotion because they assumed mothers were not interested in advancement. She also found that courts were receptive to this “lack of interest” defense as a justification for unequal treatment of women. Several qualitative field studies also suggest that when women take family leave, employers presume they are no longer committed to their jobs. Thus, field work as well as experimental work has begun to uncover the status discrimination mechanisms behind the motherhood wage penalty.

Experimental studies about the consequences of taking family leave reveal that status discrimination extends to caretakers as well. Experimental studies find that both men and women who take family leave are perceived be less committed to work than equally qualified workers who did not take leave. Interestingly, men who take leave suffer especially harsh penalties: they are rated less committed to work and are less likely to be recommended for raises or promotions than all other workers, including women who take family leave. Men who take leave are also rated as less likely to help their coworkers, be punctual, work overtime, or have good attendance than other workers, including women who take leave.

Across a variety of studies, mothers and caretakers are found to experience wage, promotion and hiring disadvantages in the workplace.

31 Id. at 1330.
32 Id.
33 Schultz, supra note 18, at 1802-1803.
34 Id. at 1769-1771; 1776-1781.
37 Id., at 177, 185.
These disadvantages result, in part, from stereotypical perceptions that mothers and caretakers are less committed and competent workers, even when their characteristics are held identical to other workers by experimental design. Thus, merely the status of being a mother or caretaker, apart from any other worker characteristic or behavior, produces negative perceptions of competence and commitment, and fewer workplace rewards.

B. Normative discrimination

In contrast to status discrimination, which involves descriptive stereotypes about the characteristics of certain groups, normative discrimination involves prescriptive stereotypes about how certain groups should be. Normative discrimination theory helps explain why mothers who work and fathers who take family leave suffer penalties in the workplace. Normative stereotypes about mothers prescribe that they should be warm, nurturing, take primary responsibility for the family, and invest significant time and care in their children.39 Normative stereotypes about fathers prescribe that they should be stable and responsible family breadwinners, work hard, and put work first before other responsibilities, including family responsibilities.40 Mothers who work and fathers who take leave from work to care for their families violate these normative expectations.

Individuals who violate prescriptive stereotypes pay a price. Psychologists have shown that when individuals comply with prescriptive stereotypes, others find them more warm and likeable.41 In contrast, when individuals violate prescriptive stereotypes, they are seen as less warm, less likeable and more “interpersonally hostile,” a term that encompasses a suite of negative attributes, such as being seen as more selfish and arrogant. The theory predicts that individuals who are liked less and viewed as more hostile should be less likely to hired or promoted. As Peter Glick and his colleagues have argued, these subtle positive and negative responses discourage behavior that violates gender

39 Alice H. Eagly & Valerie. J. Steffen, Gender Stereotypes Stem from the Distribution of Women and Men into Social Roles, 46 J. PERSONALITY & SOC. PSYCHOL. 735 (1984); JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT (2000); Hochschild, supra note 35.
40 Id.
41 See Madeline E. Heilman, Description and Prescription: How Gender Stereotypes Prevent Women’s Ascent up the Organizational Ladder, 57 J. SOC. ISSUES 657 (2001).
norms and encourage behavior that conforms to gender norms, thus reproducing stereotypically gendered behavior.\textsuperscript{42}

Research indicates that normative discrimination operates separately from status discrimination. In an experimental study designed to test the normative discrimination theory, Benard and Correll had evaluators rate two equally qualified job applicants who, by experimental design, were extremely committed to their jobs and highly competent.\textsuperscript{43} The study asked whether demonstrations of especially high levels of workplace commitment would eliminate discrimination against mothers or motivate new forms of discrimination. Perhaps because the study depicted applicants with extremely high levels of past workplace commitment, mothers and childless women were judged to be equally competent or committed workers: both received the highest possible ratings. However, the highly committed mothers were viewed as less warm, less likeable and more interpersonally hostile than other workers.\textsuperscript{44} Because of these lower ratings, the highly committed mothers received fewer organizational rewards.\textsuperscript{45} As this study shows, normative discrimination occurs not because evaluators view mothers as less competent or committed workers, but because they think mothers should put family first. Displaying especially high levels of commitment to paid work violates this gendered prescription.

In the same study, fathers who displayed especially high levels of workplace commitment continued to be seen as equally warm and no more hostile than fathers with more ambiguous workplace commitment. Unlike mothers, fathers who display high levels of workplace commitment conform to gendered prescription that fathers should prioritize work over family. Although breadwinning fathers may not be penalized, other experimental research cited above finds that fathers who step out of the breadwinning role and take family leave are penalized, often more than women who take leave.\textsuperscript{46} The especially harsh penalties for leave taking men are consistent with qualitative research that finds

\textsuperscript{42} Peter Glick & Susan T. Fiske, \textit{An Ambivalent Alliance: Hostile and Benevolent Sexism as Complementary Justifications for Gender Inequality}, 56 AM. PSYCHOLOGIST 109 (2001); Miguel Moya et al., \textit{It’s for Your Own Good: Benevolent Sexism and Women’s Reactions to Protectively Justified Restrictions}, 33 PERS. SOC. PSYCHOL. BULL. 1421 (2007); Peter Glick et al., \textit{The Two Faces of Adam: Ambivalent Sexism and Polarized Attitudes Toward Women}, 23 PERS. SOC. PSYCHOL. BULL. 1323 (1997).

\textsuperscript{43} Benard & Correll, \textit{supra} note 19.

\textsuperscript{44} Id. at 629-634.

\textsuperscript{45} Id. at 634-638.

\textsuperscript{46} See \textit{supra} notes 36, 38.
that many employers believe men should not take more than a few days off for parental leave, if that.47

Normative discrimination creates a conundrum for working mothers and for fathers who take family leave because these workers violate the proscribed behavior for their gender and parental status. Mothers who comply with ideal worker behavior by working steadily and not taking family leave violate norms about putting family first, and consequently are seen as less warm and likable, and receive fewer organizational rewards than other workers. Men who do the same do not face the same conflict between ideal worker behavior and proscribed behavior for their gender roles, and therefore do not face the same penalties. Indeed, as the findings discussed above show, these men are seen as more warm and likable than other workers because they conform to their stereotypical gender roles. In contrast, men who take family leave violate the breadwinner stereotype, and consequently may be perceived as less warm, less likable, and less deserving of organizational rewards than other workers.

Together, these two theoretical mechanisms help explain why working mothers and leave takers are penalized in the workplace. Only working fathers who do not take leave reap the benefits of both their preferred status relative to mothers and the benefits of conforming to prescriptive gender stereotypes. All other working parents are disadvantaged in some way by the combined effects of status and normative discrimination.

IV. THE ROLE OF LAW IN REDUCING BIAS

Can law reduce the biases mothers and care takers experience in the workplace? Substantial authority holds that discrimination based on these descriptive and prescriptive stereotypes violates Title VII.48 In addition, the Family and Medical Leave Act (FMLA) provides job-protected time off from work for childbirth, to care for and bond with new children in a family, or to care for seriously ill family members.49

47 Albiston, supra note 18, at 31-36.
For constitutional and statutory reasons, as well as equity goals, these leave entitlements are gender neutral, so leave taking fathers are protected. In addition, penalizing workers for using FMLA leave violates the Act. Although the FMLA is limited in scope, covering only about half of American workers and providing only unpaid leave, it represents a substantial departure from the prior norm that employers need not adapt work schedules to the family responsibilities of workers.

There are at least two common objections to the likely effectiveness of antidiscrimination laws like these. The first is that under-enforcement of employment discrimination law renders top-down regulation largely ineffective. After all, these are very subtle subjective biases that are difficult to prove legally without employer admissions or other hard to obtain evidence. Some scholars who take this view contend that flexible, voluntary organizational policies are likely to be more effective than legal mandates in reducing bias. The second objection is that legal prohibitions face backlash when they attempt to change deep-seated normative beliefs. Prescriptive stereotypes about appropriate behavior for mothers and fathers are a classic example of entrenched normative beliefs that risk evoking backlash.

Some social psychological research suggests, however, that law might reduce stereotypic biases in the workplace not only by bucking, but also by changing normative beliefs, regardless of whether the law is vigorously enforced. Law and society scholars have long contended that law affects society not only through punitive sanctions, but also through its symbolic or expressive effect on normative judgments. In contrast to

50 U.S. Const. amend. XIV, § 1.
52 See 29 U.S.C. § 2601 (2000) (stating in the preamble to the FMLA that one of the intended purposes is to provide leave in a manner that minimizes the potential for employment discrimination on the basis of sex and promotes equal employment opportunity for both men and women).
53 Id.; CAL GOV’T CODE § 12945.1; CAL. UNEMP. INS. CODE §§ 3300 et seq.; N.J. STAT. ANN. §§ 34:11B-1 et seq.
54 29 U.S.C. § 2615(a); 29 C.F.R. §825.220.
55 Albiston, RIGHTS ON LEAVE, supra note 18 at viii-ix.
59 See, e.g., Leonard Berkowitz & Nigel Walker, Laws and Moral Judgments, 30 SOCIOMETRY 410 (1967); Robert MacCoun, Drugs and the Law: A
rational actor approaches, which assume compliance with the law is driven by the probability or severity of sanctions, normative perspectives posit that compliance also results from individuals’ moral evaluations of illegal conduct.\textsuperscript{60} So, for example, individuals refrain from murdering those they dislike not only because they fear being punished, but also because they find murder to be morally reprehensible.

Normative theories of law’s influence on society contend that law affects moral judgments by symbolically conveying that certain actions are improper or wrong.\textsuperscript{61} In an early articulation of this theory, Berkowitz and Walker argued that law implies a social consensus that the prohibited conduct is wrong, and this implied consensus influences moral judgments of that conduct.\textsuperscript{62} In an experimental test of these theories, Berkowitz and Walker asked participants to make judgments about a behavior, such as public drunkenness, and then told them that the behavior was either legal or illegal. Once informed of the legality of the behavior, participants altered their judgments of the morality of the behavior in the direction of the law.\textsuperscript{63}

More recently, legal scholars have argued that law has an expressive function that can change both behavior and norms.\textsuperscript{64} In this perspective, law does more than simply threaten penalties for engaging in prohibited behavior; it also changes the meaning of a given behavior and, with it, individuals’ normative evaluations of that behavior. This idea is consistent with the well-established finding in social psychology that majority opinion influences judgments, beliefs and behaviors.\textsuperscript{65}

If law can change behavior and normative judgments, then laws prohibiting discrimination against caregivers should improve both workplace outcomes and perceptions of mothers and leave takers. In this

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\textsuperscript{60} Suchman, supra note 59, at 486-490; MacCoun, supra note 59, at 503-504.

\textsuperscript{61} Id.

\textsuperscript{62} Berkowitz & Walker, supra note 59, at 412.

\textsuperscript{63} Id.


\textsuperscript{65} See, e.g., Charles Stangor et al., Changing Racial Beliefs by Providing Consensus Information, 27 PERSONALITY & SOC. PSYCHOLOGY BULLETIN 484 (2001).
way, law’s expressive effects could mitigate a host of problematic workplace penalties for mothers and fathers who step outside the stereotypical gender roles of the family wage ideal. Moreover, unlike law’s coercive effects, law’s expressive effects do not require uniform and vigorous enforcement, only publicity and knowledge by the relevant actors.

Theory and research about law’s expressive effects speak to the backlash argument as well. The backlash thesis assumes that norms are independent of, and impervious to, law. Expressive theories, by contrast, contend that law and norms are not separate entities; they mutually construct each other in an integrated social process. Empirical research about law’s expressive function is limited, but what evidence we have does suggest that law influences normative judgments. Although normative resistance and backlash may still be an issue, we argue that legal reforms contribute to changing individuals’ normative beliefs about work, family and gender. If this theory is supported, it has important public policy implications for proposals to expand protections for family leave.66

V. EVALUATING THE NORMATIVE EFFECTS OF LAW

We use a laboratory experiment to evaluate whether knowledge of legal protections for employees who use family leave affects workplace evaluations. The law in question is the Family and Medical Leave Act (FMLA).67 The FMLA is a federal law passed in 1993 that entitles workers who work in a location with at least 50 employees and have been on the job for at least a year to 12 weeks of unpaid leave for certain family and medical reasons.68 This law is obviously limited in its coverage, but if our theory about the expressive power of law is correct, it should nonetheless convey a social consensus about leave taking behavior and affect normative judgments of leave-taking workers.

A. Experimental Procedure

Participants were 131 undergraduate students who participated in the study in exchange for pay.69 Participants evaluated three, same gender, equally qualified, fictitious employees based on paper files that

68 Id.
69 Data from four participants were dropped because participants were suspicious about the purpose of the study.
were pretested to be equivalent. All employees worked for the same company, which was described as being in “integrated communications,” and all held a marketing-type position. Each employee file contained worker specific information, including a resume, a strong performance evaluation, and a description of the company and its benefits. Although the study relied on undergraduate participants, employee materials for the study were derived from a previous study that found that undergraduate students and actual employers responded very similarly to the fictitious employees.70

Participants were told (falsely) that researchers conducting the study were studying “360 performance evaluation” systems. We chose 360 evaluations as a cover story because they are becoming more common such that workers in a wide variety of positions in firms are now asked to make evaluations of their peers, supervisors and the like. Participants were told that the researchers hoped to learn how individuals of different ages and educational backgrounds made judgments about workers based on very little information.

The three employees evaluated by the participants were the same gender, either all men or women. One employee was childless, a second was a parent who had not taken family leave and the third was a parent who had taken family leave. We manipulated gender by first name. We manipulated parental status by indicating on the resume for non-leave taking parent that s/he was an officer in an elementary school parent-teacher association. The leave taking employee’s files contained a form requesting and approving a 12-week family leave. The files of the childless employee and the non-leave taking parent instead contained an ergonomic worksheet to insure that participants read equivalent amounts of material across type of employee. We standardized time on the job so that workers who took leave and workers who did not had equivalent lengths of service.

Participants were randomly assigned to one of six experimental conditions, which crossed type of policy (none, legal, or voluntary organizational policy) by gender of the three employees (female or male). The main experimental condition was theFMLA condition, in which the description of the company’s benefits contained a paragraph stating that the company was covered by the FMLA and describing the provisions of the law. In the no policy condition, the description of the company contained no mention of a leave policy, but instead discussed the company’s program for health maintenance and stress reduction. As

70 Correll et al., supra note 1.
an additional comparison, we included a voluntary organizational policy condition, in which the description of the company explained that it had a family leave policy that allowed new mothers and fathers time to be at home with their child to help with the transition to a larger family. In this way we could determine whether any effects we found were the result of legal policies, or simply the result of having any policy at all.

B. Dependent Measures and Predictions

Our dependent measures tracked our theoretical framework and were largely drawn from prior studies regarding motherhood and caretaker discrimination. Status based discrimination and normative discrimination both anticipate that mothers and leave takers will be penalized in terms of organizational rewards, such as pay and promotion. To evaluate these predictions, we asked participants to recommend an annual salary increase, in dollars, for each employee in the range of $0 - $10,000. Participants were told that salary increases averaged between $3,000 and $5,000 at this company. We also had participants assess how likely each employee was to be promoted within the next five years, on an 4-point scale ranging from “most certainly will not be promoted” to “most certainly will be promoted.” Since we constructed our employees to be highly qualified, it is perhaps not surprising that 54.5 percent fell into the top category of this variable, being seen as highly promotable. Another 37.4 percent fell into the next highest category, “might be promoted,” and only 8.1 percent fell into either of the bottom two categories. Therefore, we recoded this variable into a dichotomous variable, coded 1 if the employee “most certainly will be promoted,” and 0 if s/he fell into one of the 3 other categories. We predicted that in the No Policy condition, mothers, regardless of whether or not they took leave, and leave takers, regardless of their gender, would receive lower salary increases and be judged less promotable than other types of employees.

We were also interested in how law affects judgments about the personal characteristics of mothers and leave takers. Status based discrimination focuses on descriptive stereotypes of mothers and caretakers as less competent and committed workers. To determine whether these stereotypes operated here, we asked participants to rate each employee’s competence using items drawn from prior studies. The competence scale is the average rating of each employee on a series of 7-point items ranging from “not at all” to “extremely” capable, efficient, skilled, self-confident, independent, and intelligent (alpha=.853). We also asked subjects to estimate how committed each employee was to the company relative to other employees in similar positions. The
commitment variable comes from a single item ranging from 0-99, as participants rate the employees as being more committed than “0 percent of other employees” to more committed than “99 percent of other employees.” This item has been successfully used in other similar studies. We predicted that in the No Policy condition, participants would rate mothers and leave takers as less competent and less committed than other workers.

Normative discrimination focuses on judgments about how mothers and fathers should behave with regard to work and family care giving responsibilities. When individuals violate these stereotypes, they are usually seen as less warm and more interpersonally hostile. We measured both warmth and interpersonal hostility using items adapted from prior studies. Warmth is the average of participants’ ratings of each employee on 7-point scales ranging from “not at all” to “extremely” warm, aware of others’ feelings, cooperative, and likeable (alpha=0.826). Interpersonal hostility is the average of participants’ ratings on 7-point scales ranging from “not at all” to “extremely” aggressive, selfish, ambitious, intimidating, and arrogant (alpha=.797). We predicted that in the No Policy condition, men who take family leave and mothers who do not will be rated as less warm and more interpersonally hostile since gender stereotypes prescribe that mothers should prioritize family over work, even if employed, and fathers should be breadwinners, prioritizing work over family.

Our theory about the symbolic or expressive effects of law predicts that the biases outlined above should diminish or be eliminated in the FMLA condition. Participants who read the description of legal rights to leave and protections for leave takers are predicted to change their normative evaluations of workers who take family leave. And, because the FMLA normalizes behavior that transgresses traditional gender roles, it may also help mitigate bias against working mothers, even though the law contains no explicit protections for mothers who work but do not take leave.

We also evaluate the effects of having a voluntary organizational policy in place instead of a legal mandate. While we do not have strong predictions about the effect of voluntary policies, it seems reasonable that organizational polices might reduce some of the biases that mother and caretakers experience by signaling that this particular organization has adopted policies to minimize work-family conflict. However, it seems unlikely that such policies will be viewed a signaling a broad

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71 Correll et al., supra note 1; Benard & Correll, supra note 13.
social consensus about the appropriateness of stepping outside traditional gender roles. Indeed, one well-known problem with family friendly policies, such as leave policies, is that workers are reluctant to use them, worrying that doing so would signal a lack of commitment to one’s job.\textsuperscript{72}

\textbf{C. Results}

We estimated a series of OLS and logistic regression models where type of employee (parent, leave taker, and childless employee) predicts each of our six dependent variables (raise, promotion, competence, commitment, warmth and interpersonal hostility). Childless employees are the omitted category in all models. Because participants rated three employees who were all the same gender, we present separate regressions for ratings of male and female employees, with standard errors clustered by participant id to account for the non-independence of observations that results from having participants evaluate three employees. Our results do not differ by gender of participant, so we pool data across participant gender for all models. Finally, for all models, we present results for the “no policy” condition in tables (Tables 1-4). Then, in the interest of space, we simply comment on how the results differ in the “FMLA” and “organizational policy” conditions. The question to be answered is whether the FMLA and/or voluntary organizational policies reduce any penalties found when no policy is in place. Regression tables for the FMLA and organizational policy conditions are available upon request.

1. \textit{Organizational Rewards: Pay and Promotion}

Perhaps the most important question is how much being a mother and/or caretaker penalizes workers financially when no policy is in place. To investigate this question, we estimated OLS regression models where type of employee (parent, leave taker, and childless employee) predicts participants’ recommended annual salary increase.

In Table 1, we see that women who took family leave were offered significantly lower raises than childless women (about $1000 less). The magnitude of the salary penalty was similar for men who took leave, although the difference was only marginally significant. Surprisingly given past research, mothers who did not take leave did not experience a salary penalty compared with childless women. We discuss this lack of effect below. Finally, it is notable that the explained variance is higher in the women employee models, suggesting that participants rely more heavily on parental and leave taker information when making decisions about raises for women than for men.

Studies show that workers are also concerned about how taking leave may affect perceptions about their potential for promotion. We investigate this question by estimating a binary logistic regression model where type of employee predicts the odds of being seen as “certainly promotable.” As can be seen in Table 2, in the No Policy condition, the odds of promotion for women who took family leave were about eight times lower than the odds of promotion for childless women, a statistically significant difference. For men, taking leave did not significantly affect their odds of promotion relative to childless men. So while men leave takers were penalized in terms of the raise they were offered, the disadvantages associated with their leave taking did not extend to long-term judgments about their promotability.

Table 2: Logistic Regression Predicting Perceived Likelihood of Promotion in No Policy Condition

<table>
<thead>
<tr>
<th></th>
<th>MEN</th>
<th></th>
<th>WOMEN</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>Std. Error</td>
<td>B</td>
<td>Std. Error</td>
</tr>
<tr>
<td>Parent</td>
<td>-.182</td>
<td>.492</td>
<td>.833</td>
<td>-.491</td>
</tr>
<tr>
<td>Leave Taker</td>
<td>.560</td>
<td>.567</td>
<td>1.750</td>
<td>-2.059*</td>
</tr>
<tr>
<td>Constant</td>
<td>.000</td>
<td>.436</td>
<td>1.000</td>
<td>1.030</td>
</tr>
<tr>
<td>N</td>
<td>22</td>
<td></td>
<td>19</td>
<td></td>
</tr>
<tr>
<td>R²</td>
<td>.0175</td>
<td></td>
<td>.124</td>
<td></td>
</tr>
</tbody>
</table>

†p<.10; *p<.05
As with the salary model, mothers who did not take leave did not experience a penalty in terms of judgments about their promotability. This is surprising since past research has consistently found that, compared to childless women, mothers are penalized in terms of organizational rewards. Although we cannot be certain about why a motherhood penalty was not found in the current study, we suspect that this lack of finding might be because our design asked participants to compare three types of employees (childless, mothers and leave takers), whereas past research only compared mothers to childless women. Thus, the salient distinction for participants may have been the comparison between mothers who took leave and those who did not, rather than between mothers and childless women.

Returning to the question that motivates this paper, we now turn to examining whether the FMLA reduces biases found in the No Policy condition. Consistent with our predictions about the expressive effects of law, when the FMLA was made salient, there were no penalties for leave takers in terms of organizational rewards. For women leave takers, both the previous salary and promotion penalties were eliminated when the FMLA was made salient. The previous salary penalty that men leave takers experienced was also eliminated. In fact, men who took leave were actually recommended marginally significantly higher salary increases than childless men when the FMLA was salient.

Since the FMLA guarantees the right to take family leave, we would expect it to have the largest effect on rewards for employees who take leave. However, since the law permits both men and women to take family leave without loss of job, it does speak more broadly to gendered norms about work and family. So, we might ask what effect the law has on the rewards of mothers and fathers who do not take leave. Although there were no significant differences between mothers and childless women in the No Policy condition, when the FMLA was made salient, mothers received significantly higher salaries and were judged more promotable than their childless counterparts. Fathers, by contrast, were judged significantly less promotable than childless men.

Returning to our key result, simply exposing participants to the provisions of the FMLA during the rating process eliminated the disadvantages that leaving taking men and women experienced in terms of organizational rewards. Since we are interested in whether it is law, per se, that reduces this penalty or whether mention of any policy would

73 Budig & England, supra note 1; Anderson et al., supra note 3; Correll et al., supra note 1.
have similar effects, we now turn to the results from the voluntary organizational policy condition.

Like the FMLA, a voluntary organizational policy eliminated the salary penalty for both women and men who took leave. However, for women, a moderately significant negative effect on promotion remained (odds ratio of 0.25). Because the FMLA eliminated both the salary and promotion penalty for women who took leave, we tentatively conclude that law was more effective than a voluntary organizational policy at mitigating the penalties leave takers face in the workplace.

2. Status Based Discrimination: Competence and Commitment

We also wanted to understand how law affected subjects’ evaluations of the competence and commitment of mothers and caretakers. In the No Policy condition, as expected, participants rated women who took leave as significantly less competent and committed than childless women (Table 3). There was some evidence of a motherhood penalty: mothers who did not take leave were judged as less committed than childless women. Surprisingly, however, non-leave taking mothers were seen as significantly more competent than childless women. The ratings for men employees did not differ across type of employees. Fathers, whether or not they took leave, did not differ from childless men in perceptions of their workplace competence and commitment.

Table 3: Estimated OLS coefficients for models predicting Competence and Commitment, No Policy Condition

<table>
<thead>
<tr>
<th></th>
<th>Men</th>
<th></th>
<th>Women</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>Std. Error</td>
<td>B</td>
<td>Std. Error</td>
</tr>
<tr>
<td>COMPETENT</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>6.341</td>
<td>.113</td>
<td>6.140</td>
<td>.158</td>
</tr>
<tr>
<td>Parent</td>
<td>-.087</td>
<td>.159</td>
<td>.403*</td>
<td>.168</td>
</tr>
<tr>
<td>Leave Taker</td>
<td>.080</td>
<td>.159</td>
<td>-.386*</td>
<td>.178</td>
</tr>
<tr>
<td>N</td>
<td>23</td>
<td>19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>R²</td>
<td>.016</td>
<td>.247</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| COMMITTED |       |           |       |           |
| Constant | 75.182 | 4.87 | 86.421 | 2.71 |
| Parent   | -5.182 | 3.60 | -7.316* | 3.75 |
| Leave Taker | 1.773 | 3.26 | -9.105* | 3.10 |
| N        | 22  | 19 |
| R²       | .016 | .087 |

†p<.10; *p<.05

Once again, we found that law mitigated the disadvantages mothers and leave takers experienced. When the FMLA was made
salient, all negative judgments of mothers and leave taking women were
eliminated. The findings for mothers who take leave suggest that in the
FMLA condition, descriptive stereotypes that mothers who engage in
caretaking are not committed or competent workers no longer affected
participants’ evaluations. These findings suggest that law can not only
change material outcomes like pay and promotion, but also shape how
people understand the meaning of leave taking behavior. Mothers who
did not take leave continued to be judged as significantly more
competent than their childless counterparts.

With regard to pay and promotion, recall that law was more
effective than organizational policy in reducing penalties. With regard to
judgments about competence and commitment, however, organizational
policy and law were equally effective in eliminating the biases mothers
and women leave takers experienced in the No Policy condition. Thus,
the FMLA and voluntary policies both seem to eliminate status-based
discrimination.

3. Normative Discrimination: Warmth and Interpersonal Hostility

Our final inquiry examines how law affects normative judgments of
workers who step outside their prescribed gender roles, that is, mothers
who work without taking leave and fathers who take family leave. In
Table 4, we see that in the No Policy condition, workers who conformed
to gender stereotypes were generally viewed more positively than those
who did not. Fathers who did not take leave (i.e. breadwinners) were
rated significantly more warmly than childless men. They were also seen
as significantly less hostile. Conversely mothers who violated gender
stereotypes by not taking family leave were seen as significantly more
interpersonally hostile than childless women. Mothers who took leave
(conforming to prescriptive gender stereotypes) were judged to be
warmer than childless women at a marginal level of significance. Unexpectedly, fathers who took leave did not suffer negative judgments.
Perhaps the nurturing image of caretaking helped to soften any negative
judgments associated with violating gender norms.
Table 4: Estimated OLS coefficients for models predicting Warmth and Interpersonal Hostility, No Policy Condition

<table>
<thead>
<tr>
<th></th>
<th>MEN</th>
<th>Std. Error</th>
<th>WOMEN</th>
<th>Std. Error</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>WARMTH</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>5.203</td>
<td>.163</td>
<td>5.136</td>
<td>.183</td>
</tr>
<tr>
<td>Parent</td>
<td>.547*</td>
<td>.197</td>
<td>-.096</td>
<td>.237</td>
</tr>
<tr>
<td>Leave Taker</td>
<td>-.312</td>
<td>.231</td>
<td>.469†</td>
<td>.245</td>
</tr>
<tr>
<td>N</td>
<td>23</td>
<td></td>
<td></td>
<td>19</td>
</tr>
<tr>
<td>R²</td>
<td>.169</td>
<td></td>
<td>.114</td>
<td></td>
</tr>
<tr>
<td><strong>HOSTILITY</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>4.861</td>
<td>.232</td>
<td>4.074</td>
<td>.260</td>
</tr>
<tr>
<td>Parent</td>
<td>-.600†</td>
<td>.318</td>
<td>.832*</td>
<td>.264</td>
</tr>
<tr>
<td>Leave Taker</td>
<td>.052</td>
<td>.228</td>
<td>-.263</td>
<td>.281</td>
</tr>
<tr>
<td>N</td>
<td>23</td>
<td></td>
<td></td>
<td>19</td>
</tr>
<tr>
<td>R²</td>
<td>0.075</td>
<td></td>
<td>0.193</td>
<td></td>
</tr>
</tbody>
</table>

† p<.10; *p<.05

Making the FMLA salient eliminated all of the differences found in the No Policy condition except that non-leave taking fathers continued to be seen as warmer and as less hostile than childless men. Since the FMLA speaks most directly to the rights of workers who take leave, we found it especially interesting that mothers who did not take leave were no longer seen as more hostile than childless women. The FMLA imposes no sanction for discrimination against mothers who do not take leave, yet making the FMLA salient eliminated bias toward these women as well. This finding is consistent with our theory regarding the expressive effect of law on gender norms. Information about FMLA seemed to change participants’ normative evaluations of women who transgressed work and family gender roles more generally, even beyond the leave taking behavior that the law specifically addresses.

Voluntary organizational polices were not as effective as law in eliminating normative discrimination. In the voluntary policy condition, non-leave taking mothers continued to be rated as more interpersonally hostile than childless women. In contrast, mothers who took leave, and thus conformed to prescriptive gender stereotypes, continued to be rated as warmer than childless women. Perhaps the very existence of an organizational policy suggests that there is no good reason why a responsible mother would not make use of it. By not taking leave when it is available, a working mother may signal her deviance from expectations that mothers should prioritize family over work. It is all the more interesting then, that in the FMLA condition, where leave is not only available but also legally protected, we do not see this effect. Non-leave taking mothers in the FMLA condition suffer no negative
normative judgments for their (presumed) choice. This difference suggests that family leave laws affect broad normative judgments about gender roles in ways that voluntary organizational policies do not.

How do voluntary organizational policies affect judgments of leave-taking fathers? Fathers who took leave, and thus violated prescriptive stereotypes for their gender, were judged to be more hostile when a voluntary policy was in place. In contrast, we did not find this effect in either the FMLA or the No Policy condition. Although we cannot be certain why a voluntary organizational policy would activate negative judgments about leave-taking fathers, prior research does find that workers are often reluctant to use their employers’ voluntary family friendly policies for fear of signaling a lack of commitment to work. Other research finds that it is not uncommon for employers to believe men should not take extended family leave and actively discourage them from doing so.74 Thus, voluntary organizational policies do not necessarily change the social meaning of taking family leave, and that social meaning is clearly gendered.

V. CONCLUSION

Our goal was to evaluate whether law might mitigate the biases experienced by mothers and caretakers in the workplace by changing both discriminatory behaviors and normative judgments. In particular, we argued for the expressive power of law, with the key claim being that law signals a broad social consensus that influences the meanings of behaviors (such as taking family leave) and, consequently, the normative judgments that individuals make about those behaviors. If so, law has the potential to reduce the workplace penalties that mothers and caretakers experience, even when legal sanctions are relatively small and enforcement is lax.

The results of this study generally support our argument. Making the FMLA salient consistently eliminated bias against workers who took family leave. Although voluntary organizational “family leave” policies also eliminated some of these disadvantages, these policies were less effective than the FMLA. Organizational policies also increased some forms of bias, such as hostility directed at men who violated gender stereotypes by taking family leave. This suggests that some caution should be exercised by those calling for delegated governance and self-regulation in the antidiscrimination realm. Antidiscrimination laws address deeply-held status-based distinctions and prescriptive gender

74 Albiston, supra note 18, at 31-36.
stereotypes. Our findings suggest that voluntary policies are less effective than law in eliminating those biases. Antidiscrimination legislation may be one area in which law’s expressive effects are especially important, and cannot be matched by less authoritative and institutionally legitimate voluntary organizational policies that do not carry the same message of moral consensus.

This is not to say, however, that voluntary organizational policies are entirely worthless. Our data indicate that they do reduce some of the bias against leave takers relative to no policy at all. Our findings suggest some caveats about administering leave policies within an organization, however. First, to the extent that such policies are put in place by organizations in order to comply with delegated governance regimes, it should be made clear to managers, human resource personnel, and rank and file employees that those policies are legally required. Our data indicate that simply signaling that a policy is legally required will make it more effective in eliminating bias against leave takers. Second, our study suggests that it is important that organizations communicate their policies to decision makers at the point at which substantive decisions about pay or promotion are made, and not just as part of an employee handbook or an information sheet for workers who need leave. Finally, it may be the case that organizational policies that are more deeply embedded in the organizational culture are more effective than policies that are individual accommodations for certain workers. That is, to the extent that a policy is deeply entrenched in the culture, it, like law, might be seen as representing a social consensus, thereby influencing moral judgments and behavior. Future research could test this prediction.

We also caution that making law salient requires more than a blanket policy against gender discrimination or mere compliance with legal requirements to post information about the law in the workplace. Recent research indicates that mere policy statements, without more, do little to reduce discrimination, yet courts increasingly defer to these largely symbolic efforts at compliance. One recent example is the decision inWal-Mart v. Dukes, in which the Supreme Court pointed to

the company’s generic antidiscrimination policy to deny class certification even in the face of substantial evidence that managers relied on widely-held gender stereotypes of mothers in decisions about pay and promotion.\textsuperscript{77} Wal-Mart’s general antidiscrimination policy had trouble penetrating these decisions, which were left to managers’ discretion. In contrast, our research indicates that targeted efforts to make legal protections salient \textit{at the point of decision} offset deeply-entrenched status-based and normative bias against working mothers and caretakers.

There are also a few limits to the current study that need to be addressed in future research. First, the study relied on a sample of undergraduate students who have little or no experience evaluating employees. Although this sample limits the external validity of the results, it is worth noting that past research on the motherhood penalty used materials highly similar to those used here, and found that employers and students exhibit similar amounts of bias against mothers.\textsuperscript{78} The second limit is that the design may have highlighted a comparison between mothers who took leave and mothers who did not, which could mask a possible motherhood penalty. Our next project addresses both of these limits and will complement the results presented here. The new study involves a scaled down version of the experiment presented here, where participants rate simpler employee profiles using fewer measures. Although scaled down, the newer study utilizes a sample that is a random sample of the U.S. population, including participants who have hiring experience.

Third, we caution that social meaning of motherhood and caretaking behavior is socially contingent and may vary across time and cultures. Similarly, the social consensus conveyed by family leave legislation may also vary across cultures. The explicit purpose behind the FMLA, and the impetus for its passage, was to ease the conflict between work and family responsibilities as more women and mothers moved into the workforce by enabling both parents to take family leave on a gender neutral basis. American families faced increasing workplace demands on their time with little or no access to state support childcare or other means for managing family responsibilities. In contrast, many Western European countries offer much longer, paid, legally-protected

\textsuperscript{77} See Wal-Mart Stores, Inc. v. Dukes, 131 S.Ct. 2541, 2553-54 (2011) (citing Wal-Mart’s blanket antidiscrimination policy and assuming that most managers in a corporation that prohibits sex discrimination would select sex-neutral criteria for hiring and promotion); Plaintiffs’ Motion for Class Certification & Memorandum of Points and Authorities at 17-18 n.10, Dukes v. Wal-Mart Stores, Inc., 222 F.R.D. 137 (No. C-01-2252 MJJ) (citing statements by several managers that men need to be paid more because they have families to support).

\textsuperscript{78} Correll et al., \textit{supra} note 1.
leaves that reflect explicitly maternalist goals. In these countries, leave legislation is designed to encourage mothers to conform to traditional gender roles by staying home, in some instances for two or three years, to care for children. Unlike the individual leave benefit provided equally to mothers and fathers by the FMLA, many Western European countries provide leave time to the family as a whole, almost of which is typically taken by the mother. For these states, extremely generous leave policies are seen as a maternalist alternative to state supported childcare, and thus a more conservative policy choice in terms of preserving gender roles.

For these reasons, it may be that not all leave legislation will have the same normative effects as the FMLA. Indeed, some comparative research indicates that very long leaves result in worse outcomes for working women in terms of workforce attachment, pay, and advancement. These leaves, common in maternalist states, may have the opposite normative effect from the FMLA because they shore up prescriptive stereotypes that mothers belong at home with young children and that fathers should take on the primary breadwinner role. Future comparative research would be useful to tease out how social meaning and the expressive effect of law vary across different leave regimes.

Finally, some may question our theoretical argument for the expressive effect of law by asking why bias against mothers and caretakers persists given that the FMLA is nearly two decades old and Title VII is even older. After all, if we are correct that laws can change normative judgments, shouldn’t the existence of these laws have long ago done away with biases against mothers and caregivers? We emphasize that our experiment made the FMLA salient at the point of evaluation, heightening evaluators’ attention to the normative message conveyed by the statute at the time that they made judgments and allocated organizational rewards. If the law were not made salient, evaluators would likely fall back on widely held social stereotypes about work and gendered behavior. Indeed, our findings indicate that

80 Id.
82 See Morgan & Zippel, supra note 79.
evaluators may rely even more on these stereotypes when they evaluate women than when they evaluate men. Perhaps in the absence of law, motherhood and caretaker status are the most salient features of workers because the social meaning of those identities conflict with assumptions that ideal workers are by definition male breadwinners. Making law salient at the point of decision short-circuits the effects of background stereotypes, and introduces a different normative framework. That framework may be especially powerful because of the legitimacy and authority of law.

To conclude, our larger message is that, to the extent that law is thought to represent a social consensus about the rightness or wrongness of a behavior, it can affect the meaning and normative judgments of individuals in regard to that behavior. The implication is a hopeful one, suggesting that even a very limited law, like the FMLA, which fails to cover large numbers of workers and is weakly enforced, nonetheless has the potential to promote gender equality.