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## Introduction

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## Introduction

June Carbone and Naomi Cahn<sup>†</sup>

*Law & Inequality: A Journal of Theory and Practice* is delighted to bring together the contributions from two different conferences in this issue. The first is a Journal-sponsored symposium in honor of Catharine A. MacKinnon, “Legal Feminism: Looking Back, Looking Forward.” The second is a conference on “The Family-Inequality Debate: A Workshop on Coercion, Class, and Paternal Participation.”

Professor MacKinnon founded *Law & Inequality* in 1981 and served as its inaugural faculty advisor while she was a member of the University of Minnesota faculty. The inspiration for this year’s symposium started with meetings between Journal board members, who continue to treasure their experiences working with Professor MacKinnon in the early days of the Journal, and subsequent Journal editors who continue to draw inspiration from her example.

This Symposium combines a celebration of the Journal’s thirty-fifth anniversary with the thirtieth anniversary of the publication of Professor MacKinnon’s *Toward a Feminist Theory of the State*, her groundbreaking work on feminist theory.

In addition, this issue features Articles from a workshop, “The Family-Inequality Debate,” which examines the role of coercion, class, and paternal participation in family formation. This Workshop, sponsored by the Center for Equitable Growth, considers the implications of new research by sociologist Jennifer Barber of the University of Michigan, who tracked a random sample of eighteen- to nineteen-year-old women in Flint, Michigan for two and a half years. Barber used semi-structured interviews as well as weekly online surveys to develop her data. Her research casts new light on the quality of the young women’s relationships, the reasons why some relationships are more likely than others to lead to pregnancy, and the trajectories of fathers’ involvement.<sup>1</sup> The

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1. See, e.g., Justine P. Wu, Yasamin Kusunoki, Elizabeth J. Ela & Jennifer S.

Articles that came out of the workshop contribute additional empirical works that supplement and amplify Barber's findings and a discussion of their legal and policy implications.<sup>2</sup>

While these two events were planned independently, they complement each other. Central to Professor MacKinnon's work is the relationship between sexuality and coercion as part of a system of power. Professor Barber's new work considers the role of coercion in relationships that lead to pregnancy. Many of the scholars at each event commented on the legal system's ability to deal with violence in family disputes that often arise in the context of unstable parental unions. In addition, both events consider an issue that has always been central to Professor MacKinnon's work: the role of gender in systems of inequality, and the creation of hierarchies that govern not only the relationships between men and women, but among men and among women.<sup>3</sup>

This topic, which informs all of the Articles in this issue, has become even more critical with the passage of an event that the Symposium planners did not consider in the long period it took to bring the Symposium to fruition—the election of President Donald Trump. Trump in many ways embodies the issues that originally motivated Professor MacKinnon's work, and, as Professor Bartlett suggests, the issues underlying his election give a new sense of urgency to the exploration of Professor MacKinnon's work, not only for its past contributions, but for the insights it offers on the pressing issues we face today. *Law & Inequality* is accordingly pleased to offer this issue in honor of Professor MacKinnon and the continuing importance of her work for issues of law and inequality and in recognition of the significance of new empirical and theoretical work on gender and economic inequality.

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Barber, *Patterns of Contraceptive Consistency Among Young Adult Women in Southeastern Michigan: Longitudinal Findings Based on Journal Data*, 26 WOMEN'S HEALTH ISSUES 305–12 (2016); Jennifer S. Barber, Yasamin Kusunoki, Heather Gatny & Paul Schulz, *Participation in an Intensive Longitudinal Study with Weekly Web Surveys Over 2.5 Years*, 18 J. MED. INTERNET RES. 105 (2016).

2. Jennifer S. Barber et al., *The Relationship Context of Young Pregnancies*, 35 LAW & INEQ. 175 (2017).

3. See, e.g., June Carbone & Naomi Cahn, *Unequal Terms: Gender, Power, and the Recreation of Hierarchy*, 69 STUD. IN L., POL., & SOC'Y 189, 194 (2016), <http://www.law.unc.edu/documents/faculty/eichner/carbone-cahn-unequalterms.pdf> (observing that “men may be the biggest winners and losers in a more patriarchal society”).

### I. Legal Feminism: Looking Back, Looking Forward

The enduring contribution of Professor MacKinnon's work to feminism involves its construction of a theory of power.<sup>4</sup> Mainstream legal theory assumes the capacity for autonomy and free choice, ignoring the impact of the initial distribution of resources or the impact of race and gender. In contrast, feminism generally, and Professor MacKinnon's work in particular, makes power central to its analysis. Indeed, Professor MacKinnon defines patriarchy in terms of men's quest for dominance and their appropriation of women's sexuality in the process.<sup>5</sup>

Professor MacKinnon's work provided a foundation for a far-reaching series of reforms. She almost singlehandedly brought attention to sexual harassment and succeeded in securing a legal shift that categorized it as sex discrimination in employment. She prompted reconsideration of the notion of consent, leading to a redefinition of the basis for rape and other forms of sexual assault that continues to this day. And in work that remains controversial, Professor MacKinnon challenged the role of pornography in reinforcing patriarchy. Perhaps most critically, she forced us to see societal relationships in terms of the assertion of dominance and to recognize that interactions that were once taken as ordinary involve forms of coercion that can and should be the subject of legal regulation.

This issue includes Articles that consider Professor MacKinnon's contributions in terms of the continuing influence of her work in informing and shaping today's ongoing debates on the relationship between sexuality and power.

Professor Katharine T. Bartlett of Duke University School of Law addresses the relationship between *Feminism and Economic Inequality*.<sup>6</sup> She begins by observing that growing economic inequality has disproportionately hurt women, and yet, "few feminist legal scholars in recent years have had much to say about it."<sup>7</sup> Bartlett draws on *Toward a Feminist Theory of the State* to explain how Professor MacKinnon created a "robust theory of how the exercise of power disguises itself as natural, good, and obvious."<sup>8</sup> She accordingly draws on Professor MacKinnon's theory to propose

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4. *Id.* at 192–93.

5. CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 4 (1989).

6. Katharine T. Bartlett, *Feminism and Economic Inequality*, 35 *LAW & INEQ.* 265 (2017).

7. *Id.* at 265, 268.

8. *Id.* at 280.

a revitalized theory of economic inequality that shows how neoliberalism creates a self-reinforcing system that assumes its own legitimacy, uses stereotyping to naturalize power relationships, and depends on the appropriation of the power of the state to allocate resources in seemingly democratic ways. Her challenge is to build on the foundation Professor MacKinnon laid to examine the newly remade relationship between male domination in a neoliberal society and the group-based economic subordination of women.

In *Reforming the Law of Rape*,<sup>9</sup> Professor Stephen J. Schulhofer, a New York University School of Law Professor and Reporter to the American Law Institute Project to Revise Article 213 of the Model Penal Code, considers Professor MacKinnon's impact on the ongoing efforts to reform rape law. Schulhofer begins by reminding us that as recently as the 1970s, the law still treated rape as a crime of physical violence that required proof of the use of physical force or a threat to use physical violence.<sup>10</sup> Professor MacKinnon's work eventually led to a redefinition of rape to include non-consensual sexual intercourse and recognition of the many forms coercion could take. Schulhofer then examines the modern state of the law. He emphasizes how far we have yet to go, stating that in just under a majority of states, "[p]enetration without consent is not, in itself, a crime."<sup>11</sup> In the majority of the states that do make rape a crime on the basis of the lack of consent alone, the battle, in contrast, has shifted to the definition of consent and the circumstances that might nullify apparent consent, such as inebriation or drug use.<sup>12</sup> Central to Professor MacKinnon's concerns in establishing these doctrines is the presence of unequal power; she would thus make the inequality of the relationship between the two parties, such as a supervisor and a subordinate who fears dismissal, central to the rape determination. Schulhofer-although sympathetic to Professor MacKinnon's objectives-prefers clearer standards for prosecutors.<sup>13</sup> He ends with a discussion of the groups most opposed to any reform.<sup>14</sup> Here, he articulates his own theory of power, emphasizing the ways that the

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9. Stephen J. Schulhofer, *Reforming the Law of Rape*, 35 LAW & INEQ. 335 (2017).

10. *Id.* at 336-37.

11. *Id.* at 343 (emphasis in original).

12. *Id.* at 345-48.

13. *Id.* at 346-48.

14. *Id.* at 348-52.

assumptions of the powerful construct rape discourse, often without recognition of the realities that shape the great majority of cases.

The final two articles examine Professor MacKinnon's impact on pornography law. In the United States, Professor MacKinnon's early efforts to persuade legislatures to outlaw certain forms of pornography were declared unconstitutional as a violation of the First Amendment.<sup>15</sup> In *Appraising the Impact of Toward a Feminist Theory of the State: Consciousness-Raising, Hierarchy Theory, and Substantive Equality Laws*,<sup>16</sup> Max Waltman, a visiting researcher at Harvard University and a Wenner-Gren Fellow in Political Science, Stockholm University, discusses Professor MacKinnon's continuing influence internationally. Waltman provides a comprehensive summary of the updated empirical evidence that demonstrates the strong associations between pornography, sexual exploitation, and gender-based violence, greatly strengthening the initial case Professor MacKinnon had developed. He cites not only studies that document the gendered and violent nature of pornography, but its effects in normalizing the behavior of those who watch. One study found, for example, that where juries in simulated rape trials were exposed to common non-violent pornography, they recommended almost half the penalty recommended by control groups.<sup>17</sup> Waltman describes Professor MacKinnon's considerable influence on the Swedish law governing prostitution and compares the Swedish developments with those in other Northern European countries.

Professor Shannon Gilreath, a Wake Forest University School of Law Professor, in *A Feminist Agenda for Gay Men (Or: Catharine MacKinnon and the Invention of a Sex-Based Hope)*,<sup>18</sup> ties Professor MacKinnon's work to an examination of the destructive role of pornography in gay men's lives, and the implications for "queer theory." Gilreath explains that queer theory, particularly in Janet Halley's work, began as a response to Professor MacKinnon's indictment of pornography.<sup>19</sup> Yet, he maintains that "[c]elebration of the straight masculine ideal—either as celebration of the

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15. Max Waltman, *Appraising the Impact of Toward a Feminist Theory of the State: Consciousness-Raising, Hierarchy Theory, and Substantive Equality Laws*, 35 LAW & INEQ. 353, 364 n.48 (2017) (discussing pornography ordinances invalidated by courts).

16. *Id.*

17. *Id.* at 368 (citing Dolf Zillman & Jennings Bryant, *Pornography, Sexual Callousness, and the Trivialization of Rape*, 32 J. COMM. 10, 17 tbl.3 (1982)).

18. Shannon Gilreath, *A Feminist Agenda for Gay Men (Or: Catharine MacKinnon and the Invention of a Sex-Based Hope)*, 35 LAW & INEQ. 289 (2017).

19. *Id.* at 290.

subordinating power of straight masculinity or denigration of gay submission to it—is the predominating theme of gay pornography.”<sup>20</sup> While some theorists champion gay pornography in all of its forms as a necessary part of sexual liberation, Gilreath argues that the celebration of inequality, violence, and subordination is harmful wherever it occurs. He ties these images in gay pornography to the forces that long served to oppress gay men, and thus draws on Professor MacKinnon as a source of inspiration for gay men to invent “a sex-based hope” for a different future.<sup>21</sup>

## II. The Family-Inequality Debate: A Workshop on Coercion, Class, and Paternal Participation

The family has emerged as a marker of class. Stable, two-parent families, which correlate with better outcomes for children,<sup>22</sup> have increasingly become the province of the college-educated middle class, who carefully plan children and increasingly delay childbearing into their late twenties and beyond.<sup>23</sup> Those who graduate from high school, but not college, continue to have children at roughly the same ages as before, but fewer than half of the mothers marry the fathers, and more than half of the pregnancies that produce children are unplanned.<sup>24</sup>

Underlying these developments has been an intense debate. The disappearance of stable, well-paying jobs for blue-collar men has almost certainly been a factor in the changing nature of the family;<sup>25</sup> yet, some scholars insist that an economic calculus cannot explain the moral shift.<sup>26</sup> Almost all studies find that two parents who voluntarily stay together produce better outcomes than those who part, but they also agree that the two groups are not

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20. *Id.* at 291.

21. *Id.* at 310.

22. See, e.g., Cynthia Osborne & Sara McLanahan, *Partnership Instability and Child Well-Being*, 69 J. MARRIAGE & FAM. 1065, 1072 (2007); Terry-Ann Craigie et al., *Family Structure, Family Stability and Early Child Wellbeing* 4 (Nov. 2010) (unpublished working paper), <http://crcw.princeton.edu/workingpapers/WP10-14-FF.pdf>.

23. See JUNE CARBONE & NAOMI CAHN, *MARRIAGE MARKETS: HOW INEQUALITY IS REMAKING THE AMERICAN FAMILY* (2014).

24. Kay Hymowitz et al., *Knot Yet: The Benefits and Costs of Delayed Marriage in America: The Great Crossover*, figs.10B & 10C, <http://twentysomethingmarriage.org/the-great-crossover/> (last visited Apr. 12, 2017).

25. See ANDREW J. CHERLIN, *LABOR’S LOVE LOST: THE RISE AND FALL OF THE WORKING-CLASS FAMILY IN AMERICA* 7 (2014) (charting the relationship between stable, well-paying jobs for blue-collar men and family stability).

26. JAMES Q. WILSON, *THE MARRIAGE PROBLEM* 156 (2003).

necessarily the same in their ability to cooperate in childrearing.<sup>27</sup> Many would like to see greater efforts to promote two parent involvement. Others, however, are skeptical about the ability of the legal system to distinguish between those couples who, despite initial opposition, can in fact work together constructively versus those experiencing levels of conflict likely to persist to the detriment of their children.<sup>28</sup>

In this issue, Professor Jennifer Barber presents significant research from the Relationship Dynamics and Social Life (RDSL) study at the University of Michigan that sheds new light on family formation—and potentially on the legal and policy debate that underlies these issues. The Fragile Families and Child-Wellbeing Study, which followed mothers from the time they were in the hospital giving birth, dramatically changed our images of unmarried families.<sup>29</sup> It showed that, contrary to the popular assumptions of the time, the majority of unmarried mothers were in relationships with the fathers of their children at the time of the birth, and the majority of the fathers remained involved with their children for at least a period after the break-up with the mother. Barber's new research follows young women before they become pregnant and often before they have entered the relationships that produce the pregnancies. The study has produced numerous remarkable and important findings concerning young women's likelihood of becoming pregnant, their contraceptive use, and their partners. It promises to add significantly to our understanding of the formation and development of fragile families.

This issue begins with Professor Barber's Article describing some of the Study's findings. *The Relationship Context of Young Pregnancies*,<sup>30</sup> by Jennifer S. Barber, Yasamin Kusunoki, Heather Gatny, and Robert Melendez, provides details about the women most likely to become pregnant and about the fathers of their

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27. See June Carbone & Naomi Cahn, *Nonmarriage*, 76 MD. L. REV. 55, 69–80, 86–93 (2016).

28. See, e.g., Daniel L. Hatcher, *Remembering Anti-Essentialism: Relationship Dynamics Study and Resulting Policy Considerations Impacting Low-Income Mothers, Fathers, and Children*, 35 LAW & INEQ. 239, 252–53 (2017) (describing the works in this volume, which provide descriptions of overworked family courts).

29. See, e.g., Sara McLanahan, *Fragile Families and the Reproduction of Poverty*, 621 ANNALS AM. ACAD. POL. & SOC. SCI. 111, 11314 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2831755/>.

30. Jennifer S. Barber et al., *The Relationship Context of Young Pregnancies*, *supra* note 2, at XX. Professor Barber's workshop contribution builds on her work in Jennifer S. Barber et al., *The Dynamics of Intimate Partner Violence and the Risk of Pregnancy During the Transition to Adulthood* (Univ. Mich. Population Stud. Ctr., Working Paper 2016).



children. At the beginning of the RDSL, almost none of the women indicated a desire to become pregnant, but by the end of the two-and-a-half-year study, approximately one-fifth of the women had become pregnant.<sup>31</sup> The women who became pregnant were somewhat more disadvantaged than the women who did not,<sup>32</sup> but the bigger differences involved their partners. Pregnant women experienced relationship violence at between two and three times the rate of those who did not become pregnant, and the violent men were more likely than non-violent men to have multiple children with multiple partners.<sup>33</sup> Moreover, where the women who became pregnant had more than one partner during the study period, the women's oldest and least educated partners were the most likely to father their pregnancies.<sup>34</sup> In contrast, the pregnant women's non-pregnancy relationships did not differ much from their peers' relationships that did *not* lead to pregnancy.<sup>35</sup> Pregnancies were more likely to occur in longer relationships (22.43 months for pregnant respondents versus 8.15 for nonpregnant respondents), and those relationships appeared to be somewhat more stable than nonpregnant relationships, with 83% describing themselves in serious, cohabiting, engaged, or married unions, as opposed to 29% of other relationships.<sup>36</sup> After the pregnancy occurred, however, the relationships often deteriorated, with couples breaking up or becoming less serious, and also becoming more violent.<sup>37</sup> The preliminary findings already suggest that not all relationships are alike in their potential for constructive two-parent involvement.

Professor Margaret Brinig, of the University of Notre Dame Law School, provides a complementary examination of paternity establishment cases, presenting a snapshot of couples who end up in court. Professor Brinig's Article, *Racial and Gender Justice in the Child Welfare and Child Support Systems*, examines the records filed in one particular Indiana county during four months in 2008.<sup>38</sup> Unlike Professor Barber's data, which followed the lives of young

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31. Barber et al., *The Relationship Context of Young Pregnancies*, *supra* note 2, at 186–87, tbl.1.

32. *Id.* See also Leslie Joan Harris, *Family Policy After the Fragile Families and Relationship Dynamics Studies*, 35 LAW & INEQ. 223, 229 (2017).

33. Barber et al., *The Relationship Context of Young Pregnancies*, *supra* note 2, at 192, 196–97.

34. *Id.* at 188–89, 195.

35. *Id.*

36. *Id.* at 189, 193, tbls.3 & 4.

37. *Id.* at 193, tbl.4.

38. Margaret F. Brinig, *Racial and Gender Justice in the Child Welfare and Child Support Systems*, 35 LAW & INEQ. 199, 200–01 (2017).

women who may not necessarily become pregnant, Professor Brinig's data addresses only those who have children and litigate their relationships. Moreover, while some of the couples in the Barber Study were married, all of those who appear in the paternity establishment cases are unmarried.

Professor Brinig reports that, controlling for incarceration, Black fathers received more parenting time than fathers of other races.<sup>39</sup> Black fathers were the most likely to have child support orders entered against them; yet, they had the lowest incomes and the lowest rates of compliance with their child support orders.<sup>40</sup> Latino fathers were the least likely to be subject to child support orders; White fathers were in between.<sup>41</sup> She also found that the child's amount of overnight visitation with the noncustodial parent was correlated with income, and was related to the mother's (but not the father's) juvenile delinquency records.<sup>42</sup> Indeed, fathers who had a juvenile record received more overnight visits; fathers also received more overnights if the mother had some type of juvenile record.<sup>43</sup> Finally, Brinig reported that the existence of a domestic violence protective order was not correlated with the amount of visitation, but was related to other factors including whether the father had substance abuse or mental illness issues and child support enforcement.<sup>44</sup>

In his brief Article, *Commentary: Jennifer Barber's Landmark Research on the Connection Between Intimate Partner Violence and the Onset of Pregnancy*,<sup>45</sup> Professor William Doherty of the University of Minnesota explores the significance of Professor Barber's research for family systems therapists.<sup>46</sup> He hails the importance of her study for developing public health and other policy approaches because Professor Barber's data covers interactive patterns between couples over a period of time. In addition, focusing on the incidents of domestic violence experienced by study participants, he—like others—sounds a note of caution in generalizing about the results and developing one universal judgment about the families. Finally, he suggests that

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39. *Id.* at 208, tbl.2.

40. *Id.*

41. *Id.*

42. *Id.* at 211–14.

43. *Id.* at 212, tbls.5 & 6.

44. *Id.* at 209–10.

45. William J. Doherty, *Commentary: Jennifer Barber's Landmark Research on the Connection Between Intimate Partner Violence and the Onset of Pregnancy*, 35 *LAW & INEQ.* 217 (2017).

46. *Id.* at 218–19.

psychological “attachment” theory provides insights into the emotional complexities of the relationships that Professor Barber studied.<sup>47</sup>

In *Family Policy After the Fragile Families and Relationship Dynamics Studies*,<sup>48</sup> Professor Leslie Harris also explores the national significance of Professor Barber’s work. She first shows how it complements the Fragile Families Study; while that research began when subjects gave birth, the Barber Study includes subjects who never became pregnant and, for those who did, shows what happens before birth as well as afterwards. Professor Harris pulls out some of the details from Professor Barber’s data concerning the pregnant women and builds not just on Professor Barber’s published work, but also on her comments at the workshop, in order to use the data to help explain the behavior of these women. For example, she notes that Professor Barber explained that the pregnant women understood their partners’ weaknesses, but typically believed their partners were strongly committed to the relationship—a belief that often turned out to be false—and that the relationships would last.<sup>49</sup> Next, Professor Harris places the findings of the RDSL in the context of federal policies and scholarly commentary designed to encourage the parents in fragile families to cooperate with one another. She suggests that the RDSL challenges this literature because the relationships that resulted in a pregnancy, often characterized by violence and infidelity, were not necessarily stable enough to ensure positive cooperation between the parents.<sup>50</sup> Finally, she uses the RDSL results as the basis for a series of policy proposals that range from improving the living conditions of the parents as part of an effort to promote improved parenting relationships to providing additional support to improve the life chances of their children, such as high-quality early childhood education programs.<sup>51</sup> Ultimately, she concludes that both the Fragile Families and RDSL Studies underscore the importance of addressing the circumstances in which these families find themselves.

In *Remembering Anti-Essentialism: Relationship Dynamics Study and Resulting Policy Considerations Impacting Low-Income Mothers, Fathers, and Children*,<sup>52</sup> Professor Daniel Hatcher of the

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47. *Id.* at 220–21.

48. Harris, *supra* note 32.

49. *Id.* at 231.

50. *Id.* at 236–37.

51. *Id.* at 235–38.

52. Hatcher, *supra* note 28.

University of Baltimore School of Law, uses the RDSL finding concerning the pervasiveness of domestic violence to caution about the dangers of developing one uniform policy that applies to all families. As he notes, the data present a variety of circumstances in which the Study's young women became pregnant. He begins by reviewing the history of essentialist treatment of low-income mothers and fathers, beginning with the English Poor Laws in the 1500s.<sup>53</sup> This treatment, which—among other things—requires the mothers to identify the fathers in order to collect child support and protect the public fisc, was not only condescending towards the mothers, but also blamed the fathers for the family's poverty. Professor Hatcher then uses the variety of subjects in the RDSL to suggest different policies that would be more respectful of low-income mothers. And, although the RDSL included only women, he turns his focus to the men, addressing how they have similarly been subject to disdainful treatment. He concludes by suggesting that courts, which are overwhelmed by the number of these cases (he cites to one magistrate who considered up to 20 cases per hour),<sup>54</sup> can stop applying essentialist treatment to poor mothers and fathers. Like Professor Harris, he comments on the need for more resources and the importance of responding to individual family circumstances.

### III. Professor MacKinnon and Family Law

In *Mapping Gender: Shedding Empirical Light on Family Courts' Treatment of Cases Involving Abuse and Alienation*,<sup>55</sup> Professor Joan Meier, of the George Washington University Law School, and Sean Dickson, of the National Alliance of State and Territorial AIDS Directors, provide a bridge between the two parts of this publication. The authors observe that “[w]here MacKinnon pointed out the male-gendered assumptions often hidden within law and culture, an extensive scholarly literature and thousands of reports from the field suggest that men's violence in the family is often rendered invisible by family court practices.”<sup>56</sup> In accordance with these observations, they present the results of a pilot study that examines family court treatment of charges of “parental alienation,” that is, charges that one parent has tried to undermine

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53. *Id.* at 241.

54. *Id.* at 253 n.79.

55. Joan S. Meier & Sean Dickson, *Mapping Gender: Shedding Empirical Light on Family Courts' Treatment of Cases Involving Abuse and Alienation*, 35 LAW & INEQ. 311 (2017).

56. *Id.* at 311.

the other parent's involvement with the child. Meier and Dickson describe how charges of parental alienation are frequently used to discount mothers' allegations that fathers have committed child abuse or domestic violence, and they test the impact of abuse and domestic violence allegations on custody outcomes. Meier and Dickson present compelling data that the presence of such allegations make it more likely that a father will win a custody dispute, and that courts give greater weight to fathers' rather than mothers' allegations of parental alienation. This reinforces both Professor MacKinnon's observations and those of other Workshop participants on family court limitations in dealing with high-conflict relationships.

### Conclusion

By using weekly diaries to track young women before they became pregnant, the RDSL provides a new perspective on life circumstances and family formation among low-income women, validating in a new context the types of insights that underlie Professor MacKinnon's work. The richly detailed data, which show changing relationship quality over time, suggest that much of the instability in these parental relationships reflects qualities present before the women become pregnant and the women's lack of control over their sexuality and reproduction.

The most disadvantaged women, for example, were more likely to become pregnant and to give birth at younger ages. Although few of the pregnancies were planned, the women who became pregnant were almost fifty percent more likely not to have used contraception during intercourse than were the women who did not become pregnant.<sup>57</sup> Nonetheless, the study does not fully address whether this was true because the men were more likely to exploit disadvantaged women, the disadvantaged women were more likely to want the child, or the couple was simply less knowledgeable and disciplined about contraceptive use. Contrary to other studies, the RDSL finds that women did not become pregnant with men they barely knew;<sup>58</sup> but rather, the relationships that produced a pregnancy tended to be longer term and more committed (including marriages and engagements) than the relationships that did not

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57. Barber et al., *The Relationship Context of Young Pregnancies*, *supra* note 2, at 186, tbl.1.

58. KATHRYN EDIN & TIMOTHY J. NELSON, *DOING THE BEST I CAN: FATHERHOOD IN THE INNER CITY* 17 (2013) (noting that, for the men in this study, "[c]onception usually happens so quickly that the 'real relationship' doesn't begin until the fuse of impending parenthood has been lit").

produce a pregnancy.<sup>59</sup> And, they were much more likely to have experienced any form of domestic violence, including physical assault (21% in the relationships that produced a pregnancy in comparison to 5% in the relationships that did not).<sup>60</sup> Yet, the male partners who produced a pregnancy were more likely to have been unfaithful and to have less education than either the pregnant women's previous partners, or the partners of women who did not become pregnant.<sup>61</sup>

The RDSL indicates that these relationships are unstable, at least in part, because of the circumstances that produce the pregnancy. This suggests that the most effective public policy interventions may be those designed to target the circumstances that exist before the pregnancy occurs. Increasing access to long-acting forms of birth control, for example, produced a forty percent drop in births to teens and poor women in Colorado.<sup>62</sup> Improving male employment prospects and rethinking mass incarceration policies might also enhance women's prospects of finding better mates<sup>63</sup> and foster more cooperative parental behavior.

Building on the RDSL Study results should result in a reexamination of current policies; they serve as a challenge to existing assumptions about the best approaches to fostering childhood development and maximizing parental capabilities. In the meantime, we look forward to more information on the trajectory of these relationships and to a more detailed examination of the men as well as the women giving birth to these children.

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59. Barber et al., *The Relationship Context of Young Pregnancies*, *supra* note 2, at 189 tbl.3.

60. *Id.* at 189 tbl.3.

61. *Id.* at 186–89, tbls.1, 2 & 3.

62. Sabrina Tavernise, *Colorado's Effort Against Teenage Pregnancies Is a Startling Success*, N.Y. TIMES (July 5, 2015), [https://www.nytimes.com/2015/07/06/science/colorados-push-against-teenage-pregnancies-is-a-startling-success.html?\\_r=1](https://www.nytimes.com/2015/07/06/science/colorados-push-against-teenage-pregnancies-is-a-startling-success.html?_r=1).

63. CARBONE & CAHN, MARRIAGE MARKETS, *supra* note 23 (arguing that a greater supply of marriageable men has an impact on the cultural norms of the entire group).