

ESSAY

FATHERHOOD, FAMILY LAW, AND THE CRISIS OF BOYS AND MEN

June Carbone & Clare Huntington***

Boys and men in all racial and ethnic groups and across most socioeconomic groups are struggling on many fronts, including education, employment, physical and mental health, and social integration. In these areas and more, boys and men are much worse off than they were only a few decades ago. The crisis—which is concentrated among men without college degrees—is rooted in large-scale structural changes to the economy that have decimated jobs for this group and policy choices that emphasize incarceration while doing little to address economic inequality.

The decline in male well-being is not just a problem for boys and men. It is a problem for families. Men's economic prospects have a profound impact on whether couples will commit to each other. Men without steady work—and with behaviors that often accompany unemployment, including a higher frequency of intimate partner violence—have trouble sustaining long-term relationships, and many do not marry. They often have children, but once romantic relationships end, unmarried men tend to drift away from the family. Many fathers want a larger role in their children's lives, but this is possible only if they can strengthen their relationship with mothers. Many mothers also want fathers to be more involved, but they are concerned about issues fathers bring to the family. And children want a relationship with both parents.

Family law is part of the problem, contributing to the familial isolation of men without college degrees. In recent decades, family law has undergone a significant transformation, but this transformation primarily benefits married couples. The legal system now seeks to create “postdivorce families”—that is, families in which both parents are cooperative, active caregivers, notwithstanding the end of the parents’

* Robina Chair in Law, Science and Technology, University of Minnesota Law School.

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romantic relationship. To this end, custody laws encourage shared parenting, and family courts offer alternative dispute resolution processes, counseling, and other assistance that strengthen fathers' active membership in the family. But men facing economic precarity are unlikely to be married and thus need not go to court when a romantic relationship ends. Accordingly, these men do not benefit from this transformation in custody rules and processes, and they are unlikely to access the supportive services. The child support system makes things worse by imposing unrealistic orders on low-income fathers that alienate men from their families. And the family regulation system, also known as the child welfare system, treats these fathers as incompetent caregivers or, even worse, as threats.

Family law may relegate men in crisis to the periphery of family life, but it can also help bring them back. The goal is not to restore men's patriarchal authority but rather to extend the model of cooperative parenting to more families. To this end, this Essay proposes far-reaching reforms to custody rules and processes, child support, and family regulation. In each of these problematic areas of family law, the proposed reforms give families greater autonomy in shaping agreements about family relationships, support to make these bargains workable, and opportunities for men to be active fathers.

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INTRODUCTION

Scholars and think-tank researchers, as well as mainstream media and social media, increasingly focus on the “trouble with men.”¹ This attention is well deserved. Wholesale economic shifts have hollowed out the secure, well-paying jobs in the middle of the economy that once provided a source of security and status for many men without college degrees.² Men at the top of the socioeconomic ladder, who are disproportionately white and Asian, have adjusted, snaring the rewards of a new, more unequal society.³ The majority of men, however, have not. Across multiple fronts, including

1. For a small sampling, see Richard V. Reeves, *Of Boys and Men: Why the Modern Male Is Struggling, Why It Matters, and What to Do About It*, at xv (2022) (exploring the systemic roots of the social, educational, and economic challenges facing boys and men); David Shields, *The Trouble with Men: Reflections on Sex, Love, Marriage, Porn, and Power* 3 (2019) (discussing masculinity issues from a personal perspective); Christine Emba, *Opinion, Men Are Lost. Here’s a Map out of the Wilderness.*, *Wash. Post* (July 10, 2023), <https://www.washingtonpost.com/opinions/2023/07/10/christine-embam-masculinity-new-model/> (on file with the *Columbia Law Review*) (describing the disorientation of many men in light of changing norms of masculinity and the political right’s efforts to engage men); Katelyn Fossett, *Introducing the Masculinity Issue*, *Politico* (July 14, 2023), <https://www.politico.com/newsletters/politico-weekend/2023/07/14/the-masculinity-issue-00106295> [<https://perma.cc/VQV2-CUNH>] (noting the contemporary cultural significance of the politicization of masculinity); Brenda Hafera, *Our Lost Boys*, *Heritage Found.* (Apr. 5, 2023), <https://www.heritage.org/marriage-and-family/commentary/our-lost-boys> [<https://perma.cc/HZG2-63TB>] (“[W]e cannot overlook the fact that our boys are floundering and bereft of purpose.”).

2. See *infra* note 125 and accompanying text. As described in section I.B.1, white men without college degrees were far more likely than Black men without college degrees to hold these jobs, although Black men did make some gains, especially in the middle of the twentieth century. See *infra* note 132 and accompanying text.

3. See PINC-11. *Income Distribution to \$250,000 or More for Males and Females.*, U.S. Census Bureau, <https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-11.html> [<https://perma.cc/8HED-KAY3>] [hereinafter U.S. Census Bureau, *Income Distribution*] (last updated Aug. 16, 2024) (showing that of the men who earned at least \$250,000 in 2023 and did not report being more than one race or ethnicity, approximately 74.7% were white, 12.6% were Asian, 6.9% were Hispanic, and 4.8% were Black); *Quick Facts: United States*, U.S. Census Bureau, <https://www.census.gov/quickfacts/fact/table/US/RHI125222#RHI125222> [<https://perma.cc/FP3Y-8ZX4>] (last visited Aug. 8, 2024) (showing that in 2023, the population in the United States was 58.4% white, 19.5% Hispanic, 13.7% Black, and 6.4% Asian).

educational attainment, employment, physical and mental health, and social integration, men and boys are struggling. A few statistics illustrate the scope of the problem: Men without bachelor's degrees are 64% of the adult male population,⁴ but since the 1970s, the labor-force participation of these men has decreased dramatically,⁵ and their median wages have declined precipitously.⁶ The overdose rate for men is rising sharply,⁷ as is the rate of death by suicide;⁸ overdoses and suicides are concentrated among men without a college degree.⁹

Scholars agree that this crisis is rooted in structural economic changes,¹⁰ but policy choices have exacerbated the declining economic prospects of men without college degrees. A heavy emphasis on incarceration makes it even harder for men—especially Black, Hispanic, and Native American men, who are overrepresented in prison and jail populations—to obtain jobs and integrate into society.¹¹ And the policy

4. See Table 104.20. Percentage of Persons 25 to 29 Years Old With Selected Levels of Educational Attainment, by Race/Ethnicity and Sex: Selected Years, 1920 Through 2023, Nat'l Ctr. for Educ. Stat. (Oct. 2023), https://nces.ed.gov/programs/digest/d23/tables/dt23_104.20.asp [<https://perma.cc/3DE8-WV8S>] [hereinafter Nat'l Ctr. for Educ. Stat., Table 104.20] (showing that in 2023, of men between ages twenty-five and twenty-nine, 35.9% had earned a bachelor's degree or higher level of education).

5. In 1970, the labor-force participation of men with a four-year college degree was 96.1%, and it was even higher for men with only a high school diploma, at 96.3%. See Labor Force, Employment, and Earnings, *in* The Statistical Abstract of the United States: 1996, at 389, 395 tbl.617 (116th ed. 1996), <https://www2.census.gov/library/publications/1996/compendia/statab/116ed/tables/labor.pdf> [<https://perma.cc/A8XA-YKXU>]. In 2019, men with a college degree continued to participate in the labor force at a high rate—91.1%—but the labor-force participation of men with only a high school diploma dropped to 80.8%. See Women in the Labor Force: A Databook, at tbl.8, U.S. Bureau Lab. Stat. (Apr. 2021), <https://www.bls.gov/opub/reports/womens-databook/2020/home.htm> [<https://perma.cc/KZM8-T5P6>] [hereinafter U.S. Bureau of Lab. Stat., Women in the Labor Force].

6. See Steven Ruggles, Patriarchy, Power, and Pay: The Transformation of American Families, 1800–2015, 52 *Demography* 1797, 1811 (2015) [hereinafter Ruggles, Patriarchy, Power, and Pay] (“In 1961, young men were making four times what their fathers had made at about the same age. For the past three decades, the younger generation has consistently done *worse* than their fathers. Overall, generational relative income dropped a stunning 80 % since its peak in 1958.”).

7. See Nat'l Acads. of Scis., Eng'g & Med., High and Rising Mortality Rates Among Working-Age Adults 222 fig.7-1, 223 (Kathleen Mullan Harris, Malay K. Majmundar & Tara Becker eds., 2021) (on file with the *Columbia Law Review*) (documenting the increase for both men and women but the higher overall rates for men); see also *infra* text accompanying notes 104–107. This trend has grown since 2010.

8. See Nat'l Acads. of Scis., Eng'g & Med., *supra* note 7, at 284–86 (discussing the increase in suicide mortality for men).

9. See *id.* at 284–86; see also *infra* text accompanying notes 102–110.

10. See *infra* section I.B.1.

11. See *infra* text accompanying notes 141–148.

choice to tolerate a high level of child poverty has had profound impacts.¹² Childhood disadvantage affects educational and employment outcomes for all children, but the impact is more pronounced for boys than girls.¹³ Moreover, these factors are compounding. Boys who struggle in school are unlikely to continue to college, but the pathways into the secure, well-paying jobs in the current economy often require a college degree. Thus, the disproportionate impact of childhood disadvantage on boys' educational performance derails their life chances before they finish high school.¹⁴

The decline in male well-being is not just a problem for boys and men. It is a problem for families. Men without college degrees have a hard time earning money to contribute to a family, and they have high rates of substance use and intimate partner violence.¹⁵ These challenges make it difficult for men to sustain long-term relationships.¹⁶ Indeed, 78% of women say they will not marry a man who does not have a steady job.¹⁷ Instead, men without college degrees typically enter into short-term, less committed relationships and have children in the context of such relationships.¹⁸ When the parents' relationship ends, men tend to move to the periphery of family life, becoming less engaged with their children over time.¹⁹ The number of affected men is substantial: One in four fathers in the United States lives apart from at least one child, and one in five fathers does not live with any of his children.²⁰

12. See *infra* text accompanying notes 150–155. As discussed below, a fourth factor in the decline of male wellbeing is technology, which has lured boys and men to move much of their social lives online and retreat from the analog world. See *infra* section I.B.

13. See *infra* text accompanying notes 152–155.

14. See *infra* text accompanying notes 152–155.

15. See *infra* text accompanying notes 184–187; see also Kesha Baptiste-Roberts & Mian Hossain, Socioeconomic Disparities and Self-Reported Substance Abuse-Related Problems, 10 *Addict Health* 112, 116 tbl.2 (2018) (finding that among those who reported using alcohol and drugs, individuals without any college education were more likely to have substance-use-related problems).

16. See June Carbone & Naomi Cahn, *Marriage Markets: How Inequality Is Remaking the American Family* 73–74 (2014) [hereinafter Carbone & Cahn, *Marriage Markets*] (explaining that greater economic inequality has changed the ways that men and women match up, undermining relationship stability).

17. Wendy Wang & Kim Parker, Pew Rsch. Ctr., *Record Share of Americans Have Never Married* 6 (2014), https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2014/09/2014-09-24_Never-Married-Americans.pdf [https://perma.cc/C2C4-VYV8] (providing this statistic and noting that 46% of men say the same).

18. See *infra* text accompanying notes 184–195.

19. See *infra* text accompanying notes 192–204.

20. See Lindsay M. Monte, *The Two Extremes of Fatherhood*, U.S. Census Bureau (Nov. 5, 2019), <https://www.census.gov/library/stories/2019/11/the-two-extremes-of-fatherhood.html> [https://perma.cc/ZG9S-M8JF]. Nearly three out of four fathers (72.6%) live with all of their children. *Id.* These statistics are for all nonresidential fathers, not only nonresidential fathers without a college degree. Nonetheless, for the reasons this Essay describes, men without college degrees are more likely to live apart from their children than men with college degrees.

These family patterns stand in sharp contrast to the families of men with college degrees. Such men are usually able to secure well-paying jobs that can help support a family.²¹ They generally find and sustain long-term partnerships, and they overwhelmingly have children within marriage.²² College-educated men not only contribute significantly to family income, but they also increasingly share caregiving responsibilities with their spouse, albeit typically doing less than the spouse.²³ These couples tend to stay married, but if couples do divorce, fathers remain engaged in the lives of their children.²⁴

This divergence in family patterns—men with college degrees typically get married and stay married; men without college degrees are much less likely to get married and instead have short-term relationships—is a sea change in family life. In 1960, people with only a high school diploma married at nearly the same rate as college graduates.²⁵ Sixty years later, there is a gaping divide.²⁶

The challenges facing boys and men can be summed up in a word: isolation. Men are increasingly isolated from secure, status-enhancing jobs, family membership, and relationships with their children.²⁷ The isolation of fathers is a problem for everyone in the family. Many fathers want a larger role in their children's lives, but they face barriers that can be surmounted only by strengthening their relationship with the mother.²⁸ Many mothers want fathers to play a larger role as well, but they are concerned about some of the issues fathers bring to the family.²⁹ And

21. See Katherine Schaeffer, 10 Facts About Today's College Graduates, Pew Rsch. Ctr. (Apr. 12, 2022), <https://www.pewresearch.org/short-reads/2022/04/12/10-facts-about-todays-college-graduates/> [<https://perma.cc/H35J-C59Z>] (“College graduates generally out-earn those who have not attended college, and they are more likely to be employed in the first place.”).

22. See *infra* text accompanying notes 177–183.

23. See *infra* text accompanying notes 219–223 (describing these patterns and noting that unequal caregiving is typical for different-sex married couples but not same-sex couples, who tend to have a more equal split of caregiving responsibilities).

24. See *infra* text accompanying note 181.

25. See D'Vera Cohen, Jeffrey S. Passel, Wendy Wang & Gretchen Livingston, Pew Rsch. Ctr., *Barely Half of U.S. Adults Are Married—A Record Low* 8 (2011), <https://www.pewresearch.org/wp-content/uploads/sites/20/2011/12/Marriage-Divide.pdf> [<https://perma.cc/6CHC-CTGL>] (explaining that in 1960, 72% of individuals aged 18 and older with only a high school diploma or less were married, as compared with 76% of individuals with a college degree).

26. See Lisa Carlson, *Marriage in the U.S.: Twenty-Five Years of Change, 1995–2020*, at 2 fig.3 (2020), <https://www.bgsu.edu/content/dam/BGSU/college-of-arts-and-sciences/NCFMR/documents/FP/carlson-marriage-25-years-change-fp-20-29.pdf> [<https://perma.cc/MP4Q-QKGM>] (finding that for women aged eighteen to forty-nine, 66% of college graduates in 2020 had ever married, as compared with 52% of women with only a high school diploma).

27. See *infra* note 123 and accompanying text.

28. See *infra* section II.A.2.

29. See *infra* section II.A.2.

children want to get to know their parents and, ideally, have a relationship with both.³⁰

Family law is part of the problem. To begin—and this is the primary focus of this Essay—family law makes it harder for unmarried men without college degrees to maintain a relationship with their children. Over the last several decades, reforms to the substance and process of family law have increasingly sought to create and support “postdivorce families.”³¹ This approach values ongoing involvement and cooperation of both parents. Shared parenting is the central custody principle, with rules and processes encouraging both parents to have substantial time with children. The transformation of family law also prioritizes parental autonomy, with states redesigning statutes, procedures, and personnel to encourage couples to reach their own settlements.³² To these ends, family courts offer alternative dispute resolution mechanisms, counseling, and other support, recognizing that cooperation is essential to constructive two-parent involvement and that couples need help with co-parenting long after their romantic relationship is over.³³ At its core, this transformation recognizes and encourages the norm that fathers are both breadwinners *and* caregivers.³⁴ For married men and other fathers with the resources to access the family court system, the result has been a substantial increase in custodial awards and assistance in realizing the new paternal role.³⁵

For men facing economic precarity, however, the legal system does not help fathers realize the new norm of engaged fatherhood. The problem for these men is less the content of family law (although there is room for reform) than isolation from a formal legal system that encourages fathers to be hands-on parents. Unmarried parents have no legal tie to each other, so when they end their relationship, they do not need to go to court. As a practical matter, this means that unmarried couples typically are not channeled into the supportive parts of family law: the alternative dispute resolution processes, counseling, and other

30. See *infra* section II.A.2.

31. See Jana B. Singer, *Dispute Resolution and the Postdivorce Family: Implications of a Paradigm Shift*, 47 *Fam. Ct. Rev.* 363, 363 (2009) (“[A]cademics and courts reformers have argued that family courts should abandon the adversary paradigm, in favor of approaches that help parents manage their conflict[s] and encourage them to develop positive postdivorce co-parenting relationships.”). There is still room for improvement. See Clare Huntington, *Failure to Flourish: How Law Undermines Family Relationships* 81–108 (2014) [hereinafter *Huntington, Failure to Flourish*] (describing the ongoing problems with this area of family law).

32. See *infra* text accompanying notes 252–268.

33. See *infra* text accompanying notes 252–268.

34. See *infra* section III.B.1; see also Joseph H. Pleck, *American Fathering in Historical Perspective*, in *Changing Men: New Directions in Research on Men and Masculinity* 83, 93 (Michael S. Kimmel ed., 1987) (describing the emergence of a new model of fatherhood in the last quarter of the twentieth century that embraced men as both breadwinners and active caregivers).

35. See *infra* text accompanying notes 253–257.

assistance that can strengthen fathers' active membership in the family.³⁶ Instead, the ability of unmarried fathers to see their children is more likely to depend on the mother's cooperation, which is not always forthcoming, and parents must figure out for themselves how to weather the conflicts, financial exigencies, and emotional crises that undermine family relationships.³⁷ In short, unmarried fathers do not benefit from the transformation in family law that has helped divorcing fathers maintain a relationship with their children.

The second way family law contributes to the isolation of men in their own families is the punitive enforcement of child support laws, a system that views lower-income men as breadwinners, not caregivers, and failed breadwinners at that. Married, college-educated fathers can afford to pay child support, and most do.³⁸ The legal system recognizes these men as caregivers by granting divorcing parents wide latitude in reaching their own bargain between custody and child support, with many men obtaining more custody and paying less support.³⁹ By contrast, the state often initiates child support proceedings on behalf of lower-income children, whether the custodial parent wants this or not.⁴⁰ And once in a proceeding, courts and administrative agencies insist that low-income men pay unrealistic amounts of child support, even if the men are unemployed or incarcerated.⁴¹ Low-income parents rarely have legal representation, which hampers their ability to tailor custody and support orders to meet their individual circumstances and balance caregiving with economic support.⁴² Even more troubling, the state often imposes punitive measures—including imprisonment for nonpayment—that drive fathers away from their families.⁴³ The result is a counterproductive system that deters the involvement of unmarried fathers and gives the greatest autonomy to couples who can afford lawyer-negotiated settlements.

Finally, family law isolates men from their families through the family regulation system (also known as the child welfare system).⁴⁴ Mothers are more likely than fathers to be subject to coercive state intervention, but the system undermines fathers who are involved, or wish to be more

36. See *infra* section III.B.2.

37. See *infra* section III.B.2.

38. See *infra* text accompanying note 296.

39. See *infra* text accompanying note 261.

40. See *infra* text accompanying note 303.

41. See *infra* text accompanying notes 295–298.

42. See *infra* text accompanying notes 295–298.

43. See *infra* text accompanying notes 302–311.

44. Professor Dorothy Roberts and other critics call what has traditionally been known as the child welfare system the “family-policing system” or the “family regulation system” to argue that it does not promote child welfare and instead polices or regulates families. See Dorothy Roberts, *Torn Apart 3* (2022); Dorothy Roberts, *Opinion, Abolishing Policing Also Means Abolishing Family Regulation, The Imprint* (June 16, 2020), <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/> [https://perma.cc/5P72-X79H]. This Essay adopts that nomenclature.

involved, with their children.⁴⁵ The state penalizes fathers who have not paid child support, sometimes by terminating fathers' parental rights and sometimes by withholding family reunification services from the father.⁴⁶ In this way, the family regulation system makes paternal breadwinning a precondition for paternal caregiving. The system also treats fathers as threats. When the state investigates allegations of child abuse and neglect, it often resolves complaints by coercing mothers to separate from partners the state may regard as a threat, even when mothers have good reason for wanting fathers' continued involvement with children.⁴⁷

This Essay offers solutions to each of these problems.⁴⁸ It argues that family law should bring men in from the periphery and make them less isolated in their own families. But it should do so on terms that work for both parents, rather than legally reimposing men on women. To these ends, this Essay proposes reforms to three areas of family law: custody rules and processes, child support, and family regulation. Across all three areas, the goal is to give families greater autonomy in shaping agreements, support to make these bargains workable, and opportunities for men to be active fathers. The proposals assume heterogeneity among families and preferences, and they recognize that shared parenting must be embraced rather than imposed. The reforms also reject the punitive approaches that often treat men as problems to be solved. More generally, the proposals seek to increase the role of men without college degrees as breadwinners *and* caregivers. In other words, the Essay argues that family law should help families—regardless of marital status—realize the new mainstream norm of shared parenting.

To address custody rules and processes, the Essay proposes adding an institutional alternative to family courts: community-based centers that are state-funded but operate wholly apart from the judicial system.⁴⁹ Drawing on an existing model,⁵⁰ these centers would encourage fathers, ideally together with the mothers of their children, to access dispute-resolution processes and needed services. The first step is to help parents devise an agreement about shared parenting. This includes legal advice about custody and child support options and assistance in making a detailed parenting plan. The next step is providing services that support shared parenting and spur the involvement of otherwise socially isolated fathers.

45. See *infra* section III.D.

46. See *infra* section III.D.

47. See *infra* section III.D.

48. The starting point for this Essay's solutions is an insight from Jacobus tenBroek, who identified a dual system of family law: a private system for the well-off, and a public-system for lower-income families. Section III.A describes his work, and Part IV explains that the goal is to bring the benefits of the private system to the families stuck in the public system.

49. See *infra* section IV.A.

50. See *infra* notes 364–371 and accompanying text (describing Family Relationship Centres in Australia and pilot programs in the United States).

These services will be varied and depend on the needs of the family, but they should include the following: employment assistance (preferably tied to employment subsidies or other financial incentives); counseling; supervised visitation, if needed for the safety of family members; and services to address intimate partner violence, mental health, and other behavioral issues.⁵¹ In these ways, community-based centers would provide assistance in overcoming the obstacles to greater paternal engagement— involvement that many parents and their children desire. The centers would also aim to give couples greater ability to manage parenting on their own terms, and the centers would operate in the context of community norms, respectful of couples' values and sensitive to the challenges facing lower-income families.

To address the problems with child support, this Essay proposes giving lower-income families the autonomy currently enjoyed by higher-income parents to negotiate their own support terms. The same community-based centers would help parents with these negotiations. With assistance, parents could decide and formalize an agreement about whether to have a support order, and, if so, the balance between cash and in-kind support and any offset for active caregiving. Further, this Essay argues in favor of radically rethinking state-initiated child support actions, which too often produce little money for families at a high cost to paternal engagement.

Finally, the Essay proposes reforms to the family regulation system that would promote family autonomy and paternal engagement. A critical reform is decoupling child support enforcement from the family regulation system. More broadly, the goal is to move decisionmaking authority out of courts and into the hands of families and communities— at least for the majority of cases.⁵² A screening system would divert many if not most cases into community-based centers, where families could ask for and receive services that are better tailored to individual circumstances, more consistent with community-based values, and better designed to empower constructive parental decisionmaking. These centers would not be part of the surveillance apparatus of the family regulation system. To fund this work, states could channel at least some of the resources currently spent on the family regulation system into the centers.

Critically, the proposals do not replicate the results nor principles sometimes associated with the fathers' rights movement. In that movement, advocates seek greater rights for fathers, often on the basis of biology or legal parental status alone, with presumptive fifty-fifty custody

51. See *infra* notes 364–371 and accompanying text.

52. See Clare Huntington, *Rights Myopia in Child Welfare*, 53 *UCLA L. Rev.* 637, 640 (2006) [hereinafter *Huntington, Rights Myopia*] (arguing in favor of a similar approach— replacing family courts with family group conferences—for the majority of cases in the family regulation system); see also Jane Spinak, *The End of Family Court: How Abolishing the Court Brings Justice to Children and Families* 274–93 (2023) (arguing for the abolition of family court involvement in family regulation cases).

awards.⁵³ By contrast, this Essay's approach acknowledges that unmarried lower-income women are more likely to have assumed primary responsibility for children since birth and to have substantial concerns about men's behavior, such as substance use or violence.⁵⁴ Accordingly, the proposals promote paternal engagement on terms both parents can embrace. This requires both building parenting capacity through the provision of greater financial, counseling, and administrative support and ending the punitive approaches at the heart of the child support and family regulation systems. Most fundamentally, however, it requires increasing the respect and status associated with lower-income fathers assuming caretaking roles and giving lower-income families the ability to negotiate their own arrangements.

By addressing the family law aspects of the decline in male well-being, this Essay fills a significant gap in the literature. A few legal scholars have explored the challenges facing boys and men.⁵⁵ And family law scholars, including the authors of this Essay, have analyzed the problems facing

53. See The Fathers' Rights Movement, <https://tfrm.org> [<https://perma.cc/GP9E-JP4E>] (last visited Aug. 9, 2024) ("The Fathers' Rights Movement's primary goal is to educate society on the importance of the rebuttable presumption of 50-50 Shared Parenting by raising awareness about the imbalances and injustices within the system of Family Law, which will empower fathers to exercise their full rights and responsibilities . . ."). For a description of the historical and ongoing basis for the fathers' rights movement, see Deborah Dinner, *The Divorce Bargain: The Fathers' Rights Movement and Family Inequalities*, 102 Va. L. Rev. 79, 89 (2016) ("[Advocates] affirmed a set of entitlements regarding the sexual division of labor, husbands' sexual control over wives, and patriarchy that had long defined the socioeconomic status of middle-class white men.").

54. See *infra* section II.A.2.

55. See, e.g., Nancy E. Dowd, *The Man Question: Male Subordination and Privilege* 25, 63 (2010) [hereinafter Dowd, *The Man Question*] (arguing that feminism too often forgets that male privilege varies by race and class and contending that true equality for everyone requires a deeper understanding of how masculinity both privileges and subordinates); Nancy E. Dowd, *Reimagining Equality: A New Deal for Children of Color* 1–3 (2018) [hereinafter Dowd, *Reimagining Equality*] (identifying the multiple disadvantages facing Black boys to argue for greater investment in all children); Symposium, *Evaluating Claims About the "End of Men": Legal and Other Perspectives*, 93 B.U. L. Rev. 663, 663–64 (2013) ("The Conference examined how the data supporting claims about the 'end of men'—and the progress of women—appear when differentiated by class, race, religion, and other categories. It provided historical perspectives on current anxieties about imbalances between the relative power, opportunities, and status of men and women."); Ann C. McGinley & Frank Rudy Cooper, *Masculinities, Multidimensionality, and Law: Why They Need One Another*, in *Masculinities and the Law: A Multidimensional Approach* 2, 10–11 (Frank Rudy Cooper & Ann C. McGinley eds., 2012) (illustrating how masculinity is socially constructed and varied); Barbara Stark, *Anti-Stereotyping and "The End of Men"*, 92 B.U. L. Rev. Annex 1, 10–11 (2012), <https://www.bu.edu/law/journals-archive/bulr/volume92n4/documents/STARK.pdf%20> [<https://perma.cc/9SXV-WBWK>] (examining some of the ways in which many men are "victims of outmoded gender stereotypes"). These scholars generally do not explore the family law implications of the decline in male wellbeing.

nonmarital families.⁵⁶ But scholars largely have not brought these conversations together, using the research on the decline in male well-being to highlight the role of family law in male isolation and the impact on the entire family.⁵⁷

Before proceeding, three clarifying notes are in order. First, in focusing on men, this Essay does not intend to minimize the continuing difficulties facing women. Today's society produces disproportionately male winners at the expense of most of the rest of the population, including women and nonbinary individuals.⁵⁸ This Essay is also cognizant of the growing calls to affirm traditional gender roles, including claims to restore male authority within the family.⁵⁹ In focusing on the

56. June Carbone has argued that the changing family reflects the way men and women match up with each other in the new economy (described in greater detail below, see *infra* section II.A.3). In a society in which relative male and female incomes still predict relationship quality, this produces vibrant two-parent families at the top of the income scale and a shift toward more contingent relationships further down the income scale. See Carbone & Cahn, *Marriage Markets*, *supra* note 16, at 124–25 (highlighting the impact of financial differences on marital outcomes). Clare Huntington has explored the legal response to nonmarital families, arguing that family law is designed for married couples but needs to address the distinct needs of nonmarital families. See Clare Huntington, *Postmarital Family Law: A Legal Structure for Nonmarital Families*, 67 *Stan. L. Rev.* 167, 171–72 (2015) [hereinafter Huntington, *Postmarital Family Law*] (explaining the shortcomings of family law for nonmarital families). But no family law scholar has directly engaged the crisis facing boys and men and laid out possible family law responses to this sociological development.

57. The closest work is a chapter in Nancy Dowd's book, *The Man Question*. See Dowd, *The Man Question*, *supra* note 55, at 105. Dowd contends that there is a tension between masculinity norms and caring, involved fatherhood. She suggests that masculinities analysis may contribute to feminist analysis of parenthood by exposing gendered cultural assumptions embedded in public policies and assist in reimagining policies that facilitate a more equal balance between mothers and fathers. *Id.* at 119–21. This Essay draws on Dowd's proposals below, but proposing institutional, doctrinal, and procedural solutions, as this Essay does, is not Dowd's project.

58. For an assessment of how men disproportionately continue to occupy the top rungs of the economy, see Naomi Cahn, June Carbone & Nancy Levit, *Fair Shake: Women's Fight for a Just Economy 4* (2024) (discussing how female college graduates have been losing ground economically to male college graduates since the 1990s).

59. See, e.g., Shanti Das, *Inside the Violent, Misogynistic World of TikTok's New Star*, Andrew Tate, *The Observer* (Aug. 6, 2022), <https://www.theguardian.com/technology/2022/aug/06/andrew-tate-violent-misogynistic-world-of-tiktok-new-star> [<https://perma.cc/J6KD-86HE>] (describing the misogynistic views of Andrew Tate, who says women should stay at home, not drive, and so on). In addition, the marriage movement has long maintained that marriage is a necessary institution to integrate "men into the care of their children." Don S. Browning, Linda McClain's *The Place of Families* and *Contemporary Family Law: A Critique from Critical Familism*, 56 *Emory L.J.* 1388, 1395 (2007) (emphasis omitted); see also Linda C. McClain, *The "Male Problematic" and the Problems of Family Law: A Response to Don Browning's "Critical Familialism"*, 56 *Emory L.J.* 1407, 1413–14 (2007) (critiquing the parts of the marriage movement that maintain that a masculine head of household role is necessary to the centrality of marriage and that marriage itself is necessary to fathers' assumptions of responsible roles in their children's lives).

disproportionate impact of social and economic changes on men without college degrees, the proposals do not seek to restore men to the *head* of the table but rather to give them a *place* at the table.

Second, although the Essay often uses marriage as a dividing line between family structures, the intention is not to valorize marriage.⁶⁰ Instead, the Essay uses this divide in family form for its descriptive power. As elaborated in this Essay, marriage has become a class marker that correlates with the ability to achieve a measure of economic security, relationship quality, family stability, and greater capacity to invest in the next generation. Marriage also correlates with greater paternal involvement, including maintaining a two-parent household throughout children's minority and remaining involved in children's lives when parental relationships end.⁶¹ And the legal consequences of dissolving a marital relationship, as discussed below, are different from the dissolutions of nonmarital relationships in ways that affect the prospects of continuing two-parent involvement. The Essay nonetheless recognizes that families vary. For some families, cohabitation is indistinguishable from marriage, and patterns for many groups are different from the dominant divide. Black parents, for example, are less likely to be married but are more likely than other nonmarital families to maintain strong ties, at least while children are young.⁶² This Essay assumes this heterogeneity of family forms and functioning and argues that family law needs to address the full range of family patterns.

Finally, the Essay focuses on men in different-sex relationships, in part because gay boys and men are faring better on the educational and

60. For critiques of marriage, see, e.g., Katherine Franke, *Wedlocked: The Perils of Marriage Equality* 2–3 (2015) (arguing that the “freedom to marry” . . . inaugurates a new set of hard questions about what it means to be liberated into a social institution that has its own complicated and durable values and preferences”); R.A. Lenhardt, *Marriage as Black Citizenship?*, 66 *Hastings L.J.* 1317, 1322 (2015) (“[T]he true story of legal marriage in this country involves racial caste and subordination.”). For work by the authors of this Essay arguing that the decline in marriage rates is a symptom, not a cause, of inequality, see Naomi Cahn & June Carbone, *Nonmarriage*, 76 *Md. L. Rev.* 55, 93–94 (2016); Huntington, *Postmarital Family Law*, *supra* note 56, at 219–20. But see Brad Wilcox, *Get Married: Why Americans Must Defy the Elites, Forge Strong Families, and Save Civilization*, at xix (2024) (offering a traditional defense of the links between marriage, two-parent families, and male well-being).

For all the valorization of two-parent families, see, e.g., Melissa S. Kearney, *The Two-Parent Privilege* 21–41 (2023) (documenting the educational and economic disadvantages of children who grow up in a single-parent household), there is evidence that having two low-income parents does not confer the same benefit, at least for Black families. See Christina J. Cross, *Beyond the Binary: Intra-racial Diversity in Family Organization and Black Adolescents' Educational Performance*, 70 *Soc. Probs.* 511, 528 (2023) (finding that in low-income Black households, having two parents in the home did not affect the children's grades, likelihood of repeating a grade, or rates of suspension).

61. See *infra* text accompanying notes 177–183.

62. See *infra* text accompanying notes 196–204.

economic measures of well-being than straight boys and men.⁶³ Additionally, although gay and bisexual boys and men face challenges on other measures of well-being,⁶⁴ there appears to be no research connecting these challenges to the formation of relationships between men. If researchers produce empirical work on that connection, it will be possible to extend the analysis in this Essay. Similarly, the available research on the decline in male well-being and family formation does not disaggregate the population by sex assigned at birth and gender identity. Although it is not possible to provide a comprehensive or distinctive analysis of how trans men and nonbinary individuals are faring, the solutions the Essay offers to strengthen family relationships, particularly the ties between nonresidential parents and children, should be available to everyone.

* * *

This Essay proceeds in four parts. Part I offers a statistical portrait of the decline in male well-being before identifying the factors contributing to this decline. Part II describes and explains the impact on families. Part III analyzes how family law contributes to male isolation in the family, focusing on custody rules and processes, child support, and the family regulation system. Finally, Part IV provides solutions in each of these three areas as well as initial thoughts about a broader agenda for addressing the decline in male well-being. The structural macroeconomic forces that have isolated men in their own families may well deepen—whether through the expanded use of artificial intelligence or other means⁶⁵—and now is the time for family law to respond.

I. THE CRISIS OF BOYS AND MEN

In some ways, boys and men have always faced challenges.⁶⁶ Masculinities theory teaches that male social status is hierarchical and

63. See *infra* text accompanying notes 86, 100–101.

64. See *infra* text accompanying note 112.

65. See Jan Hatzius, Joseph Briggs, Devesh Kodnani & Giovanni Pierdomenico, *The Potentially Large Effects of Artificial Intelligence on Economic Growth* (Briggs/Kodnani) 1 (2023), https://www.key4biz.it/wp-content/uploads/2023/03/Global-Economics-Analyst-The-Potentially-Large-Effects-of-Artificial-Intelligence-on-Economic-Growth-Briggs_Kodnani.pdf [https://perma.cc/AGY9-RSLW] (“If generative AI delivers on its promised capabilities, the labor market could face significant disruption.”); Jack Kelly, *Goldman Sachs Predicts 300 Million Jobs Will Be Lost or Degraded By Artificial Intelligence*, *Forbes* (Mar. 31, 2023), <https://www.forbes.com/sites/jackkelly/2023/03/31/goldman-sachs-predicts-300-million-jobs-will-be-lost-or-degraded-by-artificial-intelligence/?sh=2c28aa60782b> (on file with the *Columbia Law Review*) (“If generative AI lives up to its hype, the workforce in the United States and Europe will be upended . . .”).

66. For descriptions of the perennial concern about men, see Michael S. Kimmel, *The Contemporary “Crisis” of Masculinity in Historical Perspective*, in *The Making of Masculinities: The New Men’s Studies* 121, 143–53 (Harry Brod ed., 1987) (discussing how men have historically responded to the crisis of masculinity with a “hypermasculine

must be earned, inevitably producing winners and losers, especially in unequal societies.⁶⁷ Striving for social status therefore can create a perpetual sense of angst for boys and men uncertain about their place in steeply banked social and economic hierarchies. Boys and men, however, have suffered a distinctive decline over the last half century in relative (and in some cases absolute) well-being. The decline varies significantly by race and socioeconomic status.⁶⁸ Accordingly, this Part uses an intersectional analysis to highlight the differences among men.⁶⁹ Unlike some commentary,⁷⁰ this Essay's argument is not that girls and women are necessarily excelling.⁷¹ Instead, the point is that many boys and men face

subordination of women"); Michael Kimmel, *Manhood in America: A Cultural History* 5 (1st ed. 1996) (explaining that manhood is a social construct in which men who do not live up to a certain model are considered incomplete and inferior); Serena Mayeri, *Historicizing "The End of Men": The Politics of Reaction(s)*, 93 B.U. L. Rev. 729, 730 (2013) (describing the political reaction to the 1965 Moynihan Report and noting that "concerns about the growing number of 'female-headed households' and the concomitant 'emasculat[ion]' of African American men reflected a long-lived consensus...that a male-breadwinner/female-homemaker model of household political economy was integral to racial progress"); Kara Swanson, *The End of Men, Again*, 93 B.U. L. Rev. Annex 27, 28 (2013), <https://www.bu.edu/bulawreview/files/2013/04/SWANSON.pdf> (on file with the *Columbia Law Review*) ("Historians . . . have documented recurring crises of masculinity throughout the nineteenth and twentieth centuries. . . . Men, it seems, are always ending."). And for examples from past eras, see Washington Irving, *A Tour on the Prairies* 56 (1835) (decrying the practice of "send[ing] our youth abroad to grow luxurious and effeminate in Europe," and arguing that instead a "tour on the prairies would be more likely to produce that manliness . . . most in unison with our political institutions"); Arthur Schlesinger Jr., *The Crisis of American Masculinity*, *Esquire*, Nov. 1, 1958, at 63, 63 ("The way by which American men affirm their masculinity are uncertain and obscure. There are multiplying signs, indeed, that something has gone badly wrong with the American male's conception of himself.").

67. See *infra* section I.B.2.

68. See *infra* notes 137–138, 140–142 and accompanying text.

69. This Part also notes where the seemingly better outcomes for girls and women on some measures also vary by race and class. See Julie Yixia Cai, Emma Curchin, Tori Coan & Shawn Fremstad, *Are Young Men Falling Behind Young Women? The NEET Rate Helps Shed Light on the Matter*, *Ctr. for Econ. & Pol'y Rsch.* (Mar. 30, 2023), <https://cepr.net/report/are-young-men-falling-behind-young-women-the-neet-rate-helps-shed-light-on-the-matter/> [<https://perma.cc/4BLJ-VHY2>] ("Narratives that imply young men as a whole are falling behind young women are misleading It would be more accurate to say that most groups of young men and women are falling behind white men by their late 20s, particularly Black men, women overall, Black women, and Latinas."); see also *id.* ("But white men are not a monolith either—many white men are falling behind other white men, largely due to class background, disability, and other categorical inequalities.").

70. See, e.g., Hanna Rosin, *The End of Men* 92 (2012) (describing low-income communities as "matriarchies," with "women making all the decisions and dictating what the men should and should not do"); cf. June Carbone & Naomi Cahn, *The End of Men or the Rebirth of Class?*, 93 B.U. L. Rev. 871, 888 (2013) (observing that while women's greater independence and societal power gives women greater ability to refuse to enter into or stay in relationships, it does not necessarily "translate into the ability to dictate 'what the men should and should not do' within relationships").

71. See Philip N. Cohen, *The "End Of Men" Is Not True: What Is Not and What Might Be on the Road Toward Gender Equality*, 93 B.U. L. Rev. 1159, 1160–70 (2013) (challenging

significant challenges that undermine their ability to play a meaningful role in their families and in American society, and that these challenges merit consideration apart from those facing many girls and women.

After describing the decline in male well-being, this Part turns to unpacking explanations for this decline, emphasizing structural changes to the economy as well as affirmative policy choices, such as the central place of incarceration in the criminal legal system and the high tolerance for inequality in the United States. This Part also notes the growing connection between technology use and the social isolation of boys and men.

A. *Tracking Declines in Male Well-Being*

Perhaps the most striking change in measures of well-being for boys and men involves education, an important marker of societal standing that correlates with greater economic opportunities, physical and mental health, and social connections.⁷² Young men today are more likely to graduate from high school and earn a college degree than young men forty years ago,⁷³ but their levels of educational attainment are increasingly lagging behind levels for young women.⁷⁴ Apart from low-income families,⁷⁵ boys and girls start kindergarten with roughly the same skills.⁷⁶

a reductionist story about the decline of men and the rise of women, noting, for example, that men continue to dominate the top of economic and political ladders and that a decades-long increase in women's labor-force participation has stalled); see also Cahn et al., *supra* note 58, at 3–4 (arguing that since the 1990s, women's overall progress has stalled and that women have lost ground in the ranks of the economy enjoying the greatest income gains).

72. See *infra* notes 87–93, 103–110, 119 and accompanying text.

73. See Nat'l Ctr. for Educ. Stat., Table 104.20, *supra* note 4 (noting that in 1980, 85.4% of men aged twenty-five to twenty-nine had earned a high school diploma as compared with 93.5% in 2023, and that in 1980, 24.0% of men aged twenty-five to twenty-nine had earned a college degree as compared with 35.9% in 2023).

74. In 1980, the gender gap in earning a college degree for individuals aged twenty-five to twenty-nine was three points in favor of men; in 1990, it was one point in favor of men; and in 1995, it was roughly equal. See Nat'l Ctr. for Educ. Stat., Table 104.20, *supra* note 4. By 2000, it was two points in favor of women; in 2010, it was eight points in favor of women; and in 2023, nine points in favor of women. See *id.*

75. See David Autor, David Figlio, Krzysztof Karbownik, Jeffrey Roth & Melanie Wasserman, Family Disadvantage and the Gender Gap in Behavioral and Educational Outcomes, 11 *Am. Econ. J.: Applied Econ.* 338, 359 (2019) [hereinafter Autor et al., Family Disadvantage and the Gender Gap] (noting that in low-income families, girls tend to be more prepared for kindergarten than boys).

76. See Emma Garcia, *Econ. Pol'y Inst.*, Inequalities at the Starting Gate: Cognitive and Noncognitive Skills Gaps Between 2010–2011 Kindergarten Classmates 24–25 (2015), <https://files.epi.org/pdf/85032c.pdf> [<https://perma.cc/6C2R-A7SL>] (finding that if there is a preexisting cognitive gap between boys and girls when they enter school, it is very small); P. Gail Williams & Marc Alan Lerner, School Readiness, *Pediatrics*, Aug. 2019, e20191766, at 1, 7 (noting that the sex gap in readiness skills upon starting kindergarten, which was more apparent in 1999, had disappeared by 2012). When looking at low-income families, however, girls tend to be more prepared for kindergarten than boys. See Autor et al., Family

But girls quickly outpace boys,⁷⁷ and by the end of twelfth grade, there is a six-point gender gap in high school graduation rates.⁷⁸ The gender gap continues into higher education. Of those who have completed high school, young men are considerably less likely than young women to enroll in college (a nine-point gap).⁷⁹ Men are also less likely to complete their degree in four years and more likely to drop out entirely.⁸⁰ Unsurprisingly, these differences mean fewer men have a bachelor's degree than women (a nine-point difference).⁸¹ And more women earn advanced degrees than

Disadvantage and the Gender Gap, *supra* note 75, at 359 (noting the correlation between socioeconomic status and the readiness of boys relative to girls).

77. See Laura LoGerfo, Austin Nichols & Duncan Chaplin, *Gender Gaps in Math and Reading Gains During Elementary and High School by Race and Ethnicity 6–10* (2006), https://webarchive.urban.org/UploadedPDF/411428_Gender_Gaps.pdf [<https://perma.cc/RL8C-93KL>] (finding that while boys generally do better in math, girls “gain reading skills at a faster rate than males for all races and ethnic groups considered”).

78. See Richard V. Reeves, Eliana Buckner & Ember Smith, *The Unreported Gender Gap in High School Graduation Rates*, Brookings Inst. (Jan. 12, 2021), <https://www.brookings.edu/blog/up-front/2021/01/12/the-unreported-gender-gap-in-high-school-graduation-rates/> [<https://perma.cc/MHL8-NRTE>] (reporting that 88% of girls graduated on time compared to 82% of boys in 2018). These statistics are for students graduating high school on time. Among the boys who do not graduate on time, many ultimately earn a high school diploma or an equivalency. See Nat'l Ctr. for Educ. Stat., Table 104.20, *supra* note 4 (finding a less pronounced gender gap in high school graduation rates for young people aged twenty-five to twenty-nine in 2022, with 93.9% of men and 95.2% of women completing high school).

79. See Table 302.10. Number of Recent High School Completers and Percent Enrolled in College, by Sex and Level of Institution: 1960 Through 2022, Nat'l Ctr. for Educ. Stat. (July 2023), https://nces.ed.gov/programs/digest/d23/tables/dt23_302.10.asp [<https://perma.cc/NLV4-M4AB>] (showing that in 2022, 57.2% of male high school graduates enrolled in a two- or four-year program as compared with 66.0% of female graduates).

80. See Table 326.10. Graduation Rate From First Institution Attended for First-Time, Full-Time Bachelor's Degree-Seeking Students at 4-Year Postsecondary Institutions, by Race/Ethnicity, Time to Completion, Sex, Control of Institution, and Percentage of Applications Accepted: Selected Cohort Entry Years, 1996 Through 2016, Nat'l Ctr. for Educ. Stat. (Jan. 2024), https://nces.ed.gov/programs/digest/d23/tables/dt23_326.10.asp [<https://perma.cc/P854-Y4Y7>] (showing that of the men who started a four-year degree program in 2014, 41.0% finished in four years as compared with 51.3% of women and only 60.5% finished within six years as compared with 67.0% of women); see also Table 326.15. Percentage Distribution of First-Time, Full-Time Bachelor's Degree-Seeking Students at 4-Year Postsecondary Institutions 6 Years After Entry, by Completion and Enrollment Status at First Institution Attended, Sex, Race/Ethnicity, Control of Institution, and Percentage of Applications Accepted: Cohort Entry Years 2011 and 2016, Nat'l Ctr. for Educ. Stat. (Oct. 2023), https://nces.ed.gov/programs/digest/d23/tables/dt23_326.15.asp [<https://perma.cc/XKL8-TF7V>] (showing that of the men who started a four-year degree program in 2016, 23.7% of them were either “no longer enrolled” or had an unknown status within six years as compared to 18.3% of women).

81. See Nat'l Ctr. for Educ. Stat., Table 104.20, *supra* note 4 (showing that in 2023, of all individuals aged twenty-five to twenty-nine, 35.9% of men and 45.2% of women had earned a bachelor's degree).

The gender differences in college completion rates may reflect the fact that the highest-paying occupations that do not require college degrees, such as construction, sales,

men (a five-point difference).⁸² These gender differences persist within racial and ethnic groups.⁸³

Educational attainment among boys and men varies by race and ethnicity. High school graduation rates are the highest among Asian American and Pacific Islander (AAPI) and white men,⁸⁴ but the biggest racial and ethnic gap is the rate of earning a college degree, with AAPI and white men far outpacing Black and Hispanic men.⁸⁵ Another point of

and various technician and repair positions, attract more men than women. See 80 Highest Paying Jobs Without a Degree (Over \$50K), U.S. Career Inst. (Sept. 2019), <https://www.uscareerinstitute.edu/blog/80-jobs-that-pay-over-50k-without-a-degree> [<https://perma.cc/4BFG-C8ZT>]; see also Labor Force Statistics From the Current Population Survey, U.S. Bureau Lab. Stat., <https://www.bls.gov/cps/cpsaat18.htm> [<https://perma.cc/MA85-WUJR>] (last updated Jan. 26, 2024) (showing that more men worked in construction, wholesale and retail trade, and repair and maintenance than women in 2023). These jobs, however, are often less secure than the positions open to those with college degrees, with more income volatility and more cyclical employment opportunities. See Evgeniya A. Duzhak, Fed. Rsv. Bank of S.F., *How Do Business Cycles Affect Worker Groups Differently?* 3–4 (Sept. 7, 2021), <https://www.frbsf.org/wp-content/uploads/el2021-25.pdf> [<https://perma.cc/KLD9-EQ8D>] (showing that male-dominated fields such as agriculture, construction, and mining are more sensitive to cycle variations, particularly for Black and Hispanic men).

82. See Nat'l Ctr. for Educ. Stat., Table 104.20, *supra* note 4 (showing that in 2023, of all individuals aged twenty-five to twenty-nine, 8.3% of men and 13.0% of women had earned at least a master's degree).

83. The biggest within-race gender gap in earning a bachelor's degree is for Hispanic men and women (a twelve-point difference), and the smallest gap is for Asian and Pacific Islander men and women (a three-point difference) and Black men and women (a three-point difference); white men and women have an eleven-point difference. See Nat'l Ctr. for Educ. Stat., Table 104.20, *supra* note 4 (reporting college graduation rates for individuals aged twenty-five to twenty-nine in 2023).

It is a more complicated picture by income. See Sarah Reber & Ember Smith, Ctr. on Child. & Fams. at Brookings, *College Enrollment Disparities: Understanding the Role of Academic Preparation* 11 tbl.1 (2023), https://www.brookings.edu/wp-content/uploads/2023/02/20230123_CCF_CollegeEnrollment_FINAL2.pdf [<https://perma.cc/8P35-VWGF>] (reporting the correlation between household income and college enrollment and completion and finding no gender differences in the highest quintile of families by income, a small advantage for boys in the next quintile, but a significant gender advantage for girls in the third and fourth (but not bottom) quintiles). For statistics combining race and income, see Jacqueline E. King, *Gender Equity in Higher Education: 2010*, at 11 tbl.2 (2010) (finding that in the lowest income quartile in 2007, sons in Black families constitute 42% of those going to college, and sons in white families constitute 44% of those going to college).

84. See Nat'l Ctr. for Educ. Stat., Table 104.20, *supra* note 4 (reporting that in 2023, among those aged twenty-five to twenty-nine, 98.5% of AAPI men, 95.6% of white men, 95.5% of Black men, 93.0% of American Indian/Alaska Native men, and 85.6% of Hispanic men had a high school diploma or the equivalent).

85. In 2023, among men aged twenty-five to twenty-nine, 73.9% of AAPI men had earned a college degree, compared with 40.2% of white men, 30.2% of Black men, and 18.8% of Hispanic men. See Nat'l Ctr. for Educ. Stat., Table 104.20, *supra* note 4. The likelihood of a young man aged twenty-five to twenty-nine having a college degree has increased for all racial groups, but historically there were also significant racial and ethnic gaps. See *id.* (reporting that in 1990, of the young men aged twenty-five to twenty-nine,

difference among boys and men is sexual orientation. Gay men are significantly more likely than straight men to graduate from college (an eighteen-point difference).⁸⁶

In light of changes to the economy described below,⁸⁷ it is unsurprising that these patterns of educational attainment influence paid labor.⁸⁸ The labor-force participation rate for men with a college degree

47.6% of AAPI men had a college degree, as compared with 26.6% of white men, 15.1% of Black men, and 7.3% of Hispanic men).

86. See Joel Mittleman, *Intersecting the Academic Gender Gap: The Education of Lesbian, Gay, and Bisexual America*, 87 *Amer. Socio. Rev.* 303, 315 tbl.2 (2022) [hereinafter Mittleman, *Intersecting the Academic Gender Gap*] (reporting results of the National Health Interview Survey, which show that of all men aged twenty-five and older, 52.7% of gay men have earned college degrees, as compared with 33.9% of straight men); *id.* at 314 (“[I]f U.S. gay men were considered on their own, they would have, by far, the highest college completion rate in the world: easily surpassing the current leader, Luxemburg, at 46.6 percent.”); see also *id.* at 315 tbl.2 (reporting results from the National Crime Victimization Survey that 5.8% of gay men aged twenty-five and older have earned an advanced degree as compared with 4.2% of straight men). Gay boys and men are also more likely than straight boys and men to earn high grade point averages in high school and college, enroll in harder classes, take school seriously, and have academically minded friends. See *id.* at 320 tbl.3. Scholars contend that gay boys do well in school because they are excluded from the male social hierarchy and thus are free to excel in school. See *id.* at 308 (explaining the literature making this finding and noting that “[f]or gay/bisexual boys, precisely those aspects of gender that are *socially* costly could also be *academically* beneficial”).

The educational attainment of gay men holds across racial and ethnic groups, see *id.* at 316 (“[G]ay men’s sizable bachelor’s degree advantage extends across the four largest racial/ethnic groups. Among White (non-Hispanic) men, Black men, Hispanic men, and Asian men, gay men consistently surpass straight men by double digit margins.”), and across birth cohorts and family socioeconomic status, see *id.* at 317, 321 (“Across all birth cohorts, in every dataset, gay men maintain a large and statistically significant bachelor’s degree advantage . . .”); see also Joel Mittleman, *Intersecting the Academic Gender Gap: The Education of Lesbian, Gay and Bisexual America*, 87 *Amer. Socio. Rev. Online Supplement 1*, 15 fig.S8 (2022), https://journals.sagepub.com/doi/suppl/10.1177/00031224221075776/suppl_file/sj-pdf-1-asr-10.1177_00031224221075776.pdf (on file with the *Columbia Law Review*) (presenting significantly higher bachelor degree attainment rates across birth cohorts for men attracted to mostly or only men as compared to men attracted to mostly or only women). For a discussion of possible selection bias, see *id.* at 16 (explaining that the educational-attainment gap exists even among young men who did not enroll in college and thus the gap cannot be explained by a concern that men who earn a college degree are more willing to self-identify as gay). Men who identify as bisexual do not earn college degrees and advanced degrees at a rate that is statistically significant from straight men. See Mittleman, *Intersecting the Academic Gender Gap*, *supra*, at 316 (“Bisexual-straight disparities [in college completion] remain small and are generally not significantly different from zero.”). The data sets underlying these statistics do not track gender identity, and thus there are no measures of educational attainment by gender identity. See *id.* at 331 (detailing the unavailability of such data).

87. See *infra* section I.B.1.

88. The text cites statistics about both employment and labor-force participation. For a description of the difference, see Labor Force Statistics From the Current Population Survey: Concepts and Definitions (CPS), Bureau of Lab. Stat., <https://www.bls.gov/cps/definitions.htm> [<https://perma.cc/TY8N-2K2W>] (defining “employed” as working at least one hour in the previous week; “unemployed” as not working

has remained high and steady over the past several decades, but for men without a college degree, it has decreased dramatically since the 1970s.⁸⁹ Men in all racial and ethnic groups have experienced this decline,⁹⁰ but Black men are much more likely to be unemployed (seeking but not finding work) than white men,⁹¹ and they are more likely than men in other racial and ethnic groups to be out of the labor force.⁹² Black men with a college degree generally have a lower unemployment rate than Black men with less education, but the unemployment rate is higher than for white men with a college degree.⁹³

but making efforts in the previous four weeks to find work; and “labor-force participation rate” as “the percentage of the [civilian noninstitutionalized] population that is either working or actively looking for work”).

89. See *supra* note 5; see also Didem Tüzemen, *Why Are Prime-Age Men Vanishing From the Labor Force?* 12 (2018), <https://www.kansascityfed.org/Economic%20Review/documents/653/2018-Why%20Are%20Prime-Age%20Men%20Vanishing%20from%20the%20Labor%20Force%3F.pdf> [<https://perma.cc/Z35T-EUBM>] (finding that between 1996 and 2016, the decrease in non-labor-force participation for men in the prime ages of twenty-five to thirty-four occurred in the middle educational groups: men with only a high-school degree, some college, or an associate’s degree); U.S. Bureau of Lab. Stat., *Women in the Labor Force*, *supra* note 5, at tbl.2 (showing steady declines in male labor-force participation beginning in the 1960s, accelerating with the Great Recession in 2008, and not fully recovering despite some improvement with the tighter labor markets following the Great Recession).

As a group, men are still more likely than women to be in the paid labor market, see *id.* (showing that from 1948 to 2019, the percentage of men in the labor force was higher than the percentage of women in the labor force), but the percentage of men in the labor force is decreasing. By contrast, the labor-force participation rate for women has increased substantially during the same period. See *id.* (reporting that the labor-force participation rate steadily increased from 32.7% in 1948 to 57.4% in 2019 for women, while it decreased from 86.6% to 69.2% in the same time period for men).

90. See *Labor Force Characteristics by Race and Ethnicity, 2021*, at tbl.4, U.S. Bureau of Lab. Stat. (Jan. 2023), <https://www.bls.gov/opub/reports/race-and-ethnicity/2021/> [<https://perma.cc/PNE2-SSLP>] [hereinafter U.S. Bureau of Lab. Stat., *Labor Force Characteristics by Race*] (reporting decreased participation in the labor force across all races and ethnicities).

91. See Valerie Wilson & William Darity Jr., *Econ. Pol’y Inst., Understanding Black-White Disparities in Labor Market Outcomes Requires Models that Account for Persistent Discrimination and Unequal Bargaining Power* 5 (2022), <https://files.epi.org/uploads/215219.pdf> [<https://perma.cc/582G-ZCW7>] (showing the unemployment rate for Black men across four decades as consistently twice as high as for white men). Black women are more likely than white women to be unemployed, U.S. Bureau of Lab. Stat., *Women in the Labor Force*, *supra* note 5, at tbl.6, but Black women experience lower rates of unemployment than Black men. See Wilson & Darity, *supra*, at 9 fig.F (showing that from 1978 to 2019, the unemployment rate of Black men was consistently higher than that of Black women).

92. See U.S. Bureau of Lab. Stat., *Labor Force Characteristics by Race*, *supra* note 90, at tbl.4 (finding that in 2021, 63.5% of Black men were in the labor force as compared with 67.9% of white men, 71.8% of Asian men, and 75.4% of Hispanic men).

93. See Wilson & Darity, *supra* note 91, at 7, 8 fig.D (“[B]lack workers are not just twice as likely to be unemployed as similarly educated white workers, but they are often more likely to be unemployed than less-educated whites.”); see also *id.* at 7 (showing

With regard to earnings, men as a group still earn more than women,⁹⁴ but men have also experienced the biggest relative gains *and* losses over the last several decades.⁹⁵ At the top of the income spectrum, the earnings of men with an advanced degree increased by 43% between 1979 and 2017, and by 12% for men with only a college degree.⁹⁶ Highly educated white and AAPI men made especially striking gains.⁹⁷ By contrast, median wages for men without college degrees have declined by nearly half since the 1970s.⁹⁸ The longstanding pay gap between Black men and white men has steadily increased over the last several decades.⁹⁹ Gay

unemployment rates by education and noting that “only black workers with advanced degrees have approached anything near parity with their white counterparts”).

94. The gender wage gap persists across all levels of educational attainment. See Wendy Chun-Hoon, 5 Fast Facts: The Gender Wage Gap, DOL Blog (Mar. 14, 2023), <https://blog.dol.gov/2023/03/14/5-fast-facts-the-gender-wage-gap> [https://perma.cc/EXC9-KTKF] (“Overall, women must complete one additional degree in order to be paid the same wages as a man with less education.”). The wage gap is somewhat smaller for men and women aged twenty-five to thirty-four. See Carolina Aragão, Gender Pay Gap in U.S. Hasn’t Changed Much in Two Decades, Pew Rsch. Ctr. (Mar. 1, 2023), <https://www.pewresearch.org/short-reads/2023/03/01/gender-pay-gap-facts/> [https://perma.cc/XA36-9CD5] (“In 2022, women ages 25 to 34 earned an average of 92 cents for every dollar earned by a man in the same age group—an 8-cent gap.”). The biggest earnings gap is between white men and Black and Hispanic women. See Rakesh Kochhar, The Enduring Grip of the Gender Pay Gap, Pew Rsch. Ctr. (Mar. 1, 2023), <https://www.pewresearch.org/social-trends/2023/03/01/the-enduring-grip-of-the-gender-pay-gap/> [https://perma.cc/9GJG-7BVF] (“In 2022, Black women earned 70% as much as White men and Hispanic women earned only 65% as much.”).

95. See David H. Autor, The Labor Market Impacts of Technological Change: From Unbridled Enthusiasm to Qualified Optimism to Vast Uncertainty 5, 6 fig.2 (Nat’l Bureau of Econ. Rsch., Working Paper No. w30074, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4122803 (on file with the *Columbia Law Review*) (“Between 1979 and 2017, the real weekly earnings of full-time, full-year working men with a post-baccalaureate degree rose Conversely, real earnings *fell* substantially among men without a four-year degree”).

96. *Id.* at 5.

97. See, e.g., Eileen Patten, Racial, Gender Wage Gaps Persist in U.S. Despite Some Progress, Pew Rsch. Ctr. (July 1, 2016), <https://www.pewresearch.org/short-reads/2016/07/01/racial-gender-wage-gaps-persist-in-u-s-despite-some-progress/> [https://perma.cc/B3CD-L8VT] (showing that Asian men have outpaced other groups since the 1990s); see also Cahn et al., *supra* note 58, at 4 (describing how men have gained at the top of the income ladder since the early nineties).

98. See Ruggles, Patriarchy, Power, and Pay, *supra* note 6, at 1809, 1810 fig.12(b) (marking a 44% decline in median wages from a peak of \$41,000 in 1973 to \$23,000 in 2013). Median wages for women have not dropped nearly as much. See *id.* (noting a 24% decline in median wages for women since their peak in 2001); see also Autor, *supra* note 95, at 5 (“[R]eal earnings fell . . . by 10 percent among men with some-college; by 21 percent among men with exactly a high school diploma; and by 25 percent among men without a high school diploma.” (emphasis omitted)). By contrast, women’s earnings rose during the same period at all educational levels, although the gains for the least educated women were modest. *Id.*

99. See Wilson & Darity, *supra* note 91, at 11 fig.H (showing that the gap between Black and white male hourly wages increased from 14.9% in 1979 to 22.2% in 2019).

men earn more than straight men,¹⁰⁰ in large part because of their higher levels of educational attainment.¹⁰¹

The physical and mental health of boys and men is another area of challenges in well-being. Perhaps the starkest marker is the increased mortality rate for working age adults (aged twenty-five to sixty-four). Mortality rates have been rising sharply for all adults in this group,¹⁰² but two main drivers are concentrated among men, especially those without a college degree¹⁰³: an increase in overdose and alcohol-related deaths and an increase in deaths by suicide.¹⁰⁴ Rates of overdose deaths have been rising for all demographic groups, with a 538% increase between 1990 and 2017,¹⁰⁵ but the largest increase is for white men aged twenty-five to forty-four with only a high school diploma or less.¹⁰⁶ Alcohol-related deaths are a more complex story, but, again, deaths are concentrated among white men with only a high school diploma or less.¹⁰⁷ Finally, suicide mortality has increased, especially since the early 2000s.¹⁰⁸ American Indian/Alaska

100. Kitt Carpenter, *Gay Men Used to Earn Less Than Straight Men; Now They Earn More*, *Harv. Bus. Rev.* (Dec. 4, 2017), <https://hbr.org/2017/12/gay-men-used-to-earn-less-than-straight-men-now-they-earn-more> [<https://perma.cc/WW46-V54E>].

101. See *supra* note 86 and accompanying text.

102. See Nat'l Acads. Scis., *Eng'g & Med.*, *supra* note 7, at 1 (attributing an increase in mortality for working-age adults to specific causes, including drugs, alcohol, and suicide).

103. See *id.* at 238 (“Mortality due to substance use generally (drug and alcohol use) explains most of the growth in the socioeconomic gap in mortality among men and about half of the growth in the gap among women.”).

104. See *id.* at 8 (noting suicide as substantially higher among men than women and as a primary driver of working-age mortality); see also *id.* at 1 (“[W]hy mortality has been rising among working-age adults is not straightforward. Mortality is the final result of both acute events and cumulative, long-term processes involving the interaction of social, behavioral, economic, environmental, and biological factors that develop and unfold over the life course.”); *id.* at 222 fig.7-1 (documenting the significantly higher mortality rates due to drug poisoning for men).

105. *Id.* at 220–22 (describing this increase and noting the especially sharp increase since 2010).

106. See *id.* at 221–23, 222 fig.7-1. There is also a geographic component to overdose deaths, with concentrations in some rural areas, especially parts of Appalachia, New England, and the deindustrialized Midwest. See *id.* at 223–32.

107. See *id.* at 232–38 (“[T]he research collectively suggests that among working-age Whites, particularly men, increased mortality from [alcohol] was greater among those with a high school degree or less than among those with a college degree.”); see also Merianne Rose Spencer, Sally C. Curtin & Matthew F. Garnett, CDC, *Alcohol-Induced Death Rates in the United States, 2019–2020, at 2* (2022), <https://www.cdc.gov/nchs/data/databriefs/db448.pdf> [<https://perma.cc/S8T6-996Y>] (noting that in 2020, the alcohol-induced death rate was 19.2 per 100,000 men and 7.5 per 100,000 women).

108. Men are four times more likely to die by suicide than women. See Sally C. Curtin, Matthew F. Garnett & Farida B. Ahmad, HHS, *Provisional Numbers and Rates of Suicide by Month and Demographic Characteristics: United States, 2021, at 3* (2022), <https://stacks.cdc.gov/view/cdc/120830> [<https://perma.cc/DLL7-TW8K>] (reporting that in 2021, men died by suicide at a rate nearly four times that of women); see also Nat'l Acads. Scis., *Eng'g & Med.*, *supra* note 7, at 283–85 (setting forth suicide mortality rates and

Native men have the highest absolute rate of suicide mortality and the sharpest increase between 2011 and 2021.¹⁰⁹ White working-age men with only a high school diploma or less also experienced a sharp increase in suicide mortality from the early 2000s to 2017.¹¹⁰ Most major studies tracking measures of well-being do not contain information about sexual orientation, and thus it is hard to compare, for example, overdose rates among men by sexual orientation,¹¹¹ but there is evidence that LGBTQ+ individuals face significant health and safety challenges.¹¹²

A fourth measure of the crisis in well-being for boys and men involves social integration.¹¹³ In 1990, more than half of all men reported that they

explaining that suicide rates in this source do not include deaths related to drugs because of the difficulty of determining intentionality). There is also a gender gap between boys and girls. See Sally C. Curtin, Melonie Heron, Arialdi M. Miniño & Margaret Warner, HHS, *Recent Increases in Injury Mortality Among Children and Adolescents Aged 10–19 Years in the United States: 1999–2016*, at 12 tbl.1 (2018), https://www.cdc.gov/nchs/data/nvsr/nvsr67/nvsr67_04.pdf [<https://perma.cc/JF4M-KY8P>] (finding that in 2016, the suicide rate per 100,000 minors ages ten to nineteen was 8.8 for boys and 3.4 for girls).

109. See Nat'l Acads. Scis., Eng'g & Med., *supra* note 7, at 283 n.1 (reporting that suicide mortality is highest among American Indians/Alaska Natives as compared to all racial/ethnic groups); Heather Saunders & Nirmita Panchal, *A Look at the Latest Suicide Data and Change Over the Last Decade*, KFF (Aug. 4, 2023), <https://www.kff.org/mental-health/issue-brief/a-look-at-the-latest-suicide-data-and-change-over-the-last-decade/> [<https://perma.cc/XR9Q-HFPZ>] (reporting a 70.3% increase in suicide mortality of American Indians and Alaska Natives between 2011 and 2021).

110. See Nat'l Acads. Scis., Eng'g & Med., *supra* note 7, at 284–86 (documenting this increase and noting that suicide mortality remained roughly the same or declined during the same period for Black and Hispanic men, although with a small increase for most age groups beginning around 2010); *id.* at 294–95 (documenting the increase for men with only a high school diploma and further discussing the correlation between economic conditions, especially unemployment, and suicide). More recent statistics show an increase in suicide mortality for Black, Hispanic, and AAPI people between 2011 and 2021, although the absolute rate is still considerably lower than for white people. See Saunders & Panchal, *supra* note 109 (indicating a 15.5% absolute rate for white people as compared to 5.5%, 5.7%, and 6.0% respective rates for Black, Hispanic, and AAPI people; further reporting a 58.2%, 38.6%, and 16.7% respective increases in suicide rates for Black, Hispanic, and AAPI people). The suicide mortality for men is about four times higher than that of women. See *id.* (indicating a 22.8% suicide mortality rate for men and 5.7% rate for women in 2021).

For a discussion of the risk of suicide among adolescent boys, see Laura Kann et al., CDC, *Youth Risk Behavior Surveillance—United States, 2017*, at 24–28, 188 tbl.44, 191 tbl.46, 194 tbl.48, 197 tbl.50 (2018), <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2017/ss6708.pdf> [<https://perma.cc/2GYP-RBDS>] (reporting survey results showing that boys in grades nine through twelve report high rates of serious consideration of suicide, having a suicide plan, attempting suicide, and suicide attempts resulting in injury, poisoning, or overdose that required medical treatment).

111. See Mittleman, *Intersecting the Academic Gender Gap*, *supra* note 86, at 308–09 (lamenting “severe data limitations” in research on sexual orientation).

112. See *id.* at 321 (describing how gay boys and men continue to experience more discrimination and greater fear for their safety than straight men); see also Kann et al., *supra* note 110, at 42, 46 (describing the correlation between health risk factors, such as tobacco and alcohol use, and adolescents who identify as gay or bisexual).

113. This is part of a larger trend. Although the patterns are complex and there is considerable nuance and differences among subgroups, men and women from all racial

had six or more close friends; in 2021, only a quarter of all men could say the same.¹¹⁴ The percentage of men who report having no friends whatsoever has increased 500% since 1990 and now stands at 15%.¹¹⁵ In one survey, two-thirds of younger men said that “no one really knows me well”;¹¹⁶ almost one-third of younger men reported not spending time with someone outside their household in the past week;¹¹⁷ and nearly half of all men reported that their “online lives are more engaging and rewarding than their offline lives.”¹¹⁸ Social integration is correlated with educational attainment: Men without college degrees are much more likely to be socially isolated.¹¹⁹

Men are also less connected to religious groups and less likely to be in intimate relationships than women. More men than women (an eight-point gap) never attend religious services.¹²⁰ Younger men are less likely

and ethnic groups and across socioeconomic statuses have experienced an increase in social isolation since the early 2000s. See Viji Diane Kannan & Peter J. Veazie, *US Trends in Social Isolation, Social Engagement, and Companionship—Nationally and by Age, Sex, Race/Ethnicity, Family Income, and Work Hours, 2003–2020*, *Soc. Sci. & Med.—Population Health*, Mar. 2023, at 1, 5–7 (“We find Americans’ social connectedness declined over almost two decades—social isolation increased, social engagement decreased across all roles, and companionship decreased.”). For a discussion of social integration that focuses on boys and men, see Niobe Way, *Rebels With a Cause: Reimagining Boys, Ourselves, and Our Culture* 27–28 (2024) (describing the author’s decades of research with boys and men that finds that boys and men crave connection but struggle in a culture that devalues relationships for boys and men).

114. Daniel A. Cox, *Men’s Social Circles Are Shrinking*, *Surv. Ctr. on Am. Life* (June 29, 2021), <https://www.americansurveycenter.org/why-mens-social-circles-are-shrinking/> [<https://perma.cc/GBS3-Y7KY>] [hereinafter Cox, *Men’s Social Circles*]. This is part of a larger problem, see, e.g., Vivek H. Murthy, *Together: The Healing Power of Human Connection in a Sometimes Lonely World* 10 (2020) (“According to a 2018 report by the Henry J. Kaiser Family Foundation, 22% of all adults in the US say they often or always feel lonely or socially isolated. That’s well over fifty-five million people” (footnote omitted)), but boys and men face a sharper decline than girls and women.

115. Cox, *Men’s Social Circles*, *supra* note 114.

116. Gary Barker, Caroline Hayes, Brian Heilman & Michael Reichert, *Equimundo, State of American Men: From Crisis and Confusion to Hope* 3 (2023), <https://www.equimundo.org/wp-content/uploads/2023/05/STATE-OF-AMERICAN-MEN-2023.pdf> [<https://perma.cc/5V2S-46EG>] (internal quotation marks omitted).

117. *Id.* at 4.

118. *Id.*

119. Cf. Daniel A. Cox, *The College Connection: The Education Divide in American Social and Community Life*, *Surv. Ctr. on Am. Life* (Dec. 13, 2021), <https://www.americansurveycenter.org/research/the-college-connection-the-education-divide-in-american-social-and-community-life/> [<https://perma.cc/6YU8-2R9Y>] (documenting this correlation for men and women and explaining that although all groups are more socially isolated than thirty years ago, there has been a steeper decline for non-college-graduates).

120. See Tom W. Smith, Michael Davern, Jeremy Freese & Stephen L. Morgan, *General Social Surveys (GSS), 1972–2022*, NORC Univ. Chi., <https://gssdataexplorer.norc.org/trends> (on file with the *Columbia Law Review*). Of the men and women who do participate in religious services, there is not much of a gender gap in the levels of participation. See *id.* Although older men are more likely than older women to

than younger women to be in an intimate relationship,¹²¹ and a majority of men say they are not in a satisfying, stable relationship.¹²² Moreover, social isolation and marriage are correlated: Never-married men and men with disrupted relationships have fewer social contacts, including partners, friends, relatives, and children.¹²³

B. *Understanding the Crisis*

Scholars and policymakers are engaged in an active debate about the causes of the decline in male well-being. Although disagreements persist, there is a growing consensus that the crisis is rooted in large-scale structural changes to the economy over the last forty years, which have had profound material and psychological effects on boys and men.¹²⁴ Policy choices in the United States exacerbate the declining economic prospects of men. And the growth of technology has lured many boys and men online, leading them to retreat from in-person social engagement. This section describes these compounding forces before turning to masculinities studies, a field that provides deeper sociological and psychological context for how and why structural changes impact boys and men.

1. *Economic Changes, Policy Choices, and Technology.* — The single biggest factor in the changing economic position of men without college

have left their childhood religion, among young adults, the pattern is reversed. See Daniel A. Cox & Kelsey Eyre Hammond, *Young Women Are Leaving Church in Unprecedented Numbers*, *Surv. on Am. Life* (Apr. 4, 2024), <https://www.americansurveycenter.org/newsletter/young-women-are-leaving-church-in-unprecedented-numbers/> [<https://perma.cc/GX37-GFR6>] (reporting the results of a study and finding that of the adults in the Baby Boom generation who left their childhood religion, 57% were men and 43% were women; of the adults in the Gen Z generation who left their religion, only 46% were men and 54% were women).

121. See Anna Brown, *Pew Rsch. Ctr., Nearly Half of U.S. Adults Say Dating Has Gotten Harder for Most People in the Last 10 Years* 17 (2020), https://www.pewresearch.org/wp-content/uploads/sites/20/2020/08/PSDT_08.20.20.dating-relationships.full_report.pdf [<https://perma.cc/7V6V-LUD5>] (finding that 51% of men aged eighteen to twenty-nine are single, compared to 32% of women).

122. See Barker et al., *supra* note 116, at 4 (reporting only 38% of all men in the study as being in a stable relationship and mostly satisfied; 22% of men as mostly either not looking for a relationship or unable to find sexual partners; 13% of men as in occasional relationships but looking for something more committed).

123. See Debra Umberson, Zhiyong Lin & Hyungmin Cha, *Gender and Social Isolation Across the Life Course*, 63 *J. Health Soc. Behav.* 319, 322, 328–29 (2022) (summarizing studies finding that boys and men are more isolated than girls and women through most of the life course and that this gender difference is much greater for the never-married and those with disrupted relationship histories).

124. See *Nat'l Acads. Scis., Eng'g & Med.*, *supra* note 7, at 11 (explaining that a primary cause of the increased mortality, especially among white working-age men without college degrees, is “adverse economic trends”); Pamela J. Smock & Christine R. Schwartz, *The Demography of Families: A Review of Patterns and Change*, 82 *J. Marriage & Fam.* 9, 11–12 (2020) (summarizing the literature documenting the structural changes to the economy and a decline in marriage).

degrees is the decimation of manufacturing jobs and the marginalization of the jobs that remain for these men.¹²⁵ Throughout the 1950s and continuing for nearly three decades, blue-collar workers in unionized workplaces—overwhelmingly white men¹²⁶—reaped considerable economic gains, enjoying decent wages,¹²⁷ job security,¹²⁸ and social status.¹²⁹ This enhanced income, security, and social standing provided a foundation for the families of the postwar era and the enhanced importance of the male head-of-household role.¹³⁰ Black men were not in the same privileged position as white men, but they did have some access to stable manufacturing jobs.¹³¹

125. See, e.g., Anthony P. Carnevale, Nicole Smith & Jeff Strohl, *Recovery: Job Growth and Education Requirements Through 2020 Executive Summary 10* (2013), https://cew.georgetown.edu/wp-content/uploads/2014/11/Recovery2020.ES_Web_.pdf [<https://perma.cc/PP4P-6G3G>] (discussing continuing decline in demand for physical skills); Daron Acemoglu & Pascual Restrepo, *Tasks, Automation, and the Rise in US Wage Inequality 37* (Nat'l Bureau of Econ. Rsch., Working Paper No. 28920, 2021), www.nber.org/system/files/working_papers/w28920/w28920.pdf [<https://perma.cc/8TLG-TD3R>] (“[W]e documented that between 50% and 70% of the changes in US wage structure between 1980 and 2016 are accounted for by the relative wage declines of worker groups specialized in routine tasks in industries experiencing rapid automation.”).

126. See Andrew J. Cherlin, *Labor’s Love Lost: The Rise and Fall of the Working-Class Family in America 53* (2014) [hereinafter Cherlin, *Labor’s Love Lost*] (describing the “white panethnic” makeup of unions).

127. See *id.* at 93 (observing that male working-class income almost doubled between the early 1950s and the 1970s); Ruggles, *Patriarchy, Power, and Pay*, *supra* note 6, at 1808 (describing the post-World-War-II era as “a golden age of wage labor for young men”).

128. See Alfred W. Blumrosen, *Seniority Rights and Industrial Change: Zdanok v. Glidden Co.*, 47 Minn. L. Rev. 505, 505 (1963) (describing the benefits of seniority rights systems created by collective bargaining agreements).

129. See, e.g., Katherine V.W. Stone, *Legal Protections for Atypical Employees: Employment Law for Workers Without Workplaces and Employees Without Employers*, 27 Berkeley J. Emp. & Lab. L. 251, 281 (2006) (describing the “social insurance” provided by the twentieth-century union model).

130. See Cherlin, *Labor’s Love Lost*, *supra* note 126, at 90–119 (“[The postwar era] was also the only time when many working-class families could attain the culturally potent ideal of the breadwinner husband and the homemaker wife . . .”).

131. In the 1940s, Black men benefitted from jobs in the defense industry, see Thomas N. Maloney, *Wage Compression and Wage Inequality Between Black and White Males in the United States, 1940–1960*, 54 J. Econ. Hist. 358, 364–65 (1994), and labor shortages, see Andreas Ferrara, *World War II and Black Economic Progress*, 40 J. Labor Econ. 1053, 1087–88 (2022), but they were often subject to racial discrimination in factories, see William J. Collins, *African-American Economic Mobility in the 1940s: A Portrait From the Palmer Survey*, 60 J. Econ. Hist. 756, 776–78 (2000), paid less than their white counterparts, see Maloney, *supra*, at 379–80, and excluded from unions, see Philip Dray, *There Is Power in a Union: The Epic Story of Labor in America 482–83* (2010). Further, Black veterans of World War II were often denied the benefits promised by the G.I. Bill, contributing to a racial wealth gap that continues to expand. See Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America 121* (2005) (“[T]here was no greater instrument for widening an already huge racial gap in postwar America than the GI Bill.”).

Today, manufacturing jobs are much more scarce.¹³² As the economy has deindustrialized, better jobs and worse jobs have grown in number, producing employment polarization.¹³³ Better jobs tend to require higher levels of education and experience,¹³⁴ pay well, and offer opportunities for career growth.¹³⁵ There is a demand for workers at the other end of the education and income spectrum—jobs in the service economy that do not require a college degree—but these jobs pay poorly, offer little security, and provide limited opportunity for advancement.¹³⁶ There are a few sectors of the economy that do not fall into these poles, notably in healthcare, which requires workers with some skill and offers stable, relatively well-paid jobs.¹³⁷

Men with college degrees have done disproportionately well in obtaining the highest-paying jobs in the new economy,¹³⁸ but for men who

132. See Katelynn Harris, *Forty Years of Falling Manufacturing Employment*, U.S. Bureau Lab. Stat. (Nov. 20, 2020), <https://www.bls.gov/opub/btn/volume-9/forty-years-of-falling-manufacturing-employment.htm> [<https://perma.cc/38RJ-U8AL>] (detailing that in 1979, manufacturing jobs reached an all-time high of 19.6 million jobs, and in 2019, it was 12.8 million jobs). The deindustrialization underlying this loss in manufacturing jobs hit Black men first. See Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* 125–26 (1993) (“[The elimination of] many high-paying jobs in manufacturing . . . took a heavy toll on the distribution of black income, especially among families in the industrial cities of the northeast and midwest.”). Many of the men who lost manufacturing jobs left the workforce entirely. See David Autor, David Dorn & Gordon H. Hanson, *On the Persistence of the China Shock* 17 (Nat’l Bureau of Econ. Rsch., Working Paper No. 29401, 2021), https://www.nber.org/system/files/working_papers/w29401/w29401.pdf [<https://perma.cc/S7VQ-88DF>] (finding no evidence that nonmanufacturing sectors absorbed workers who lost manufacturing jobs).

133. See Arne L. Kalleberg, *Good Jobs, Bad Jobs: The Rise of Polarized and Precarious Employment Systems in the United States: 1970s to 2000s*, at 2 (2011) (“[There] has been a polarization of jobs and employment relations with regard to aspects of job quality, such as security and stability, economic compensation, control over work activities, and time spent on the job.”).

134. See Carnevale et al., *supra* note 125, at 6 (“Three of the fastest-growing occupations . . . also have the highest demand for postsecondary education and training.”).

135. See Autor, *supra* note 95, at 9 (“[A]t the high end of the labor market, a growing cadre of high-education, high-wage occupations offer strong career prospects, rising lifetime earnings, and significant employment security.”).

136. See *id.* at 9 (“At the other end [of the labor market], low-education, low-wage occupations, often in personal services, provide little economic security and limited career earnings growth.”); see also Carnevale et al., *supra* note 125, at 3 (showing that the percentage of jobs that require no more than a high school degree has declined from 72% in 1973 to 44% in 1992 to 36% in 2020, while the percentage of jobs requiring a bachelor’s degree or higher has increased from 16% in 1973 to 35% in 2020).

137. See News Release, U.S. Bureau of Lab. Stat., *Employment Projections: 2023–2033 Summary* 2 (Aug. 29, 2024), <https://www.bls.gov/news.release/pdf/ecopro.pdf> [<https://perma.cc/5TTK-NCQ5>] (projecting rapid growth for the healthcare sector); see also Carnevale et al., *supra* note 125, at 6 (“Though healthcare support is . . . fast growing, it does not require the same amount of training.”).

138. See Elise Gould, *Econ. Pol’y Inst., State of Working America Wages 2019*, at 15 (2020), <https://files.epi.org/pdf/183498.pdf> [<https://perma.cc/L8NB-92JC>] (“Over the entire period from 2000 to 2019, wage growth among those with a college degree rose faster

do not have a college degree, wages and opportunities have dropped precipitously.¹³⁹ And men are less likely to be employed in growth sectors such as healthcare and other personal services—jobs traditionally filled by women.¹⁴⁰

Changes to the economy and labor market are not the only explanations for the decline in male well-being. Policy choices also have a negative impact. A heavy reliance on incarceration makes it even harder for men to obtain jobs and integrate into society. This impact is concentrated among Black men, who were disproportionately affected by the concentrated unemployment in urban areas that followed deindustrialization beginning in the 1960s and who were disproportionately incarcerated as a result of the punitive carceral policies that followed, especially in the period beginning in the 1980s.¹⁴¹ Hispanic and Native American men are also overrepresented in prisons and jails.¹⁴²

Formerly incarcerated men face significant barriers if they try to pursue higher education, including ineligibility for Pell Grants and federal student loans, and inquiries by college admissions officers into applicants'

than among those with a high school diploma (8.8% vs. 4.0%).”). For older data, see Elise Gould, Econ. Pol’y Inst., *State of Working America Wages* (2019), <https://files.epi.org/pdf/161043.pdf> [<https://perma.cc/4KD2-VYT5>] (observing that “[a]s inequality among men has continued to increase, it is not surprising that the gender wage gap at the top grew significantly”); see also Cahn et al., *supra* note 58, at 4 (indicating that gender disparities have grown most for college graduates); cf. U.S. Census Bureau, *Income Distribution*, *supra* note 3 (finding that in 2023, 4,271,000 men and 1,777,000 women earned at least \$250,000).

139. See *supra* text accompanying notes 89–98.

140. See Domingo Angeles, *Share of Women in Occupations with Many Projected Openings, 2016–26*, U.S. Bureau Lab. Stat. (Mar. 2018), <https://www.bls.gov/careeroutlook/2018/data-on-display/dod-women-in-labor-force.htm> [<https://perma.cc/X3AQ-WUZV>] (showing that thirteen out of the twenty occupations projected to have the most openings each year are employing more women than men); *Fastest Growing Occupations*, U.S. Bureau Lab. Stat., <https://www.bls.gov/ooh/fastest-growing.htm> [<https://perma.cc/L7LH-4PWD>] (last updated Apr. 17, 2024) (reporting that traditionally female occupations—such as nurse practitioners, physician assistants, occupational therapy assistants, and personal care aides—are among the occupations with the highest projected growth).

141. See E. Ann Carson, DOJ, *Prisoners in 2021—Statistical Tables 25* (2022), <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/p21st.pdf> [<https://perma.cc/J9J6-4GCT>] (finding that Black men have the highest rate of incarceration in the United States and that the largest Black–white gap in imprisonment is in men aged eighteen to nineteen, with Black men incarcerated at 11.6 times the rate for white men in the same age group); Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 *Calif. L. Rev.* 1781, 1819–20 (2020) (tracing California’s twentieth-century prison boom to “crises in capitalism rather than to rising crime rates” and observing that the “state invested in prisons to absorb ‘the labor and land rendered surplus by deindustrialization and globalization of capital’” (quoting Ruth Wilson Gilmore, *Golden Gulag* 54–55, 64 (2007))).

142. See Carson, *supra* note 141, at 25 (finding that Hispanic men are imprisoned at twice the rate of white men and that Native American men are also overrepresented).

criminal histories.¹⁴³ Incarceration also denies individuals the opportunity to develop employable skills,¹⁴⁴ and formerly incarcerated people who seek an occupational license face restrictions based on criminal history.¹⁴⁵ Given these obstacles, it is unsurprising that formerly incarcerated men are far less likely to be employed than men without a history of incarceration.¹⁴⁶ This is especially true for Black men.¹⁴⁷ Moreover, even arrests for relatively minor offenses that do not result in imprisonment have negative effects on high school completion, college attendance, and employment rates.¹⁴⁸

143. See Press Release, Lucius Couloute, Getting Back on Course: Educational Exclusion and Attainment Among Formerly Incarcerated People, Prison Pol’y Initiative (Oct. 2018), <https://www.prisonpolicy.org/reports/education.html#> [<https://perma.cc/P3SS-QCCF>] (“While those in the general public have a 1 in 3 chance of attaining a college degree, a formerly incarcerated person’s chances are less than 1 in 20.” (emphasis omitted)).

144. See Kelly Parker, Employment After Prison: The Importance of Supporting Workers Who Are Seeking Work After Incarcerations, Nat’l Career Dev. Assoc. (Dec. 1, 2022),

https://www.ncda.org/aws/NCDA/page_template/show_detail/476831?model_name=news_article [<https://perma.cc/6Y87-P9R8>] (“Lack of employability skills is a major issue for many individuals released from the prison system due to a lack of educational attainment.”).

145. See Couloute, *supra* note 143 (discussing license restrictions as a barrier to employment after incarceration).

146. See Employment of Young Men After Arrest or Incarceration, U.S. Bureau Lab. Stat. (May 20, 2019), <https://www.bls.gov/opub/ted/2019/employment-of-young-men-after-arrest-or-incarceration.htm> [<https://perma.cc/4888-WLH3>] [hereinafter U.S. Bureau of Lab. Stat., Employment of Young Men] (finding that in the eighteen months after incarceration, employment rates ranged from 34–58% for men who were incarcerated for at least six months, compared with employment rates of 82–87% for men never arrested or incarcerated).

147. See Expanding Economic Opportunity for Formerly Incarcerated Persons, The White House (May 9, 2022), <https://www.whitehouse.gov/cea/written-materials/2022/05/09/expanding-economic-opportunity-for-formerly-incarcerated-persons/> [<https://perma.cc/GD9E-DQPT>] (showing that formerly incarcerated Black men face an unemployment rate of 35.2% compared with 18.4% for formerly incarcerated white men).

148. See U.S. Bureau of Lab. Stat., Employment of Young Men, *supra* note 146 (describing the employment rate for men who were arrested but not incarcerated as ranging from 69–77%, compared to 82–86% for men never arrested or incarcerated); see also Randi Hjalmarrsson, Criminal Justice Involvement and High School Completion, 63 *J. Urb. Econ.* 613, 621–22 (2008) (finding arrested individuals are approximately 11% less likely to graduate high school than nonarrested individuals); Alex O. Widdowson, Sonja E. Siennick & Carter Hay, The Implications of Arrest for College Enrollment: An Analysis of Long-Term Effects and Mediating Mechanisms, 54 *Criminology* 621, 622 (2016) (explaining that being arrested is associated with “poor academic performance, disciplinary infractions, and low curricular involvement,” which makes it more difficult to advance to college). And the problems are compounding. See, e.g., Frank W. Munger & Carroll Seron, Law and the Persistence of Racial Inequality in America, 66 *N.Y.L. Sch. L. Rev.* 175, 196 (2021–2022) (“Incarceration of Black American fathers significantly increases the odds that their offspring have serious mental health and behavioral problems, infant mortality, and homelessness.”).

Another factor in the decline in male well-being is the high rate of child poverty in the United States.¹⁴⁹ The policy choice to tolerate a high level of inequality¹⁵⁰ means that a child's life chances turn on the parents' socioeconomic status and the child's gender.¹⁵¹ Poverty has a well-established impact on educational and employment outcomes for all children,¹⁵² but disadvantage during childhood impacts boys more than girls.¹⁵³ Comparing different-sex siblings who share the same mother and

149. See Dana Thomson, Renee Ryberg, Kristen Harper, James Fuller, Katherine Paschall, Jody Franklin & Lina Guzman, *Lessons From a Historic Decline in Child Poverty* 10 fig.1.1, 78 (2022), <https://cms.childtrends.org/wp-content/uploads/2022/09/Poverty-PDF-report.pdf> [<https://perma.cc/98HS-GUDH>] (showing a child poverty rate, as measured by the supplemental poverty measure, of 11.4% in 2019, with the poverty rate for Black children at 18%).

150. For a discussion of the choice to allow high levels of poverty and inequality, see Matthew Desmond, *Poverty, by America* 40 (2023) (arguing that the United States has not combatted poverty because many portions of the population profit from it); Paul Krugman, *Opinion, America Betrays Its Children Again*, N.Y. Times (Sept. 14, 2023), <https://www.nytimes.com/2023/09/14/opinion/child-poverty-america.html> (on file with the *Columbia Law Review*) (identifying the policies that could alleviate much child poverty—such as the continuation of the COVID-19-era child tax credit—and the political choice not to pursue these policies). The United States is an outlier among other wealthy countries in its meager support of families. See OECD Fam. Database, CO2.2: Child Poverty 1 (2021), https://www.oecd.org/els/CO_2_2_Child_Poverty.pdf [<https://perma.cc/5NTB-SKKZ>] (explaining that the United States has a higher child poverty rate than most of its peer countries).

151. See Caroline Ratcliffe, *Urb. Inst., Child Poverty and Adult Success* 9 (2015), <https://www.urban.org/sites/default/files/publication/65766/2000369-Child-Poverty-and-Adult-Success.pdf> [<https://perma.cc/PJ7L-NMKW>] (“[A]lthough 93 percent of never-poor children complete high school . . . only 64 percent of persistently poor children do so.”); Marianne Bertrand & Jessica Pan, *The Trouble With Boys: Social Influences and the Gender Gap in Disruptive Behavior*, 5 *Am. Econ. J.: Applied Econ.* 32, 61 (2013) (describing how boys from disadvantaged families do worse in school than their female counterparts).

152. For a summary of this research, see *How Can We Amplify Education as an Engine of Mobility?*, Opportunity Insights, <https://opportunityinsights.org/education/> [<https://perma.cc/AQX4-2ULH>] (last visited Aug. 8, 2024) (“Children with parents in the top 1% of the income distribution are 77 times more likely to attend . . . elite colleges and universities than children with parents in the bottom 20% of the income distribution.”); see also Patrice L. Engle & Maureen M. Black, *The Effect of Poverty on Child Development and Educational Outcomes*, 1136 *Annals N.Y. Acad. Scis.* 243, 244 (2008) (“The association between poverty and children’s development and academic performance has been well documented, beginning as early as the second year of life Low-income children are at increased risk of leaving school without graduating, resulting in inflation-adjusted earnings in the United States that declined 16% from 1979 to 2005”); Raj Chetty, David Grusky, Maximilian Hell, Nathaniel Hendren, Robert Manduca & Jimmy Narang, *The Fading American Dream: Trends in Absolute Income Mobility Since 1940*, at 10 (Nat’l Bureau of Econ. Rsch., Working Paper No. 22910, 2016), https://opportunityinsights.org/wp-content/uploads/2018/03/abs_mobility_paper.pdf [<https://perma.cc/EB4W-5MLM>] (finding that rates of upward income mobility in the United States have sharply declined, especially for children of middle-class parents).

153. See Autor et al., *Family Disadvantage and the Gender Gap*, *supra* note 75, at 339 (defining childhood disadvantage as “low availability of household resources, child-rearing inputs (e.g., nutrition, safety in the home, stimuli), and parental attention”); *id.* at 340–41

grew up in the same home, boys have lower educational achievement scores and lower rates of high school completion.¹⁵⁴ These differences are correlated with disadvantage both within the family, such as limited material resources, and outside the family, such as low-quality schools.¹⁵⁵

Finally, there is increasing evidence that the rising use of technology—gaming, smartphones, and the like—has contributed to the social isolation of boys and men and adversely affected their mental health.¹⁵⁶ Researchers posit that the digital world is especially enticing to boys and men and that boys and men have increasingly migrated their social and sexual lives online since the introduction of the personal computer in the 1970s.¹⁵⁷ This may be satisfying in the moment, but it comes at the cost of developing in-person relationships, especially with women.¹⁵⁸

2. *Insights From Masculinities Theory.* — Masculinities theory provides some context for understanding why structural changes in the economy and policy choices have had such a profound impact on the well-being of boys and men.¹⁵⁹ Masculinities theory emphasizes that although men

(“[B]oys born to low-[socioeconomic status] families perform worse on standardized tests . . . , have higher rates of absences and behavioral problems, and are less likely to graduate high school than are girls. . . . [This] reflects the differential effect of . . . non-family environment.”). There are many theories about why childhood disadvantage has a greater impact on boys than girls, see, e.g., Bertrand & Pan, *supra* note 151, at 53 (finding that in single-mother households, mothers spend more time with their daughters and that in single-mother and two-parent households, parents are more likely to read to and enroll daughters in extracurricular activities), but there is no consensus on the causal mechanism, see Melanie Wasserman, *The Disparate Effects of Family Structure*, 30 *Future Fam.* 55, 70–76 (2020) (describing the literature and concluding that there is no consensus).

154. The gender gap between boys and girls from low-income families is apparent as early as the beginning of kindergarten and increases with each year of schooling. See Autor et al., *Family Disadvantage and the Gender Gap*, *supra* note 75, at 359 (“The cumulative adverse effect of family disadvantage on the boy–girl gap in behavioral and academic outcomes in kindergarten through middle school may contribute to gender gaps in downstream market outcomes, including educational attainment and earnings.”).

155. See *id.* at 341, 373 (explaining that factors such as school and neighborhood quality can mitigate or worsen the gap between boys and girls).

156. See Jonathan Haidt, *The Anxious Generation: How the Great Rewiring of Childhood Is Causing an Epidemic of Mental Illness* 196 (2024) (reporting that the rise of technology correlates with a decline in physical and mental health for boys and young men, who have withdrawn their time from the physical world and relationships to invest in virtual spaces).

157. See *id.* at 195–96.

158. See *id.* at 196.

159. For a definition of masculinities theory, see Michael Kimmel, Foreword, *in* *Masculinities and the Law*, at xiii–xvi (Frank Rudy Cooper & Ann C. McGinley eds., 2012) (explaining that masculinities theory, which assumes there are multiple masculinities, analyzes the social construction of both the feminine and masculine and explores how gender norms imposed on men and women are “policed by both men and women”). For a description of the history of masculinities theory, explaining that it began in the social sciences, see Ann C. McGinley & Frank Rudy Cooper, *Identities Cubed: Perspectives on Multidimensional Masculinities Theory*, 13 *Nev. L.J.* 326, 330–33 (2013) (describing the

should not be essentialized,¹⁶⁰ there is a dominant construction of masculinity. Theorists call this construct hegemonic masculinity and posit that men are held—and hold each other—to this dominant standard.¹⁶¹ The content of hegemonic masculinity varies with context and time, but an enduring core feature is that men tend to devote attention to how they rank among other men as measured against the dominant standard.¹⁶² Given the jockeying for a position in the hierarchy, theorists emphasize that masculinity is precarious, and, accordingly, men need to prove themselves repeatedly.¹⁶³ Indeed, precisely because being a “real man” is a subjective, social condition, it depends on how men see themselves in relation to other men.¹⁶⁴

The dynamic of boys and men needing to establish themselves in the male hierarchy plays out in multiple contexts. In K–12 education, for example, a norm has taken hold that trying hard in school is a feminine trait, and thus boys must choose between doing well in school and being popular.¹⁶⁵ Norms of masculinity on the playground (and often in the C-

history of masculinities theory as a response to feminism in the late 1960s and early 1970s, and noting that early masculinities theorists recognized male power while underscoring its socially constructed nature).

160. See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *Stan. L. Rev.* 581, 585 (1990) (criticizing feminist legal theory for relying upon “gender essentialism—the notion that a unitary, ‘essential’ women’s experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience”).

161. See Dowd, *The Man Question*, *supra* note 55, at 27 (“Hegemonic masculinity identifies the most empowered, those at the top of the male hierarchy.”); Athena D. Mutua, *The Multidimensional Turn: Revisiting Progressive Black Masculinities*, in *Masculinities and the Law*, *supra* note 55, at 78, 86–88 (“[M]en are not a monolithic group, as antiessentialism theory provides and empirical evidence suggests. Rather, they are differentiated in a multitude of ways and these ways are also ranked such that a hierarchy of men and masculinities exists.”). For the original articulation of hegemonic masculinity, see R.W. Connell, *Men’s Bodies*, in *Which Way Is Up? Essays on Sex, Class and Culture* 17, 17–32 (R.W. Connell ed., 1983) (linking the “construction of masculinity with the social power structure of patriarchy” in outlining hegemonic masculinity).

162. See Dowd, *The Man Question*, *supra* note 55, at 28 (noting that men feel their masculinity is “constantly evaluated and tested,” particularly in homosocial settings); see also Allan G. Johnson, *The Gender Knot: Unraveling Our Patriarchal Legacy* 22–23 (3d ed. 2014) (arguing that manhood is part of a system that “both benefits [men] and exacts a price in return”).

163. See Jennifer L. Berdahl, Marianne Cooper, Peter Glick, Robert W. Livingston & Joan C. Williams, *Work as a Masculinity Contest*, 74 *J. Soc. Issues* 422, 428 (2018) (arguing manhood is “conditional and tenuous,” making men feel the “need to repeatedly prove [their] masculinity”); cf. Daniel Kahneman & Amos Tversky, *Prospect Theory: An Analysis of Decision Under Risk*, 47 *Econometrica* 263, 277 (1979) (arguing that relative economic position matters more than absolute position, and thus, the loss of relative position resonates strongly).

164. See Berdahl et al., *supra* note 163, at 428 (“[B]ecause manhood is socially attained . . . , it depends on others’ views and deference . . .”).

165. See Mittleman, *Intersecting the Academic Gender Gap*, *supra* note 86, at 305 (reviewing the literature making this finding).

suite) reward dominant behaviors, including a defiance of authority, and celebrate men who can get away with such behavior.¹⁶⁶ In school, such defiance may be a high-risk enterprise, with teachers meting out punishment disproportionately to Black boys and other boys who they view as threats to school order.¹⁶⁷ Parents with greater economic and social power often insulate their sons from the impact of their troublemaking behavior, but boys in lower-income families and families of color often do not have this protective layer.¹⁶⁸

166. See, e.g., Maggie Haberman, *Confidence Man: The Making of Donald Trump and the Breaking of America* 4–5 (2022) (describing the lifelong rule-breaking of Donald Trump); Walter Isaacson, *Elon Musk* 7–9 (2023) (describing the lifelong rule-breaking of Elon Musk); Malcolm Gladwell, *Was Jack Welch the Greatest C.E.O. Of His Day—Or The Worst?*, *New Yorker* (Oct. 31, 2022), <https://www.newyorker.com/magazine/2022/11/07/was-jack-welch-the-greatest-ceo-of-his-day-or-the-worst> (on file with the *Columbia Law Review*) (describing the lifelong rule-breaking of Jack Welch). Other studies show that the twelve-year-olds likely to earn most as adults are rule breakers, who often treat middle school high achievers as sissies. See Marion Spengler, Martin Brunner, Rodica I. Damian, Oliver Lüdtke, Romain Martin & Brent W. Roberts, *Student Characteristics and Behaviors at Age 12 Predict Occupational Success 40 Years Later Over and Above Childhood IQ and Parental Socioeconomic Status*, 51 *Dev. Psych.* 1329, 1337 (2015) (“One surprising finding was that rule breaking and defiance of parental authority was the best noncognitive predictor of higher income after accounting for the influence of IQ, parental SES, and educational attainment.”); Amy Morin, *Why Kids Who Break the Rules Are More Likely to Become Rich*, *Psych. Today* (Mar. 29, 2018), <https://www.psychologytoday.com/us/blog/what-mentally-strong-people-dont-do/201803/why-kids-who-break-the-rules-are-more-likely-to> [<https://perma.cc/S583-CBZE>] (noting that the highest-income earners are the “naughty kids”).

167. See Jayanti Owens, *Double Jeopardy: Teacher Biases, Racialized Organizations, and the Production of Racial/Ethnic Disparities in School Discipline*, 87 *Am. Socio. Rev.* 1007, 1008 (2022) (discussing research “revealing that Black and Latino boys are typified as ‘dangerous,’ ‘threatening,’ ‘less childlike,’ and ‘more criminally inclined’ than their White peers, leading to disproportionately harsh punishment” (quoting Sinikka Elliot & Megan Reid, *Low-Income Black Mothers Parenting Adolescents in the Mass Incarceration Era: The Long Reach of Criminalization*, 84 *Am. Socio. Rev.* 197, 205 (2019))); *id.* at 1041 (estimating that 27% of the racial differences in punishment can be attributed to differences in perceived “blameworthiness” for the same behavior); *id.* at 1028 (addressing the possibility that racial differences in referrals for the same misconduct may derive from teacher perceptions that “Black parents are less likely to intervene with the school or the child to correct the behavior” and that the teacher is less likely to be reprimanded for referring Black children).

168. See Matthew L. Mizel, Jeremy N.V. Miles, Eric R. Pedersen, Joan S. Tucker, Bret A. Ewing & Elizabeth J. D’Amico, *To Educate or to Incarcerate: Factors in Disproportionality in School Discipline*, 70 *Child Youth Servs. Rev.* 102, 102 (2016) (discussing how suspensions and expulsions result in a “school-to-prison pipeline” that disproportionately impacts low-income students and students of color (quoting *Ending the School-to-Prison Pipeline: Hearing Before the Subcomm. on the Const., C.R. & Hum. Rts. of the S. Comm. on the Judiciary*, 112th Cong. (2012) (written statement of Laura Murphy, Director, ACLU Washington Legislative Office & Deborah J. Vagins, Senior Legislative Counsel, ACLU Washington Legislative Office))).

The contingency of male hierarchies means that diminishing economic opportunities are especially harmful for men.¹⁶⁹ Men often use work to establish their self-worth; they demonstrate their value by being a breadwinner, and unemployment means a loss in this sense of self-worth.¹⁷⁰ Indeed, researchers have found that male insecurities increase when men are simply primed to think about job loss.¹⁷¹

Broader social conditions also influence the felt precarity of male status.¹⁷² Scholars have documented ways that unequal societies value stereotypically masculine characteristics, including competitiveness, independence, and aggression, and devalue stereotypically feminine characteristics, such as care and compassion.¹⁷³ In these ways, more competitive and unequal environments emphasize hierarchy, creating greater insecurity and the felt need for men to prove their worth. Cross-country and cross-state comparisons suggest that more equal societies produce less individual status anxiety; conversely, more unequal societies produce more of this anxiety.¹⁷⁴ In a more unequal society, greater insecurity thus may carry more weight than lower wages or the increased status of women in explaining much of what is described above—that is, higher rates of disaffection, substance abuse, mental illness, and isolation.¹⁷⁵

Regardless of its source, the decline in male well-being profoundly affects families, as the next Part explores.

169. See Berdahl et al., *supra* note 163, at 427 (discussing the precariousness of male hierarchies).

170. See *id.* at 428 (“[B]ecause manhood is socially attained (e.g., being dominant over others, being a breadwinner), it depends on others’ views and deference, which makes manhood conditional and tenuous. Therefore, masculinity can be easily lost . . . and readily undone (e.g., by becoming unemployed).”).

171. See *id.* (“Numerous studies have demonstrated the ease with which one can make a man feel like ‘less of a man,’ for example, by having him think about job loss” (quoting Kenneth S. Michniewicz, Joseph A. Vandello & Jennifer K. Bosson, *Men’s (Mis)Perceptions of the Gender Threatening Consequences of Unemployment*, 70 *Sex Roles* 88, 92 (2014))).

172. See *id.* at 428–29 (“Social movements (e.g., women’s rights) and economic changes (e.g., declines in working-class men’s wages) can threaten (some) men’s hold on power and legitimacy.”).

173. See Eva Moreno-Bella, Guillermo B. Willis & Miguel Moya, *Economic Inequality and Masculinity–Femininity: The Prevailing Perceived Traits in Higher Unequal Contexts Are Masculine*, *Frontiers Psych.*, July 2019, at 1, 1 (arguing that economic equality in society is inversely correlated with male stereotypes of individuals).

174. See Richard Wilkinson & Kate Pickett, *The Inner Level: How More Equal Societies Reduce Stress, Restore Sanity and Improve Everyone’s Well-Being* 41–68 (2018) (“Among the countries in this study, status anxiety was highest in more unequal countries . . . and lowest in more equal countries”); Richard Wilkinson & Kate Pickett, *The Spirit Level: Why Greater Equality Makes Societies Stronger* 44 (2011) (“Greater inequality is likely to be accompanied by increased status competition and increased status anxiety.”).

175. See Nat’l Acad. Scis., Eng’g & Med., *supra* note 7, at 284 (explaining that the loss of economic opportunities for white men, particularly in the form of “wage stagnation, weak safety nets, and increasing foreclosure rates,” is driving overdoses and suicides).

II. IMPLICATIONS FOR FAMILIES

The crisis facing boys and men is also a crisis of the family, affecting both partnering and parenting.¹⁷⁶ The empirical literature on the crisis facing boys and men generally focuses on socioeconomic status (SES)—that is, men’s income and educational attainment. Family law scholars are interested in how SES maps onto family patterns, especially the strong correlation with marriage and engaged fatherhood. As this Part explains, men with college degrees, who are well positioned to secure the “good jobs” of the new economy, tend to enter longer-term, committed relationships, usually based on marriage. They also tend to be involved fathers. By contrast, men without college degrees are usually in shorter-term and more contingent relationships, in large part because women are wary of committing to men in positions of economic precarity and are cognizant of the troubling behaviors that often accompany a loss of income, especially high rates of intimate partner violence. Men without college degrees still have children with their short-term partners, but when the relationship ends, these men tend to live on the periphery of family life.

Notwithstanding the accuracy of this broad portrait, this Part explains that the family patterns of men without college degrees vary. When it comes to an engaged-father norm, there are important differences by race, with unmarried Black fathers historically more engaged than unmarried fathers in other racial groups. Today, unmarried white fathers are embracing similar norms. Perhaps most critically, most unmarried fathers say they want more time with their children, and most unmarried mothers want their children to have relationships with the children’s fathers, as do children themselves. This Part describes these patterns and differences, and Part III turns to the role of family law.

A. *Diverging Family Patterns*

1. *The Families of Men With and Without College Degrees.* — Men with college degrees almost always have children within marriage,¹⁷⁷ and they

176. Sociologists refer to polarized family structures as “diverging destinies,” with family structure tracking socioeconomic status. See, e.g., Sara McLanahan, *Diverging Destinies: How Children Are Faring Under the Second Demographic Transition*, 41 *Demography* 607, 614 (2004) (“[T]he demographic changes associated with *increases* in children’s resources . . . are happening the fastest among children in the top socioeconomic strata, whereas the changes associated with *decreases* in resources . . . are happening the fastest among children in the bottom strata.”).

177. See Smock & Schwartz, *supra* note 124, at 22 (“Among parents with a bachelor’s degree or more, 88% are married.”). Of the relatively few college-educated women who give birth to children outside of marriage, about half are in cohabiting relationships and the other half are single. Andrew Cherlin, *More College-Educated Women Putting the Baby Carriage Before Marriage*, *Inst. for Fam. Stud.* (Sept. 13, 2021), <https://ifstudies.org/blog/more-college-educated-women-putting-the-baby-carriage-before-marriage> [<https://perma.cc/SSU9-WR6A>]. Single-parent families headed by a

tend to stay married,¹⁷⁸ with overall divorce rates for college graduates falling steadily over the last twenty years.¹⁷⁹ This means that the vast majority of children born to college-graduate parents grow up in two-parent households.¹⁸⁰ If parents do divorce when children are young, both parents generally remain involved in the children's lives.¹⁸¹ Additionally, although intimate partner violence occurs in relationships across all demographic groups,¹⁸² it is less common in households with higher incomes.¹⁸³

college-educated parent typically manage without severe economic hardship, thanks to relatively stable employment and sufficient income. See Ruggles, *Patriarchy, Power, and Pay*, *supra* note 6, at 1818 (“Among the college-educated with good jobs . . . cohabitation and single parenthood can be managed without hardship.”).

178. See Casey E. Copen, Kimberly Daniels, Jonathan Vespa & William D. Mosher, HHS, *First Marriages in the United States: Data From the 2006–2010 National Survey of Family Growth* 8 fig.5 (2012), <https://www.cdc.gov/nchs/data/nhsr/nhsr049.pdf> [<https://perma.cc/93QU-NWXH>] (estimating the probability of divorce for men twenty-two to forty-four years of age after twenty years of marriage: 35% for college graduates, 46% for those with some college, 53% for high school graduates, and 46% for those without a high school diploma).

179. See Kim McErlean, *The Growth of Education Differentials in Marital Dissolution in the United States*, 45 *Demographic Rsch.* 841, 845–46 (2021) (“Dissolution rates [for divorce] are declining only for college graduates.”).

180. See Kearney, *supra* note 60, at 24 (describing this gap and noting that only 12% of children born to a mother with a four-year degree live in a single-mother household and that the correlation between household structure and maternal educational attainment exists for white, Black, and Hispanic families); I-Fen Lin, Susan L. Brown & Kagan A. Mellencamp, *The Roles of Gray Divorce and Subsequent Repartnering for Parent–Adult Child Relationships*, 77 *J. Gerontology: Soc. Scis.* 212, 212 (2022) (noting the stability of marriages while children are young and describing the growth in “gray divorce”: divorce among adults aged fifty and older, often after their children age into adulthood).

181. See Wendy Wang, *American Dads Are More Involved Than Ever—Especially College-Educated or Married Dads*, *Inst. for Fam. Stud.* (Oct. 24, 2023), <https://ifstudies.org/blog/american-dads-are-more-involved-than-everespecially-college-educated-or-married-dads> [<https://perma.cc/2VY5-4DDT>] (noting that 56% of nonresidential fathers who have a college degree see their children regularly as compared with 42% of fathers without a college degree).

182. See Ruth W. Leemis, Norah Friar, Srijana Khatiwada, May S. Chen, Marcie-jo Kresnow, Sharon G. Smith, Sharon Caslin & Kathleen C. Basile, CDC, *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Intimate Partner Violence* 7 (2022), https://stacks.cdc.gov/view/cdc/124646/cdc_124646_DS1.pdf?download-document-submit=Download [<https://perma.cc/LM6B-45HD>] (describing the high rates of intimate partner violence (IPV) among both men and women and in all races and ethnicities); Jennifer L. Truman & Rachel E. Morgan, DOJ, *Violent Victimization by Sexual Orientation and Gender Identity, 2017–2020*, at 1 (2022), <https://bjs.ojp.gov/library/publications/violent-victimization-sexual-orientation-and-gender-identity-2017-2020> [<https://perma.cc/76AM-4ND4>] (describing high rates of IPV in same-sex relationships).

183. See Erika Harrell, Lynn Langton, Marcus Berzofsky, Lance Couzens & Hope Smiley-McDonald, DOJ, *Household Poverty and Nonfatal Violent Victimization, 2008–2012*, at 3 (2014), <https://bjs.ojp.gov/content/pub/pdf/hpnmv0812.pdf> [<https://perma.cc/8PWY-6JBF>] (finding that IPV rates for individuals in households at or below the federal poverty level were almost double the rates for those in households 101–

The families of men without college degrees look very different. These men are far less likely to get married,¹⁸⁴ although they often live with their partners, at least for a short period.¹⁸⁵ In explaining why they did not marry the father of a shared child, women cite issues such as financial instability (78% of women say that they will not marry a partner without a steady job¹⁸⁶), low levels of trust, and high levels of intimate partner violence.¹⁸⁷ Most men provide support while the woman is pregnant and

200% above the federal poverty level and almost four times the rates of those in households 200% above the federal poverty level).

184. See Sara S. McLanahan & Irwin Garfinkel, *Fragile Families: Debates, Facts, and Solutions*, in *Marriage at the Crossroads: Law, Policy, and the Brave New World of Twenty-First-Century Families* 147 tbl.8.1 (Marsha Garrison & Elizabeth S. Scott eds., 2012) (finding that in a landmark study of nonmarital families, 3.8% of the unmarried fathers had a college degree); Mark Regnerus & Jeremy Uecker, *Premarital Sex in America* 49, 105 (2011) (providing statistics on the nature of sexual relationships of young men without college degrees, noting that most are short-lived but often result in children); Kim Parker & Renee Stepler, *As U.S. Marriage Rate Hovers at 50%, Education Gap in Marital Status Widens*, Pew Rsch. Ctr. (Sept. 14, 2017), <https://www.pewresearch.org/short-reads/2017/09/14/as-us-marriage-rate-hovers-at-50-education-gap-in-marital-status-widens/> [<https://perma.cc/RNB8-GHB9>] (reporting that among college-educated adults aged twenty-five and older, 65% were married as of 2015, and for adults in the same age range without any college education, 50% were married).

185. See McLanahan & Garfinkel, *supra* note 184, at 145 fig.8.2 (reporting that of the children born to nonmarital parents in the *Future of Families and Child Wellbeing Study*, more than 80% were born to parents in a romantic relationship: 50% of the unmarried parents were cohabiting and 32% were in a “[v]isiting” union); Smock & Schwartz, *supra* note 124, at 16 (noting that between 2006 and 2013, “[r]oughly 62% of nonmarital births were to cohabiting couples”). Many of the dating and cohabiting relationships that end in pregnancy are not exclusive. See Jennifer S. Barber, Yasamin Kusunoki, Heather Gatny & Robert Melendez, *The Relationship Context of Young Pregnancies*, 35 *Law & Ineq.* 175, 189 tbl.3, 192 (2017) (finding that 27% of couples with a nonmarital pregnancy had sex with another partner during the relationship, which lasted, on average, 22.4 months). Couples report that they did not intend to get pregnant, but that they also did not try to avoid pregnancy. See Kathryn Edin & Maria Kefalas, *Promises I Can Keep: Why Poor Women Put Motherhood Before Marriage* 37 (2005) (“Typically, young women describe their pregnancies as ‘not exactly planned’ yet ‘not exactly avoided’ either—as only a few were using any form of contraception at all when their ‘unplanned’ child was conceived.”).

186. Wang & Parker, *supra* note 17.

187. See Kathryn Edin & Timothy Jon Nelson, *Doing the Best I Can: Fatherhood in the Inner City* 95–96 (2013) (describing fathers’ “generalized mistrust of women” developed through their personal experiences); Edin & Kefalas, *supra* note 185, at 81 (noting that, for women, financial instability is a factor in the decision not to marry and that “[i]t is the drug and alcohol abuse, the criminal behavior and consequent incarceration, the repeated infidelity, and the patterns of intimate violence that . . . loom[] largest in poor mothers’ accounts of relational failure”); Christina Gibson-Davis, Anna Gassman-Pines & Rebecca Lehrman, “His” and “Hers”: Meeting the Economic Bar to Marriage, 55 *Demography* 2321, 2329–35 (2018) (describing how couples have an “economic bar”—a multifactor index of elements such as health insurance, income, earnings growth, and more—for marrying, and that the economic bar predicted marriage entry for low-income couples); Smock & Schwartz, *supra* note 124, at 11–12 (summarizing the robust literature finding that economic prospects influence the decision to marry and that lower-income couples view marriage as something that happens only after a couple has become financially stable, not before). For a discussion of the high level of intimate partner violence among unmarried

visit her and the child in the hospital.¹⁸⁸ New fathers typically sign a voluntary acknowledgment of parentage at the hospital, which establishes the man as the legal father.¹⁸⁹

But relationships between unmarried parents tend to be more contingent, with women reporting wariness about committing to men they may need to “evict.”¹⁹⁰ The end of a relationship—which usually occurs after two or three years, if not sooner¹⁹¹—typically involves women telling partners to leave and the children staying with her.¹⁹² By the time children in nonmarital families reach age five, two out of three are not living with their father.¹⁹³ After parents break up, a significant portion of unmarried, nonresidential fathers have *no* contact with their children. In the landmark Future of Families and Child Wellbeing Study (FFCWS), when the focal child was one year old, 19% of the nonresidential, unmarried fathers had had no contact with their child in the previous month.¹⁹⁴ By the time the

couples during a pregnancy, see Barber et al., *supra* note 185, at 189 tbl.3 (examining 2,499 relationships during a thirty-month period and finding that 5% of the relationships that did not lead to pregnancy included physical assault as compared with 21% of the relationships that did lead to pregnancy (216 pregnancies total)). The women who reported violence during a pregnancy also reported much lower levels of violence in their relationships that did not result in a pregnancy, *id.* at 192, although those relationships were considerably shorter. See *id.* at 189 tbl.3 (finding that relationships that did not produce a pregnancy lasted, on average, 4.5 months, as compared to 22.4 months for relationships that did produce a pregnancy).

188. See Sara S. McLanahan, *Fragile Families and the Marriage Agenda*, in *Fragile Families and the Marriage Agenda* 1, 8 & tbl.1-2 (Lori Kowaleski-Jones & Nicholas H. Wolfinger eds., 2006) (“Over 80 percent provided financial support during the pregnancy and a similar percentage helped out in other ways.”).

189. See *Fragile Families and Child Wellbeing Study Fact Sheet* tbl.1, https://ffcws.princeton.edu/sites/g/files/toruqf4356/files/ff_fact_sheet.pdf [<https://perma.cc/HST9-E9MA>] (noting that 96% of the cohabiting fathers claimed paternity at the hospital, 80% of the “[v]isiting” fathers claimed paternity at the hospital, and 52% of the non-romantically involved fathers claimed paternity at the hospital).

190. Cynthia Grant Bowman, *Social Science and Legal Policy: The Case of Heterosexual Cohabitation*, 9 *J.L. & Fam. Stud.* 1, 12 (2007) (finding that lower-income women report reluctance to marry men they may have to “evict”).

191. Smock & Schwartz, *supra* note 124, at 15; see also Sharon H. Bzostek, Sara S. McLanahan & Marcia J. Carlson, *Mothers’ Repartnering After a Nonmarital Birth*, 90 *Soc. Forces* 817, 827 tbl.1, 833 (2012) (reporting that of the 82% of the unmarried parents in the Future of Families and Child Wellbeing Study who were romantically involved at the time of the birth, 69% ended their relationship within five years of the child’s birth). The relationships in the Barber et al. study, discussed *supra*, were much shorter, lasting an average of seven months after the child was born. See Barber et al., *supra* note 185, at 193–94.

192. See, e.g., Sara McLanahan & Audrey N. Beck, *Parental Relationships in Fragile Families*, 20 *Future Child.* 17, 22–23 (2010) (describing father involvement after a relationship ends and not mentioning any father-headed households).

193. See Bzostek et al., *supra* note 191, at 827 tbl.1, 833.

194. See Jay Fagan & Rob Palkovitz, *Unmarried, Nonresident Fathers’ Involvement With Their Infants: A Risk and Resilience Perspective*, 21 *J. Fam. Psych.* 479, 482 (2007) (indicating nonresident fathers in the FFCWS data who had no contact with their one-year-old child in the previous month).

children reached age five, 37% of the nonresidential fathers had not seen their child once in the previous two years.¹⁹⁵

Nonmarital fathers are not monolithic, however, and some fathers are more involved than others. Race is a strong predictor of paternal involvement. Both quantitative and qualitative research has shown that unmarried Black fathers are more likely than unmarried white and Hispanic fathers to spend time with their nonresidential child (at least while the child is young), share responsibilities with the mother, and develop a better co-parenting relationship with the mother.¹⁹⁶

The FFCWS found that when children were one year old, nonresidential Black fathers saw their child far more often than nonresidential white and Hispanic fathers.¹⁹⁷ By age three, all fathers were spending less time with the child, but Black fathers still spent more time with the child than white and Hispanic fathers.¹⁹⁸ As the children grew older, again all fathers spent less and less time with their children, but the patterns between Black and white fathers converged, and Hispanic fathers trailed behind.¹⁹⁹

Sharing responsibilities is another measure of involvement. FFCWS researchers asked the mothers how often the father cared for the child, ran errands for the mother, and took the child places, such as to the doctor or childcare.²⁰⁰ In interviews conducted when the child was one, Black fathers were more likely to share responsibilities with the mother than white and Hispanic fathers, but by the time the child was three, the differences among the fathers shrank, and by age nine, most fathers were doing very little to share responsibilities with the mother.²⁰¹

195. Marcia J. Carlson, Sara S. McLanahan, & Jeanne Brooks-Gunn, Coparenting and Nonresident Fathers' Involvement With Young Children After a Nonmarital Birth, 45 *Demography* 461, 479 (2008) [hereinafter Carlson et al., *Nonresident Fathers' Involvement*].

196. See Edin & Nelson, *supra* note 187, at 215 (recounting Black fathers' "more richly articulated and uniform" descriptions of ideal fatherhood as compared to white fathers); Calvina Z. Ellerbe, Jerrett B. Jones & Marcia J. Carlson, Race/Ethnic Differences in Nonresident Fathers' Involvement After a Nonmarital Birth, 99 *Soc. Sci. Q.* 1158, 1159 (2018) ("[T]here is some evidence that once nonresident, black fathers are actually more likely to remain involved with their children." (citation omitted)).

197. See Ellerbe et al., *supra* note 196, at 1169 tbl.3 (reporting that the average for nonresidential Black fathers was thirteen days a month as compared with nine days for nonresidential Hispanic fathers, and seven days for nonresidential white fathers).

198. See *id.* (revealing that the average for nonresidential Black fathers was nine days a month, as compared with seven days for white fathers and five days for Hispanic fathers).

199. See *id.* (describing that when the child was five, the average for nonresidential Black and white fathers was seven days a month, and four days for Hispanic fathers, but when the child was nine, the median for Black and white fathers was six days a month, and three days for Hispanic fathers).

200. *Id.* at 1162.

201. See *id.* at 1169 tbl.3 (reporting that when the child was one, Black fathers scored an average of 2.37—on a scale of one to four, with one indicating that the father "never"

Finally, FFCWS researchers asked mothers about the quality of their co-parenting relationship with the fathers.²⁰² In interviews conducted when the child was one, three, five, and nine, mothers consistently reported a more positive co-parenting relationship with Black fathers than with white and Hispanic fathers, although the differences diminished as the child aged, with most co-parenting relationships declining in quality.²⁰³ This is particularly important because studies have found that the quality of the relationship between mothers and fathers—whether parents are able to work together as co-parents—is a strong predictor of paternal engagement.²⁰⁴

These patterns in fatherhood are playing out against another significant shift in family patterns: an increasingly hands-on parenting role for fathers who live with their children. Since the 1960s, fathers with children in the home have nearly tripled the time they spend on childcare.²⁰⁵ College-graduate fathers spend more time with their children than men without college degrees, but they all have increased the time investment they make in their children when they live together.²⁰⁶ The issue is what happens after parents divorce or separate. As described above, unmarried fathers have a harder time remaining involved in their children's lives.²⁰⁷

2. *Family Views About the Involvement of Fathers.* — Most unmarried, nonresidential fathers express deep frustration with the current state of affairs.²⁰⁸ These fathers have internalized the growing norm that fathers

did any of the three activities—white fathers 1.63, and Hispanic fathers 2.01, and when the child was nine, the averages were 1.04, 1.11, and 1.01, respectively).

202. See *id.* at 1162 (noting that this was scored by looking at mothers' responses to six items, including whether the mother trusted the father to take good care of the child and respect the rules the mother had established, and whether the parents could discuss problems that came up in raising the child).

203. See *id.* at 1169 tbl.3 (finding mothers' scores of Black fathers in co-parenting relationships decreasing from 2.48 when the child was one to 2.25 when the child was nine on a scale of one to three, of white fathers increasing from 1.93 to 2.02, and Hispanic fathers decreasing from 2.24 to 2.10).

204. See Carlson et al., *Nonresident Fathers' Involvement*, *supra* note 195, at 473–78 (noting that a positive co-parenting relationship is associated with greater paternal involvement).

205. See Kim Parker & Wendy Wang, *Pew Rsch. Ctr., Modern Parenthood: Roles of Moms and Dads Converge as They Balance Work and Family* 27 (2013), https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2013/03/FINAL_modern_parenthood_03-2013.pdf [<https://perma.cc/2KVX-ZCB9>] (tracking this increase and noting that the data reflect parents who live together).

206. See Giulia M. Dotti Sani & Judith Treas, *Educational Gradients in Parents' Child-Care Time Across Countries, 1965–2012*, 78 *J. Marriage & Fam.* 1083, 1092 fig.2 (2016) (depicting this trajectory for all fathers).

207. See *supra* note 194 and accompanying text; Wang, *supra* note 181 (reporting that 56% of nonresidential fathers who have a college degree see their children regularly as compared with 42% of fathers without a college degree).

208. See Edin & Nelson, *supra* note 187, at 103–29 (describing this frustration and fathers' attempts to be involved in a child's life, notwithstanding the fathers' lack of

are both breadwinners and caregivers, but low-income fathers struggle to meet the breadwinning part of this norm, making them feel like failures.²⁰⁹ Many of these fathers would like to see their children more often, but they do not for a number of reasons. Mothers sometimes thwart fathers' access, especially when the mother has a new partner.²¹⁰ Mothers sometimes keep fathers away because of concerns about intimate partner violence and other misconduct or behavioral issues.²¹¹ Fathers are sometimes absent themselves, often because they feel bad about their inability to provide economically for the child and resent being seen as only "a paycheck" and not a caregiver.²¹² And unmarried parents often do not trust each other or have a functional co-parenting relationship.²¹³ Notwithstanding these

economic resources); Nat'l Responsible Fatherhood Clearinghouse, Data Snapshot 2018: Father Involvement 12 fig.10 (2018), https://www.fatherhood.gov/sites/default/files/resource_files/approved_data_snapshot_father_involvement_092018_508.pdf [<https://perma.cc/NF5T-PPLB>] (reporting that 60% of nonresidential fathers of a child aged zero to four, and 56% of nonresidential fathers of a child aged five to eighteen, were "dissatisfied" or "very dissatisfied" with the contact they had with their child); Jennifer M. Randles, *Essential Dads* 61–74, 82–83, 187 (2020) (describing fathers' frustration with not being active parents and having limited contact with their children); see also Aasha Abdill, *Fathering From the Margins: An Intimate Examination of Black Fatherhood* 81–95 (2018) (reporting results of interviews with low-income Black fathers in a New York City neighborhood, in which many men were frustrated that their attempts to be an active caregiver were thwarted or not recognized).

209. See Randles, *supra* note 208, at 61 (describing how the men in the fatherhood program "struggled to realize their definitions of responsible fathering that combined expectations of breadwinning, caregiving, and providing opportunities for their children" and that this made the fathers feel like failures).

210. See Edin & Nelson, *supra* note 187, at 169, 208 ("Another common precursor to gatekeeping [access to the child] is when the child's mother forges a relationship with a new partner . . ."); McLanahan & Garfinkel, *supra* note 184, at 154 ("When a mother forms a new partnership, the nonresident father's involvement declines . . .").

211. See Edin & Nelson, *supra* note 187, at 169, 208–09 (explaining that mothers keep fathers at bay for multiple reasons, including the belief that the father is not a competent caregiver and concerns about drug use and violence); Randles, *supra* note 208, at 62 (describing similar reasons); see also Laurie S. Kohn, *Engaging Men as Fathers: The Courts, the Law, and Father-Absence in Low-Income Families*, 35 *Cardozo L. Rev.* 511, 521 (2013) (summarizing studies showing that fathers' lack of a mutually supportive relationship with mothers is a major factor preventing greater paternal involvement). Another relationship factor that can lead mothers to keep nonresidential fathers away from their children is the stress of managing a relationship with a new partner. See Huntington, *Postmarital Family Law*, *supra* note 56, at 195 (describing evidence showing that when a mother begins seeing someone new, the new man can be jealous of the father, leading the mother to keep the father at bay, and further describing evidence showing that Black families are often better able to negotiate the postbreakup family than white families).

212. See Edin & Nelson, *supra* note 187, at 208–09, 215–16, 221–23 ("Virtually every legal and institutional arrangement governing these father's lives tells them that they are a paycheck and nothing more. . . . At every turn an unmarried man who seeks to be a father . . . is rebuffed by a system that pushes him aside . . . while reaching into his pocket . . ."); see also Randles, *supra* note 208, at 14–15, 61, 98 (describing the feelings of inadequacy low-income fathers experience).

213. See *supra* text accompanying notes 187, 202–203; see also Randles, *supra* note 208, at 99–101 (describing the co-parenting challenges that low-income fathers report).

challenges, many unmarried fathers say they want a greater role in their children's lives as an active parent.²¹⁴

Many mothers are not happy with the status quo, either. They would like fathers to be more involved, if the men can address issues such as drug use and violence, and they are frustrated with men who are providing neither financial nor caregiving support.²¹⁵

Finally, children want a relationship with both parents.²¹⁶ That said, children are also close to social fathers—men who are not legal fathers but act as fathers. Social fathers are important figures in the lives of many children, especially in Black families.²¹⁷ These findings cohere with studies that have shown that fatherhood is increasingly an “achieved status” in the eyes of both children and mothers—one that focuses more on what a man does rather than his biological ties to a child.²¹⁸

3. *Family Norms and Family Power.* — Modern marriages are typically built on reciprocity and commitment,²¹⁹ and they usually follow one of two

214. See Randles, *supra* note 208, at 15, 31–57 (detailing interviews with fathers who report this desire and noting that “fathers already possess the motivation to be involved, but lack the means and support to do so”).

215. See Edin & Nelson, *supra* note 187, at 215 (expressing mothers' frustration at fathers who fail to provide financial or other support); Edin & Kefalas, *supra* note 185, at 100–03 (describing mothers' desires to have more involved fathers, despite fathers often “resum[ing] the heavy drinking and drug use, casual drug dealing . . . or other delinquent behavior”); Randles, *supra* note 208, at 95–98 (explaining that unmarried mothers point to “substance abuse, incarceration, cheating, and intimate violence as reasons why relationships with the fathers of their children do not last”).

216. Edin & Nelson, *supra* note 187, at 62–69, 203–04 (describing the regret unmarried fathers have about not having grown up with a father in their lives); Randles, *supra* note 208, at 46–49 (same).

217. See Christina J. Cross & Xing Zhang, Nonresident Social Fathering in African American Single-Mother Families, 84 *J. Marriage & Fam.* 1250, 1252–53 (2022) (noting that social fathering is a “distinct feature of Black family life,” which often has “a broader conceptualization of family that reflects [Black families'] distinct social, economic, and political realities in the United States”); see also *id.* at 1252 (noting that nonresident social fathers are father figures to children who are not their biological children; further noting that social fathers may include a child's stepfather, other male relatives, or mentor figures); *id.* at 1259 (stating that 25% of children in a study of social fathering in Black families had a nonresident social father, with which a majority felt “very or quite close” to during young adulthood—more so than respondents who reported a nonresident biological father as their primary father figure).

218. See Rachel Brown-Weinstock, Sarah Gold, Kathryn Edin & Timothy Nelson, Earning the Role: Father Role Institutionalization and the Achievement of Contemporary Fatherhood, *Soc. Probs.*, 2023, at 1, 2, 8–10, 12–13 (noting that stepfathers are more often successful at achieving fatherhood than nonresident biological fathers, but also noting that children's expectations for biological fathers tend to exceed those for social fathers).

219. See Eleanor Brown, Naomi Cahn & June Carbone, The Price of Exit, 99 *Wash. U. L. Rev.* 1897, 1901 (2022) (explaining that married parents “intermingle their lives, based on principles of interdependence, reciprocity, and equal respect”); see also Carbone & Cahn, *Marriage Markets*, *supra* note 16, at 118 (emphasizing that the new marital script involves “interdependence,” “comparable, if not always equal, investments in the relationship,” and “unqualified trust”); Shelly Lundberg, Robert A. Pollak & Jenna Stearns,

patterns. The first pattern, more common in households with incomes above \$250,000,²²⁰ could be termed neopatriarchal. It pairs a higher-earning spouse (typically, but not inevitably, a man) with a lower-earning or nonworking spouse who assumes primary responsibility for the family's nonmarket activities.²²¹ The second pattern—which could be termed egalitarian—involves two-earner households in which both spouses are employed and share domestic responsibilities.²²² In egalitarian relationships, women in different-sex couples usually assume more domestic responsibilities than men, but increasingly men are doing more on the home front, especially in the realm of caregiving.²²³

Family Inequality: Diverging Patterns in Marriage, Cohabitation, and Childbearing, 30 *J. Econ. Persps.* 79, 94 (2016) (“Increased returns to human capital and, hence, to intense child investments, may have kept marital surplus high for college graduates, who are more likely to make these investments.”).

220. See Robert VerBruggen & Wendy Wang, *The Real Housewives of America: Dad's Income and Mom's Work*, *Inst. for Fam. Stud.* (Jan. 23, 2019), <https://ifstudies.org/blog/the-real-housewives-of-america-dads-income-and-moms-work> [<https://perma.cc/SM23-N7HL>] (finding that close to half of mothers whose husbands earn \$250,000 or more a year are stay-at-home mothers).

221. See Sarah Jane Glynn, *Ctr. for Am. Progress, The New Breadwinners: 2010 Update 3* (2012), <https://cdn.americanprogress.org/wp-content/uploads/issues/2012/04/pdf/breadwinners.pdf> [<https://perma.cc/H7VH-FYSX>] (indicating that in high-income families, husbands are more likely to earn more than their spouses than in families with less overall income). For the gender breakdown of individuals earning more than \$250,000, see U.S. Census Bureau, *Income Distribution*, *supra* note 3.

222. See News Release, Bureau of Lab. Stat., *Employment Characteristics of Families—2023* (Apr. 24, 2024), <https://www.bls.gov/news.release/pdf/famee.pdf> [<https://perma.cc/ME9V-GXWZ>] (“Among married-couple families with children, 97.6 percent had at least one employed parent in 2023, and in 67.0 percent of these families both parents were employed.”); see also Steven Ruggles, *Marriage, Family Systems, and Economic Opportunity in the USA Since 1850*, *in Gender and Couple Relationships 3*, 14 fig.10 (Susan McHale, Valarie King, Jennifer Van Hook & Alan Booth eds., 2016) (showing the rise of dual-earner families).

223. See Pew Rsch. Ctr., *Raising Kids and Running a Household: How Working Parents Share the Load 3* (2015), https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2015/11/2015-11-04_working-parents_FINAL.pdf [<https://perma.cc/H2Z7-T4S2>] (finding that although women continue to perform a disproportionate share of domestic labor in different-sex couples, over time, women have reduced their share of housework responsibilities and men have increased their share); Daniel L. Carlson, Amanda J. Miller, Sharon Sassler & Sarah Hanson, *The Gendered Division of Housework and Couples' Sexual Relationships: A Reexamination*, 78 *J. Marriage & Fam.* 975, 976 (2016) (same).

The norm of sharing domestic responsibilities is much stronger for same-sex married couples. See Kenneth Matos, *Modern Families: Same- and Different-Sex Couples Negotiating at Home 4* (2015), <https://cdn.sanity.io/files/ow8usu72/production/60c48ce374802f4fbfb5ff84b692d244a324d024.pdf> [<https://perma.cc/VX9V-45KM>] (finding that for same-sex, dual-earner married couples, 74% share routine responsibilities, 62% share the responsibility of caring for a sick child, 44% share laundry responsibilities, and 33% share household repair responsibilities, while different-sex married couples shared these responsibilities at lower rates: 38%, 32%, 31%, and 15%, respectively).

Most couples report a preference for egalitarianism. See Amanda Jayne Miller & Sharon Sassler, “Don't Force My Hand”: Gender and Social Class Variation in Relationship

Nonmarital relationships do not follow the patterns of marital relationships and reflect a different allocation of power. The neopatriarchal pattern is an impossibility because the “male family wage”—a wage sufficient to support a family on a single income—has largely disappeared for blue-collar workers.²²⁴ And the egalitarian pattern is out of reach because men without college degrees have a hard time securing steady work and earning an income that makes them an appealing partner. Instead, women are much more likely to outearn men in households in the lowest income quintile.²²⁵ Yet, women assume most of the family’s domestic responsibilities at all income levels.²²⁶ And when nonmarital relationships with men end, children stay with the mothers and, as elaborated below, mothers control fathers’ access to children.²²⁷

B. *Understanding the Divergence*

Economic changes, the nature of masculinity, and the interaction between them present a multifaceted explanation of not just what has happened to men but of the nature of family change. These changes involve the declining economic position of men as an independent factor, including both relative shifts in the economic position of these men vis-à-vis both women and other men and the greater volatility in male income, employment, and workforce participation. Greater economic insecurity and loss of status correlate in turn with behavioral factors, such as substance use and intimate partner violence, that affect the dynamics of intimate partnerships and parenting.

Beginning with the economic position of men, the evidence starts with the experience of Black families. Throughout the first half of the twentieth century, Black and white adults had approximately the same marriage rates, but beginning in the 1960s, as deindustrialization hit Black communities, marriage became less common among Black adults.²²⁸ As

Negotiation, 51 Ariz. St. L.J. 1369, 1371 (2019) (“Today’s adults desire egalitarian relationships . . .”).

224. See Naomi Cahn & June Carbone, *Uncoupling*, 51 Ariz. St. L.J. 1, 7 (2021) [hereinafter, Cahn & Carbone, *Uncoupling*] (“That [neo-patriarchal] system depended on the forces producing a male family wage, a gendered division of family labor, and a social insurance system tied to the notions of desert associated with marriage and employment.”); supra text accompanying notes 95–99 (discussing the dramatic drop in income for men without college degrees).

225. See Glynn, supra note 221, at 3 (finding that 70% of women earn more than their husbands in the bottom quintile).

226. See Katie Newkirk, Maureen Perry-Jenkins & Aline G. Sayer, *Division of Household and Childcare Labor and Relationship Conflict Among Low-Income New Parents*, 76 *Sex Roles* 319, 319 (2017) (“Even when both spouses are employed full-time, wives still do the majority of household work . . .”).

227. See supra text accompanying notes 192–195; see also *infra* text accompanying notes 274–276.

228. The Moynihan Report famously investigated this phenomenon, describing Black families as a “tangle of pathology.” Off. of Pol’y Plan. & Rsch., DOL, *The Negro Family: The*

deindustrialization spread to white communities in the following decades, this, too, correlated with the decline in marriages for white adults without college degrees.²²⁹ Moreover, there is also evidence that lower marriage rates may reflect not just low wages but declining wages.²³⁰

Masculinities theory then explains how income insecurity and declining male status destabilizes relationships.²³¹ Today, even successful men experience more competition, insecurity, and stress, all of which reinforce traditional masculine norms.²³² Men on the losing end of these steeply hierarchical competitions face even more challenges, unable to secure jobs that provide status and security.

Finally, behavioral factors that both stem from and contribute to unemployment and a felt loss of status have a profound impact on partnering and parenting. Men on the losing end of the economic and social hierarchies are more susceptible to mental illness, substance use disorder, and social isolation, and they are more likely to engage in intimate partner violence.²³³ These patterns destabilize intimate relationships, which means that more children born into families of men

Case for National Action 30 (1965). The report deservedly continues to draw condemnation as sexist and racist. See, e.g., Linda M. Burton & M. Belinda Tucker, *Romantic Unions in an Era of Uncertainty: A Post-Moynihan Perspective on African American Women and Marriage*, 621 *Annals Am. Acad. Pol. & Soc. Sci.* 132, 143–44 (2009) (rejecting the “distorted lens and constraints of Moynihan’s sense of ‘matriarchy’”); Sabrina Sojourner, *The Perpetuation of Myths*, 10 *Black Scholar* 31, 31 (1979) (asserting that stereotypes about Black men and women have been perpetuated by the Moynihan Report). But modern sociologists argue that what Moynihan had really discovered was the beginning of how deindustrialization impacted marriage rates. A 2009 retrospective concluded that “Moynihan’s core argument was really rather simple: whenever males in any population subgroup lack widespread access to reliable jobs, decent earnings, and key forms of socially rewarded status, single parenthood will increase.” Douglas S. Massey & Robert J. Sampson, *Introduction: Moynihan Redux: Legacies and Lessons*, 621 *Annals Am. Acad. Pol. & Soc. Sci.* 6, 13 (2009); see also Steven Ruggles, *Race, Class and Marriage: Components of Race Differences in Men’s First Marriage Rates, United States, 1960–2019*, 46 *Demographic Rsch.* 1163, 1180–81 (2022) (concluding that controlling for the economic factors associated with plant closings and declining job opportunities explains most of the racial differences in marriage rates).

229. See Carbone & Cahn, *Marriage Markets*, *supra* note 16, at 75 (“For blue-collar men, pathways into the labor market have become constricted and the availability and stability of work have declined, which, in turn, has affected the number of men who are seen as good marriage prospects.”).

230. Sociologist Steven Ruggles found that “the decline of marriage since 1960 can be largely accounted for by the deteriorating circumstances of young men compared with the previous generation.” Ruggles, *Patriarchy, Power, and Pay*, *supra* note 6, at 1814.

231. See *supra* section I.B.2.

232. See Berdahl et al., *supra* note 163, at 429–30 (“Because work is a site where men can acquire valued resources that enable dominance over others, it is primary site in which men attempt to prove and negotiate their manhood.”).

233. See *supra* text accompanying notes 102–112, 183, 187.

without college degrees experience fatherlessness, family violence, and economic, residential, and personal insecurity.²³⁴

Taken together, these shifts may have reinforcing effects. The decline in marriage—and the rise of short-term cohabitation—disproportionately affects lower-income families. As noted above, boys who grow up in disadvantaged homes and neighborhoods are adversely affected and, as compared with girls who grew up in the same circumstances, more likely to engage in behavior that harms themselves and others; they are also less likely to have parents who cushion them from the punitive consequences of their actions.²³⁵ This, in turn, can contribute to intimate partner violence. Studies have found that men who feel they are at the bottom of social and economic hierarchies are more likely to feel threatened and turn to violence as a way to reassert their dominance.²³⁶

It is tempting to say the differences in families represent the adaptive norms of an increasingly unequal society. Parents with college degrees have shifted to a marriage-oriented family strategy, dependent on a delay in family formation, careful selection of a partner, and accumulation of a financial cushion. That model is simply beyond the reach of the working class.²³⁷ Such a conclusion, however, misses the ways family law exacerbates the isolation of men without college degrees—the subject of the next Part.

III. FAMILY LAW'S ROLE IN ISOLATING MEN

For college-educated, married men, family law facilitates private ordering and autonomy, and it encourages fathers to be both

234. See David Autor & Melanie Wasserman, *Wayward Sons: The Emerging Gender Gap in Labor Markets and Education* 8 (2013), <https://blueprintcdn.com/wp-content/uploads/2013/03/Wayward-Sons-The-Emerging-Gender-Gap-in-Labor-Markets-and-Education.pdf> [<https://perma.cc/P9QV-6893>] (“[C]hildren of less-educated males face comparatively low odds of living in economically secure households with two parents present. In general, children born into such households . . . appear to fare particularly poorly on numerous social and educational outcomes.”).

235. See *supra* text accompanying notes 153–155, 168.

236. Indeed, most of the risk factors for perpetration of intimate partner violence listed by the CDC reflect the factors identified in this Essay. See *Risk and Protective Factors*, CDC (Feb. 8, 2024), https://www.cdc.gov/intimate-partner-violence/risk-factors/?CDC_AAref_Val=https://www.cdc.gov/violenceprevention/intimatepartnerviolence/riskprotectivefactors.html [<https://perma.cc/YE8E-JP7T>] (including unemployment, low education or income, social isolation, and low self-esteem as individual risk factors; living in a family with economic stress as a relationship factor; living in a high-poverty community as a community factor; and traditional gender norms, gender inequality, and income inequality as social and economic factors); see also Paul J. Fleming, Sofia Gruskin, Florencia Rojo & Shari L. Dworkin, *Men's Violence Against Women and Men Are Inter-Related: Recommendations for Simultaneous Intervention*, 146 *Soc. Sci. & Med.* 249, 251 (2015) (“[M]en's violence . . . establish[es] hierarchies among men.”).

237. See Carbone & Cahn, *Marriage Markets*, *supra* note 16, at 47 (explaining that much of the new middle-class family strategy, including investing in both partner's earning capacity, avoiding early marriage and childbirth, achieving economic independence, and finding the right partner, is “increasingly beyond the reach of the working class”).

breadwinners and active caregivers. But for most men without college degrees, family law is punitive and moralistic, exacerbating the isolation of men in their families and undermining their place as caregivers. This Part describes this problematic role of family law in three contexts: custody rules and processes, child support, and the family regulation system.

A. *The Dual Nature of Family Law*

The work of Professor Jacobus tenBroek—a scholar of social welfare, family law, and disability rights—helps explain how family law contributes to male isolation. As tenBroek argued, family law appears to have one set of rules, but in practice, there is a dual system.²³⁸ In the private system, which governs relatively wealthy families, the law gives families wide latitude to develop their own bargains, with judges rubber-stamping private arrangements that are often negotiated by lawyers.²³⁹ There is little political or legal oversight of this system: The law assumes families can function well and are meeting the needs of their members, and the law strives to affirm mainstream norms.²⁴⁰

By contrast, the public system of family law, which governs lower-income families, is decidedly punitive and suspicious of families, assuming they need strict monitoring.²⁴¹ In the public system, extensive political and legal oversight of families is the norm, with the state limiting family autonomy through state-initiated actions and legal rules and processes that reflect moral opprobrium.²⁴² State-initiated child support enforcement and the family regulation system are examples of the public system.

238. See Jacobus tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status* (pt. 1), 16 *Stan. L. Rev.* 257, 257–58 (1964) [hereinafter tenBroek, Part I] (“One is public, the other private. One deals with expenditure and conservation of public funds and is heavily political and measurably penal. The other deals with the distribution of family funds, focuses on the rights and responsibilities of family members, and is civil, nonpolitical, and less penal. One is for underprivileged and deprived families; the other for the more comfortable and fortunate.”).

239. See Jacobus tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status* (pt. 3), 17 *Stan. L. Rev.* 614, 675–82 (1965) [hereinafter tenBroek, Part III] (describing the ability of couples with lawyers to effect their own bargains); see also tenBroek, Part I, *supra* note 238, at 262 (“[T]he family law of the poor came to be dominantly legislative, [and] the family law of the rest of the community dominantly judicial.”); Jacobus tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status* (pt. 2), 16 *Stan. L. Rev.* 900, 970–78 (1964) (“[Family law] is dual and distinguishes among families on the basis of poverty . . . [with separate] rules applicable to families in comfortable circumstances.”).

240. See *supra* note 239.

241. See tenBroek, Part I, *supra* note 238, at 257–59, 278 (identifying the “paternal, custodial, coercive, and punitive attitudes” underlying systems governing lower-income families).

242. See tenBroek, Part III, *supra* note 239, at 676 (“Parental right is not necessarily paramount, parental fitness is examined rather than presumed, and the management, morality, and other conditions of the home are subject to the active interest of public officials.”)

The private system has always benefited better-off families, but reforms in the last sixty years have consolidated this advantage. As this Part explains, legislatures, courts, and advocates have transformed the law of divorce—a quintessential private-system area of family law. Today, divorce law is less adversarial, aims to promote cooperation between parents and further parental autonomy, and views fathers as both breadwinners and caregivers.²⁴³ By contrast, the public system of family law remains largely unchanged.²⁴⁴ As was true sixty years ago, lower-income families have limited autonomy, and they are subject to strict monitoring and state-initiated actions that reflect moral judgment that condemns men who fail to provide economically.²⁴⁵ Men with college degrees benefit from the private system.²⁴⁶ Men without college degrees are stuck in the public system, contributing to their isolation.²⁴⁷

Herein exists a pervasive irony. State monitoring in the public system is designed to police behavior perceived to be at odds with mainstream norms.²⁴⁸ For lower-income, unmarried fathers, this means the failure of these men to provide economic support for their children.²⁴⁹ But as described above, these fathers want a different mainstream norm: the new norm of shared, cooperative parenting. As Part IV argues, the fight ahead is to help lower-income unmarried men gain access to the private-system mechanisms that promote this norm of cooperative parenting and engaged fatherhood.

B. *Custody Rules and Processes*

1. *Relative Successes for College-Educated Men.* — When men marry, as tends to be the norm for college-educated men, family law protects their relationship with their children and encourages them to be active parents. During marriage, men benefit from the marital presumption, which makes

243. See Jane C. Murphy & Jana B. Singer, *Divorced From Reality: Rethinking Family Dispute Resolution* 23 (2015) [hereinafter Murphy & Singer, *Divorced From Reality*] (“Under a post-divorce co-parenting regime, the court’s job is . . . to supervise the ongoing reorganization of a family.”).

244. See June Carbone & Naomi Cahn, *The Triple System of Family Law*, 2013 Mich. St. L. Rev. 1185, 1228 [hereinafter Carbone & Cahn, *Triple System*] (“[Family] law effectively [gives] the elite . . . room to negotiate arrangements that adapt the laws to their needs. . . . [Public family law] continues to proceed from the premise that poor men have ‘abandoned’ their children”)

245. See *id.* at 1227 (“Couples caught in the state aid/child-support enforcement system that denigrates absent fathers remain subject to societal disapproval at odds with their own understandings of the terms of the relationships.”).

246. See *id.* at 1228 (arguing that the private family law system rewards the family norms of elite families).

247. See *supra* notes 119, 241 and accompanying text.

248. See Carbone & Cahn, *Triple System*, *supra* note 244, at 1228 (“Public welfare law insists on upholding mainstream norms as a condition of public benefits, even when the effort is counterproductive.”).

249. See *infra* text accompanying notes 298–301.

a husband the legal father of any child born during the marriage without the need to take any action.²⁵⁰ And if men divorce, they must go through a legal process—typically with assistance from hired professionals and court personnel—that helps couples transition from co-parenting within marriage to co-parenting outside marriage.²⁵¹

College-educated men thus tend to benefit from a paradigm shift in divorce law that embraces and encourages cooperative parenting, protects the investment both parents have made in relationships with children, and gives parents wide latitude in shaping a postdivorce family that works for them.²⁵² Both the substance and process of family law reflect this paradigm shift. Substantively, legislatures and courts have moved away over the last several decades from “the rule of one”—the idea that sharing custody inevitably leads to conflict and thus custodial rights should rest with a single parent following a divorce (which usually meant the mother).²⁵³ Instead, all states now allow parents to share either legal or physical

250. This section uses gendered language, partly because this is an Essay about men but also because the current extension of the marital presumption to same-sex couples varies by state, notwithstanding Supreme Court precedent. See generally June Carbone, *Same-Sex and Different-Sex Relationships: Is It Time for Convergence?*, in *International Survey of Family Law 2019*, at 329, 332–33 (Margaret Brinig ed., 2019) (“In the process of extending the marital presumption to same-sex couples, [some state] courts have accordingly acknowledged directly that the extension of parentage, particularly in accordance with the marital presumption, does not depend on recognition of biology.”).

251. For a description of the process, see Jane C. Murphy, *Rethinking the Role of Courts in Resolving Family Conflicts*, 21 *Cardozo J. Conflict Resol.* 625, 626–30 (2020) (describing how family courts provide a variety of both traditional adversarial and alternative dispute resolution services to families). Patrick Parkinson, the architect of Australia’s Family Relationship Centres, discussed *infra* in Part IV, refers to this as “the transition from parenting together to parenting apart.” Patrick Parkinson, *Family Law and the Indissolubility of Parenthood 187–94* (2011). For a comparison of the differences in the dissolution of marital and nonmarital relationships, see Brown et al., *supra* note 219, at 1925–29 (explaining that while getting a legal divorce is costly, ending a nonmarital relationship presents its own set of logistical challenges).

252. See Dinner, *supra* note 53, at 145 (observing that “[f]athers’ rights activists helped to make caregiving and not only breadwinning central to the definition of middle-class fatherhood”). For a description of the critiques of the paradigm shift, see Murphy & Singer, *Divorced From Reality*, *supra* note 243, at 51–59 (“To the extent that society has a legitimate role in determining how parenting disputes are resolved, the reliance on private, nonlegal decisionmaking may not be entirely a good thing. This is a particular concern when vulnerable parties waive important financial or safety protections . . .”).

253. See *McCann v. McCann*, 173 A. 7, 9 (Md. 1934) (“[D]ivid[ing] the control of the child . . . is to be avoided . . . as an evil fruitful in the destruction of discipline, in the creation of distrust, and in the production of mental distress in the child. A . . . father should acquiesce in a good mother having the . . . custody of an infant . . .”); Joseph Goldstein, Anna Freud & Albert J. Solnit, *Beyond the Best Interests of the Child* 38 (1973) (arguing that the child’s psychological needs should translate into sole custody in one parent).

custody,²⁵⁴ and many divorced couples do.²⁵⁵ State legislatures have reinforced this norm of shared parenting by replacing the labels of “primary custody” and “visitation,” which suggest winners and losers,²⁵⁶ with terms like “shared custody” or “parental responsibilities,” which imply that both parents are equally important to the child.²⁵⁷

The introduction of parenting plans is another substantive change that could encourage cooperative co-parenting and engaged fatherhood following a divorce. Many states now require or encourage parents to complete detailed parenting plans, which give each parent specified rights and responsibilities, tailored to that family’s needs and interests.²⁵⁸ Parenting plans are intended to help parents design their own co-parenting relationship and ensure both parents are involved in the child’s life.²⁵⁹ The plan can, for example, build in provisions that allow one parent to care for the child while the other is working, saving on childcare expenses. The plan also specifies how the co-parenting relationship will

254. J. Herbie DiFonzo, *From the Rule of One to Shared Parenting: Custody Presumptions in Law and Policy*, 52 *Fam. Ct. Rev.* 213, 217 (2014).

255. See Daniel R. Meyer, Marcia J. Carlson & Md Moshi Ul Alam, *Increases in Shared Custody After Divorce in the United States*, 46 *Demographic Rsch.* 1137, 1147–50 (2022) (documenting a rise in shared physical custody in the United States from 13% before 1985 to 34% in 2010–2014; further finding that an award of shared physical custody was more likely for couples with higher levels of education, especially a college degree); *id.* at 1146 (noting that there was not a clear definition of “shared” physical custody and instead the study looked at answers to whether a court or judge ever gave both parents joint shared physical custody).

256. See DiFonzo, *supra* note 254, at 216 (“The terminology of custody law changed to incorporate notions of ‘shared parenting’ and ‘parenting plans’ in place of the more rigid and proprietary ‘custody’ and ‘visitation.’”).

257. Colorado, for example, uses the term “allocation of parental responsibilities,” which is split into “parenting time” and “decision-making responsibilities.” *Colo. Rev. Stat.* § 14-10-124 (2024) (“The court shall determine the allocation of parental responsibilities, including parenting time and decision-making responsibilities, in accordance with the best interests of the child . . .”). Montana and Washington refer to child custody and visitation collectively as the “parenting plan.” *Mont. Code Ann.* § 40-4-212 (2023) (“The court shall determine the parenting plan in accordance with the best interest of the child.”); *Wash. Rev. Code* § 26.09.181 (2023) (“[E]ach party shall file and serve a proposed permanent parenting plan . . .”). Vermont Family Court refers to child custody as “parental rights and responsibilities” and visitation as “parent-child contact.” *Parental Rights and Responsibilities and Parent-Child Contact*, Vt. Judiciary, <https://www.vermontjudiciary.org/family/parental-rights-and-responsibilities-and-parent-child-contact> [<https://perma.cc/9FX8-9QNM>] (last visited Aug. 11, 2024).

258. See, e.g., *Parenting Plan Form*, N.Y. Unified Ct. Sys., <https://www.nycourts.gov/forms/matrimonial/parenting-plan-form.pdf> [<https://perma.cc/GRZ7-D7WF>] [hereinafter *Parenting Plan Form*] (providing an eleven-page template for parents, with numerous issues pre-identified). These specifics are especially important in families with a history of intimate partner violence. See Leigh Goodmark, *Achieving Batterer Accountability in the Child Protection System*, 93 *Ky. L.J.* 613, 650 (2005) (describing how “most supervised visitation programs that handle domestic violence cases have specific requirements for pick-up, drop-off, and interactions with children”).

259. See *supra* note 258.

work, detailing, for example, which parent will pick up the child from school or take a child to an activity, with exact times for exchanging the child between the parents.²⁶⁰ In short, parenting plans assume both parents will be involved in a child's life, facilitate this involvement, and allow parents to anticipate points of contention by setting rules beforehand.

A final substantive change is that, in private settlements, parents can find their own balance between custody and child support. In many jurisdictions, the more time a child spends with a parent, the less that parent owes in child support.²⁶¹ Parents can thus trade time for money, as suits their preferences.

Beyond these substantive rules, family law has adopted processes that reorient divorce from an adversarial model to a conciliation model.²⁶² These reinforce two-parent norms and make decoupling less contentious. For example, family courts increasingly incorporate alternative dispute resolution into family law, with nearly every state either requiring mediation before parents can proceed to court, requiring mediation at the judge's discretion, or making it available on a voluntary basis.²⁶³ Additionally, many states offer state-sponsored education programs to help parents learn how to work together after divorce.²⁶⁴ Studies show that these programs increase co-parenting and decrease conflict between parents.²⁶⁵

260. See Parenting Plan Form, *supra* note 258.

261. Michigan, for example, requires child support to be calculated based on the "Michigan Child Support Formula" developed by the Friend of the Court Bureau, which includes a "Parental Time Offset." Mich. Comp. Laws § 552.605 (2023); Friend of the Ct. Bureau, 2021 Michigan Child Support Formula Manual 17 (2021), <https://www.courts.michigan.gov/4a64c9/siteassets/publications/manuals/foc/2021mcsf.pdf> [<https://perma.cc/6HJH-C4X6>]. Other jurisdictions have adopted similar formulas. See Ariz. Jud. Branch, Arizona Child Support Guidelines 16–22 (2022), <https://superiorcourt.maricopa.gov/media/0zqj3ip2/child-support-guidelines-2022.pdf> [<https://perma.cc/9N8F-JMS7>] (allowing an offset for time with the parent); see also Fla. Stat. Ann. § 61.30 (West 2024) (same); 750 Ill. Comp. Stat. Ann. 5 / 510 (West 2024) (same).

262. See Singer, *supra* note 31, at 363 (describing the paradigm shift designed to support a postdivorce family, with reforms that "replaced the law-oriented and judge-focused adversary model with a more collaborative, interdisciplinary, and forward-looking family dispute resolution regime" and "fundamentally altered the way in which disputing families interact with the legal system").

263. See Connie J.A. Beck, Michele E. Walsh, Mindy B. Mechanic, Aurelio Jose Figueredo & Mei-Kuang Chen, Intimate Partner Abuse in Divorce Mediation: Outcomes From a Long-Term Multi-Cultural Study 11 (2011), <https://www.ojp.gov/pdffiles1/nij/grants/236868.pdf> [<https://perma.cc/CN2J-43CD>] (noting mediation's popularity and that it "now exists in some form (legally mandated, at judicial discretion, or voluntary) in nearly every state in the United States").

264. In addition to voluntary classes, some states authorize courts to mandate participation. See, e.g., Colo. Rev. Stat. § 14-10-123.7 (2024).

265. See Jeffrey T. Cookston, Sanford L. Braver, William A. Griffin, Stephanie R. De Luse & Jonathan C. Miles, Effects of the Dads for Life Intervention on Interparental Conflict and Coparenting in the Two Years After Divorce, 46 *Fam. Process* 123, 132–35 (2007) (finding

Finally, when divorced parents continue to have trouble co-parenting, parents can choose, or courts can require, parents to use parenting coordinators—typically mental health professionals who can resolve disputes without court involvement.²⁶⁶

Together, these substantive and procedural reforms amount to a paradigm shift in divorce law.²⁶⁷ As a practical matter, the reforms promote both parents playing an active role in a child's life, and the reforms allow parents to determine these roles. And as an expressive matter, the reforms inscribe co-parenting principles. Popular culture reflects this shift, with self-help books addressed to “parenting apart.”²⁶⁸

Still, these changes are not without controversy. These measures have substantially increased the number of fathers with shared custody following divorce, but divorcing fathers do not uniformly receive such orders, inspiring calls for stronger presumptions of equally shared parenting time.²⁶⁹ In addition, some advocates argue that revamped family court processes impose shared parenting in inappropriate cases, including those involving high levels of parental conflict and parents who cannot work together,²⁷⁰ and cases involving intimate partner violence, substance

success in noncustodial father-targeted group sessions in improving the interparental relationship).

266. Ass'n of Fam. & Conciliation Cts. Task Force on Parenting Coordination, *Guidelines for Parenting Coordination*, 44 *Fam. Ct. Rev.* 164, 165 (2006); see also Christine A. Coates, *The Parenting Coordinator as Peacemaker and Peacebuilder*, 53 *Fam. Ct. Rev.* 398, 399 (2018) (defining parenting coordination as a “child focused alternative dispute resolution process in which a mental health or legal professional . . . assists high conflict parents to implement their parenting plan by facilitating the resolution of their disputes in a timely manner, [and] educating parents about children's needs” (quoting Ass'n of Fam. & Conciliation Cts., *supra*, at 165)); Sophie B. Mashburn, “Throwing the Baby Out with the Bathwater”: Parenting Coordination and Pennsylvania's Decision to Eliminate Its Use, 2015 *J. Disp. Resol.* 191, 201 (2015) (describing the function of the coordinator and the critical view that some courts are delegating judicial determinations to the coordinator); *Guidelines for the Practice of Parenting Coordination*, Am. Psych. Ass'n, <https://www.apa.org/practice/guidelines/parenting-coordination> [<https://perma.cc/C66R-SC5S>] (last visited Aug. 8, 2024) (describing the role of parenting coordinators, which can be ordered by the judge or used voluntarily by the parties).

267. See Singer, *supra* note 31, at 363 (“This paradigm shift has replaced the law-oriented and judge-focused adversary model with a more collaborative, interdisciplinary, and forward-looking family dispute resolution regime.”); see also Milfred Dale, “Still the One”: Defending the Individualized Best Interests of the Child Standard Against Equal Parenting Time Presumptions, 34 *J. Am. Acad. Matrim. Law.* 307, 316–17 (2022) (describing how in cases that fail to settle courts often adopt “progressively more intrusive and coercive interventions that wed mental health and psycholegal interventions . . . to the social control mechanisms of the court”).

268. See, e.g., Christina McGhee, *Parenting Apart: How Separated and Divorced Parents Can Raise Happy and Secure Kids* 7–9 (2010).

269. See Dale, *supra* note 267, at 308 (describing the demands to legislatures and courts for presumptions of equal parenting time).

270. See *id.* at 341 (describing shared parenting agreements between parents who cannot work together as “counterintuitive”).

abuse, or other factors.²⁷¹ The transformation in family law has been most effective when it encourages voluntary settlements that allow parents to reach their preferred resolution of custody disputes.²⁷²

Although many of these rules and processes are theoretically available to unmarried parents, as the next section describes, nonmarital parents generally do not go to court when the romantic relationship ends and thus do not benefit from the reforms.²⁷³

2. *Relative Failures for Non-College-Educated Men.* — If an unmarried man has a child, he must take affirmative steps to become a legal father.²⁷⁴ And if the relationship with the mother ends, as most nonmarital relationships do, the couple simply separates, the father moves out of the home, and the couple typically has no contact with the legal system and little access to institutional or professional assistance in making the transition.²⁷⁵ This leaves custodial mothers as the “gatekeepers” to fathers’ continuing access to children.²⁷⁶ These arrangements do not necessarily address fathers’ desire for continuing relationships with their children, but they do reflect the implicit balance of power in the relationship and the legal differences between married and unmarried relationships.

Unmarried fathers could go to court to secure a custody order, but most do not.²⁷⁷ Consistent with tenBroek’s public system of family law, for

271. See, e.g., Joan S. Meier, *Denial of Family Violence in Court: An Empirical Analysis and Path Forward for Family Law*, 110 *Geo. L.J.* 835, 861–65 (2022) (documenting courts’ punitive responses to parental allegations of intimate partner violence).

272. See Dale, *supra* note 267, at 316 (“The advantages of the settlement culture that emphasizes parental agreement, within which mediation is the dominant approach, are well documented. Most parents find ways of managing the dissolution of their relationship and appropriately raising their children without having to litigate.”).

273. See, e.g., Andrew Schepard, Marsha Kline Pruett & Rebecca Love Kourlis, *If We Build It, They Might Come: Bridging the Implementation Gap Between ADR Services and Separating and Divorcing Families*, 24 *Harv. Negot. L. Rev.* 25, 30 (2018) (noting that supportive and conciliatory processes are relatively successful for families who go to family court but are unavailable for those who do not go to court or are not in a position to access court services).

274. See Huntington, *Postmarital Family Law*, *supra* note 56, at 203 (“[Unmarried fathers] are not automatically granted parental rights at birth. Instead, family law insists that an unmarried father prove his fatherhood” (footnote omitted)).

275. See Lundberg et al., *supra* note 219, at 89 (“Unlike marriages, cohabiting unions can be ended simply and quickly outside of the legal system.”).

276. See Edin & Nelson, *supra* note 187, at 169, 208–09 (explaining that because unmarried parents typically do not have a formal custody order, and because children almost always live with the mother, the mother usually has the sole ability and authority to control fathers’ access to their children); *supra* notes 210–211 and accompanying text (noting the reasons mothers keep fathers away from children, including the belief that the father is not a competent caregiver, concern about drug use and violence, and the desire to appease a new partner, who may be jealous of the father).

277. See *Off. of Child Support Enf’t, HHS, Child Support and Parenting Time: Improving Coordination to Benefit Children* 1–2 (2013), https://www.acf.hhs.gov/sites/default/files/documents/ocse/13_child_support_and_parenting_time_final.pdf [<https://perma.cc/FLF8-ZMY9>] (describing how unmarried parents

many lower-income families, courts are a place of oppression, not assistance.²⁷⁸ Many potential litigants, particularly lower-income men, may fear that if they initiate legal proceedings, they will be faced with outstanding warrants for unrelated violations or outstanding child support orders, sometimes for children unrelated to the current dispute.²⁷⁹ Similarly, court-administered processes can seem daunting to those who believe that they will not receive a fair hearing in the courts. As a result, unmarried parents rarely have a custodial order,²⁸⁰ and if a court has issued an order, the order typically awards the mother sole physical custody.²⁸¹

Cost is also a significant obstacle. Filing any judicial proceeding involves fees; courts generally allow indigent litigants to waive fees, but completing the necessary paperwork can be discouraging or time-consuming. In addition, court personnel, such as those undertaking custody evaluations, mediation, or parent coordination, can be expensive, unless courts provide these services directly—and many do not.²⁸²

Finally, court appearances are intrusive and time-consuming, often involving multiple appearances.²⁸³ Pro se litigants have a particularly difficult time.²⁸⁴ Parents may not understand the background

are required to overcome various barriers, like legal proceedings, to resolve child support and custody matters).

278. See Tonya L. Brito, *Nonmarital Fathers in Family Court: Judges' and Lawyers' Perspectives*, 99 Wash. U. L. Rev. 1869, 1895 (2022) [hereinafter Brito, *Nonmarital Fathers in Family Court*] (“[C]ourt proceedings are a contested space for poor nonmarital fathers who are often unable to consistently pay their support order. They are shamed and penalized for their failure to live up to the classed and raced traditional ideals of economic fatherhood.”); Murphy, *supra* note 251, at 629 (“Court appearances are inconvenient, intrusive, and may even be traumatic, especially for a person that is poor and vulnerable.”).

279. See Murphy, *supra* note 251, at 634–35 (describing the risks that parents face when initiating proceedings in family court, including incarceration and a loss of privacy).

280. See Laura Tach, Ronald Mincy & Kathryn Edin, *Parenting as a “Package Deal”: Relationships, Fertility, and Nonresident Father Involvement Among Unmarried Parents*, 47 *Demography* 181, 200 (2010) (“Divorcing fathers’ custody, financial obligations, and visitation rights are all adjudicated together at the time of the divorce. Conversely, in the nonmarital context, fathers are less frequently involved in the legal process by which child support orders are made and visitation is assigned.”).

281. See Patricia Brown & Steven T. Cook, *Children’s Placement Arrangements in Divorce and Paternity Cases in Wisconsin* 10 tbl.2a, 11 tbl.2b, 12 tbl.2c (2012), https://www.irp.wisc.edu/research1/childsup/cspolicy/pdfs/2009-11/Task4A_CS_09-11_Final_revi2012.pdf [<https://perma.cc/U8DC-BP9D>] (finding that, of the cases involving unmarried parents in Wisconsin in 2007, mothers had sole physical custody in 90.9% of adjudicated paternity cases and 80.9% of the voluntary acknowledgment of paternity cases, while divorced mothers had sole physical custody in 45.7% of cases).

282. Cf. Christine Coates, Robin Deutsch, Hugh Starnes, Matthew J. Sullivan & BeaLisa Sydlik, *Parenting Coordination for High-Conflict Families*, 42 *Fam. Ct. Rev.* 246, 256 (2004) (discussing parenting coordination as a “less expensive, faster, and more satisfactory” avenue than litigation and other court-managed processes).

283. See Murphy, *supra* note 251, at 629 (describing court appearances as “inconvenient” and “intrusive” for low-income parents).

284. See Susannah Camic Takh, *Distributive Precedent and the Pro Se Crisis*, 108 *Iowa L. Rev.* 745, 759–66 (2023) (describing the legal and social impediments facing pro se

presumptions that operate in formal proceedings, leading them to agree to disadvantageous settlements or alienate court personnel involved in their cases.²⁸⁵

The upshot is that the institutionalized processes that recognize fathers as active caregivers and help men remain involved with their children—custody orders, parenting plans, access to mediation, co-parenting education, and parenting coordinators—largely do not exist for men outside marriage. Instead, men without college degrees end up at the periphery of family life.

C. *Child Support*

Family law scholars have written at length about the problems with the child support system for economically precarious men,²⁸⁶ who are disproportionately men of color.²⁸⁷ Professor Solangel Maldonado, for example, describes at length the failure of the child support system “to distinguish between fathers who can pay child support but refuse (the true deadbeats), and those who are unemployed or severely underemployed (those who are deadbroke).”²⁸⁸ And Professor Tonya Brito has conducted in-depth qualitative research, documenting the many punitive aspects of the child support system, which especially disadvantages low-income men of color.²⁸⁹ This Essay’s contribution is to highlight how child support enforcement fails men who wish to realize mainstream norms of involved parenthood.

The core of tenBroek’s dual system involved the different treatment of families perceived as financially self-sufficient and families in need of public assistance.²⁹⁰ tenBroek contended that the public system sought to

litigants, including procedural hurdles, a lack of legal and strategic expertise, and judges’ biases against pro se litigants).

285. See Stacy Brustin & Lisa Martin, Bridging the Justice Gap in Family Law: Repurposing Federal IV-D Funding to Expand Community-Based Legal and Social Services for Parents, 67 *Hastings L.J.* 1265, 1267 (2016) (describing what parents may not understand in legal proceedings in family courts without counsel, such as the scope of their legal rights and legal presumptions).

286. See *infra* text accompanying notes 291–312.

287. See Tonya L. Brito, David J. Pate Jr. & Jia-Hui Stefanie Wong, Negotiating Race and Racial Inequality in Family Court, 36 *Inst. Rsch. Poverty Focus* 3, 3 (2020) (observing that “[t]he majority of child support debt is owed by low-income fathers, many of whom are Black”).

288. Solangel Maldonado, Deadbeat or Deadbroke: Redefining Child Support for Poor Fathers, 39 *U.C. Davis L. Rev.* 991, 1003 n.70 (2006) (observing that “[d]eadbroke” fathers are those who are “too poor to pay even minimum child support awards” (internal quotation marks omitted) (quoting Ronald Pincy & Hillard Pouncy, *The Responsible Fatherhood Field*, in *Handbook of Father Involvement* 555, 563 (Catherine S. Tamis-LeMonda & Natasha Cabrera eds., 2002))).

289. See, e.g., Tonya L. Brito, The Child Support Debt Bubble, 9 *U.C. Irvine L. Rev.* 953, 954–55 (2019) [hereinafter Brito, *Child Support Debt*] (describing this research).

290. See tenBroek, Part III, *supra* note 239, at 676 (“[T]he family law of the poor derives its particular content and special nature from the central concept of the poor law system:

limit government spending and affirm mainstream values, without regard for the interests of the specific families.²⁹¹ Child support enforcement has long served the punitive, state-driven purposes tenBroek described: punishing fathers who were seen to have abandoned their children by failing to marry the mothers and were thus responsible for the mothers' economic dependence on the state.²⁹²

Today, the mainstream values of fatherhood have expanded to include not only breadwinning but also active caregiving and shared parenting. And yet child support enforcement, with twenty percent of American children involved in state enforcement efforts,²⁹³ is a principal component of the continuing dual system of family law, makes it harder for low-income fathers to be involved parents, and, indeed, is often counterproductive to mainstream values.²⁹⁴

The counterproductive effects start with differences in ability to pay. It is not an overstatement to characterize the child support system as a trap for low-income men.²⁹⁵ Men with stable incomes typically pay the amount they are obligated to provide.²⁹⁶ By contrast, courts impose unrealistic child support orders on men with very limited income, who often cannot

public provision for the care and support of the poor. He who pays the bill can attach conditions . . . and almost always does.”).

291. See *id.* at 675–82 (describing the basic motive of the public system as one “emanat[ing] from the public assumption of responsibility and the need to keep the bill down”); see also Serena Mayeri, *Foundling Fathers: (Non-)Marriage and Parental Rights in the Age of Equality*, 125 *Yale L.J.* 2292, 2297–98 (2016) (observing that efforts to hold nonmarital fathers liable for support intensified as “poor women of color gained access to public assistance benefits”).

292. See Mayeri, *supra* note 291, at 2305 (“Unmarried fathers [were] long typecast as sexual exploiters of vulnerable, young women who abandoned their children . . .”).

293. See Daniel L. Hatcher, *Injustice, Inc.: How America’s Justice System Commodifies Children and the Poor* 157 (2023) [hereinafter Hatcher, *Injustice, Inc.*] (observing further that “Black parents are pulled into the system at more than twice the percentage of Black individuals in the overall population”).

294. See *id.* at 54–55 (concluding that child support enforcement policies push fathers out of legitimate jobs, tear fragile families apart, and increase economic instability and crime rates by driving debtor parents into the underground economy).

295. See Brito, *Child Support Debt*, *supra* note 289, at 954 (“The poorest parents have disproportionately high (relative to income) monthly child support obligations. As compared to other parents, the poorest parents . . . owe a disproportionately larger share of the national child support debt. For the poorest parents, the debt is insurmountable and unsustainable.”).

296. See Ascend: Aspen Inst., *Setting Realistic and Accurate Child Support Orders: Child Support Policy Fact Sheet 2* (2022), https://ascend.aspeninstitute.org/wp-content/uploads/2023/11/3_ChildSupport_Right_Sizing_Orders.pdf [<https://perma.cc/B6HT-5SMX>] (“The best predictor of compliance with a child support order is the noncustodial father’s monthly income.”); see also Leslie Hodges, Daniel R. Meyer & Maria Cancian, *What Happens When the Amount of Child Support Due Is a Burden? Revisiting the Relationship Between Child Support Orders and Child Support Payments*, 94 *Soc. Serv. Rev.* 238, 243 (2020) (“The child support system typically works well for families in which the noncustodial parent has regular and adequate earnings from formal employment and is supporting children from a single relationship.”).

pay the amount ordered.²⁹⁷ Judges and lawyers routinely pathologize these fathers, fixating on their inability to pay child support on a reliable schedule, and suggesting that the failure involves a deliberate shirking of family responsibilities.²⁹⁸

The myopic focus on fathers as breadwinners ignores and often undercuts the role of fathers as caregivers.²⁹⁹ Unpaid child support orders create significant friction between parents because mothers are resentful that fathers are not paying, and fathers are resentful that the court has imposed an unrealistic order.³⁰⁰ This, in turn, leads fathers to withdraw from the family.³⁰¹

But perhaps the most fundamental problem is that unlike relatively wealthy parents, low-income parents are not in control of child support obligations. For the reasons described above, unmarried fathers typically do not have custody orders, so they do not qualify for offsets in the child support calculation, even if the child spends time with the father.³⁰² And for low-income parents, child support enforcement proceedings are often

297. Approximately 70% of the outstanding child support debt is owed by men with annual incomes below \$10,000. Brito, *Child Support Debt*, supra note 289, at 954. There are a few innovations on the margins. See, e.g., N.Y.C. Hum. Res. Admin., Dep't of Soc. Servs., *Child Support Handbook for Noncustodial Parents* 9 (2016), https://www.nyc.gov/assets/hra/downloads/pdf/services/child_support/noncustodial_parents.pdf [<https://perma.cc/J8U7-9D85>] (explaining that in New York State, the maximum child support order is \$25 a month for a noncustodial parent whose earnings are below the federal poverty level and that arrearages are capped at \$500). The system has particularly harsh effects for the incarcerated. Imprisonment makes it impossible to hold a job, but in most states, incarceration does not automatically suspend child support obligations. See Lynne Haney, *Incarcerated Fatherhood: The Entanglements of Child Support Debt and Mass Imprisonment*, 124 *Am. J. Socio.*, July 2018, at 1, 21–23 (explaining that even in the minority of states that consider incarceration as possible grounds to modify a child support order, incarcerated persons must initiate the judicial process by petitioning the court upon entering prison).

298. See Brito, *Nonmarital Fathers in Family Court*, supra note 278, at 1883–84 (observing that legal actors “assume fathers are not committed to their parenting responsibilities” as a baseline).

299. See *id.* at 1881–82 (“In child support court, fathers’ primary responsibility was linked to financially providing for the children, and there was considerably less value placed on fathers’ contributions to caretaking or emotional bonding.”).

300. See Edin & Nelson, supra note 187, at 215 (“Virtually every legal and institutional arrangement governing these father’s lives tells them that they are a paycheck and nothing more.”).

301. See Daniel L. Hatcher, *The Poverty Industry: The Exploitation of America’s Most Vulnerable Citizens* 144 (2016) (“[P]oor children often lose contact with their fathers as the insurmountable child support mechanisms drive the fathers away.”); Brito, *Child Support Debt*, supra note 289, at 986 (describing how fathers may “feel so trapped and discouraged that they stop paying support altogether and even withdraw from their children’s lives”).

302. To make matters worse, in many states the child support proceeding is disconnected from a custody proceeding, so the father cannot assert a claim to custody even if he wanted to do so. Instead, he must go to a different court and file a new claim. Huntington, *Postmarital Family Law*, supra note 56, at 183.

initiated by the state, not the custodial parent.³⁰³ When a parent applies for cash welfare, Medicaid, and, in many states, food stamps or a childcare subsidy, the parent must cooperate with the state in a child support proceeding.³⁰⁴ The state then brings a child support action against the other parent to reimburse the state and to increase private support for the family, reducing the family's need for supportive programs.³⁰⁵ In these proceedings, noncustodial parents rarely have legal representation, and courts often make default judgments against them and inaccurate determinations about a parent's ability to pay.³⁰⁶

These state-initiated proceedings—which form the core of the public system of family law—are not cost effective,³⁰⁷ and they do not reflect the preferences of many low-income families. Left to their own devices, a majority of low-income custodial parents do not have a child support order in place, with many custodial parents explaining that they do not want an order because the other parent has no money or is already providing informal support.³⁰⁸ Moreover, both mothers and fathers report a

303. See Jessica Tollestrup, Cong. Rsch. Serv., *Child Support Enforcement: Program Basics*, 3 tbl.1 (2024), <https://crsreports.congress.gov/product/pdf/RS/RS22380> (on file with the *Columbia Law Review*) (noting that in fiscal year 2023, the Child Support Enforcement program—which oversees state-initiated proceedings—served 12.1 million child support cases, established new support orders for 595,498 cases, and made collections for 7.3 million cases).

304. *Id.* at 2.

305. See *id.* at 1 (“The primary purpose of [the child support enforcement] program was to reduce public expenditures for recipients of cash assistance by obtaining ongoing support from noncustodial parents that could be used to reimburse the state and federal governments for part of that assistance.”); see also Hatcher, *Injustice, Inc.*, *supra* note 293, at 54 (observing that in California, 40% of child support debt is owed to the state).

306. See Brito, *Child Support Debt*, *supra* note 289, at 955 (noting lack of representation); *id.* at 963 (observing frequency of default judgments); Elizabeth G. Patterson, *Turner in the Trenches: A Study of How Turner v. Rogers Affected Child Support Contempt Proceedings*, 25 *Geo. J. Poverty L. & Pol’y* 75, 100–13 (2017) (reporting the results of two studies finding that courts often make inaccurate determinations of a parent's ability to pay).

307. See Cortney E. Lollar, *Criminalizing (Poor) Fatherhood*, 70 *Ala. L. Rev.* 125, 159 (2018) (“[R]equiring men who make little or no income to subsidize the government's child support program—and face criminal charges and incarceration if they cannot do so—does not provide a cost-efficient or effective method for minimizing the government's costs.”). Professor Cortney Lollar observes that cost estimates of child support enforcement programs do not take into account the costs of imprisonment, skewing the accounting of cost effectiveness. See *id.* at 158.

308. See Brito, *Child Support Debt*, *supra* note 289, at 962 (“60% of poor custodial parents do not even have a child support order in place.”); see also Timothy Grall, U.S. Census Bureau, *Custodial Mothers and Fathers and Their Child Support: 2017*, at 8 fig.4 (2020), <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-269.pdf> [<https://perma.cc/CL4W-24EQ>] (listing the reasons a custodial parent lacked grounds to seek a child support order, including the top two reasons: 39% of custodial parents reported that they “[d]id not feel need to make legal”; 38% reported “[o]ther parent provides what he or she can”).

preference for informal support—either cash or in-kind contributions.³⁰⁹ Mothers prefer this informal support because it keeps the state at bay and it encourages the involvement of fathers, at least if the father is willing to contribute.³¹⁰ And fathers prefer informal support because it allows them to negotiate the terms of their contributions as circumstances change, and it gives them bargaining power if mothers are blocking access to the children.³¹¹

In all these ways, child support enforcement is counterproductive for lower-income fathers who have—or want—a continuing relationship with their children.³¹²

D. *The Family Regulation System*

The family regulation system is a third way that family law isolates men from their families. In the name of protecting children, the family regulation system authorizes the state to intervene in the life of families, often leading to the removal of children from the care of a parent.³¹³ In 2021, the state removed more than 200,000 children from their homes,³¹⁴

309. Lenna Nepomnyaschy & Irwin Garfinkel, *Child Support Enforcement and Fathers' Contributions to Their Nonmarital Children*, 84 *Soc. Serv. Rev.* 341, 344 (2010). Despite this, informal contributions are often disregarded. See Brito, *Nonmarital Fathers in Family Court*, *supra* note 278, at 1887 (critiquing how legal actors consistently discourage fathers from providing in-kind support).

310. Nepomnyaschy & Garfinkel, *supra* note 309, at 344.

311. *Id.*; see also Randles, *supra* note 208, at 37, 80, 82–84 (describing how a fatherhood program provided participants with diapers, wipes, formula, and clothes, which the fathers liked because they could use these items to negotiate with mothers access to shared children); Brito, *Nonmarital Fathers in Family Court*, *supra* note 278, at 1890–91 (describing fathers' frustration when mothers obstruct visitation). Informal support is also correlated with greater closeness between children and fathers. See *id.* at 1886–87 (describing research that found a strong correlation between fathers' contribution of in-kind support and father–child closeness).

312. See Hatcher, *Injustice Inc.*, *supra* note 293, at 54–55 (detailing the negative impacts of child support orders and enforcement on fathers); Leslie Joan Harris, *Questioning Child Support Enforcement Policy for Poor Families*, 45 *Fam. L.Q.* 157, 171 (2011) (discussing studies showing that “routine vigorous child-support-enforcement efforts applied to poor, absent fathers is not very effective at reducing childhood poverty, and it harms some children by reducing the amount of in-kind support they receive and by undermining their relationships with their fathers”).

313. See Child.'s Bureau, HHS, *How the Child Welfare System Works* 5–6 (2020), <https://cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/cpswork.pdf> [<https://perma.cc/X5FJ-GWDS>] [hereinafter *Child.'s Bureau, The Child Welfare System*] (summarizing the steps of a family regulation case, including the removal of children from their homes).

314. See Child.'s Bureau, HHS, *The AFCARS Report 1* (2022), <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-report-29.pdf> [<https://perma.cc/7MGV-R497>] (reporting the placement of 206,812 children in foster care in fiscal year 2021).

and the children were disproportionately Black and Native American.³¹⁵ Married middle-class families enjoy considerable autonomy in how they raise their children.³¹⁶ Lower-income families and families of color do not.³¹⁷ Most investigations of abuse and neglect do not result in substantiated findings,³¹⁸ but the investigations and any ensuing interventions, to an even greater degree than state-initiated child support enforcement actions, deprive families of autonomy in managing their own affairs and often undermine a father's participation in the family.³¹⁹

To begin, the state prioritizes child support payment over paternal caregiving. Both parents usually prefer that their children live with a parent rather than be in foster care.³²⁰ And if children do enter foster care, the state is required to make efforts to reunify the child with a parent, including a parent who did not have custody of the child prior to the removal.³²¹

But policies around child support too often thwart this goal of family integrity. Under federal law, after placing a child in foster care, a state agency is required—"where appropriate" and when doing so is in the child's best interests—to refer the case for child support enforcement

315. See *id.* at 2 (showing 20% of the children entering foster care in 2021 were Black, and 2% were American Indian/Alaska Native); Youth (0 to 17) Population Profile Detailed by Age, Sex, and Race/Ethnicity, DOJ (Oct. 13, 2021), <https://ojjdp.ojp.gov/statistical-briefing-book/population/faqs/qa01104> [<https://perma.cc/WND3-7QZ6>] (reporting that of the children under age 18, 15% are Black and 0.97% are American Indian).

316. See Samantha Bei-wen Lee, *The Equal Right to Parent: Protecting the Rights of Gay and Lesbian, Poor, and Unmarried Parents*, 41 *N.Y.U. Rev. L. & Soc. Change* 631, 649–50 (2017) (describing the challenges faced by poor families of color in the family regulation system as compared with the relative autonomy of wealthier, white families).

317. More than half of Black children are investigated by the child protective services before they turn eighteen. Hyunil Kim, Christopher Wildeman, Melissa Jonson-Reid & Brett Drake, *Lifetime Prevalence of Investigating Child Maltreatment Among US Children*, 107 *Am. J. Pub. Health* 274, 278 (2017); see also Katharine K. Baker, *Equality and Family Autonomy*, 24 *U. Pa. J. Const. L.* 412, 443 (2022) (observing that “[s]tate agents tend to define the norm as something that resembles a white, middle-class life, and anything that deviates from that can be monitored because there is potential for harm” (emphasis omitted)).

318. See Child’s Bureau, HHS, *Child Maltreatment 2018*, at 16–19 (2020), <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2018.pdf> [<https://perma.cc/S7R7-FM9A>] (reporting findings that, in 2018, only 16.1% of investigations found substantiated maltreatment).

319. See S. Lisa Washington, *Survived & Coerced: Epistemic Injustice in the Family Regulation System*, 122 *Colum. L. Rev.* 1097, 1120 (2022) (concluding that in practice, Child Protective Services “is a punitive, intrusive, and disempowering surveillance system”).

320. See Chris Gottlieb & Martin Guggenheim, *New York’s Unconstitutional Treatment of Unwed Fathers of Children in Foster Care*, 46 *N.Y.U. Rev. L. & Soc. Change* 309, 361 (2022) (stating that the “interests [of mothers and fathers] are likely to be aligned against the state on issues of family integrity”).

321. *Restatement of Child. & the L.* § 2.50 cmt. s (Am. L. Inst., Tentative Draft No. 4, 2022) (“The state must make reasonable efforts with both parents, regardless of whether the parent had custody of the child before the removal.”).

against the parents, with the goal of the parents paying for the cost of foster care.³²² The law leaves considerable discretion to states, and there are exemptions to the referral requirement, but most states have not provided guidance on which cases to refer.³²³ Often, the father already has a child support order in place, and thus the referral only changes the recipient from the other parent to the state.³²⁴ But some states penalize fathers in other ways. In New York, for example, a court may terminate the parental rights of a parent who has not paid child support, freeing the child for adoption.³²⁵ The court may do so even if the parent has been engaged and wants custody of the child.³²⁶ In practice, these child support collection efforts are directed only at unmarried fathers.³²⁷ In these ways, the family regulation system treats fathers as only breadwinners, not capable caregivers, and the failure to provide economically can mean the end of the father–child relationship.

Even worse than treating a father as an incompetent caregiver, the family regulation system often treats fathers as a threat. When the state investigates allegations of child abuse and neglect, it often resolves complaints by coercing mothers to separate from partners the state may regard as a safety risk and obtain an order of protection; this keeps the father away from the family, even when mothers have good reason for

322. 42 U.S.C. § 671(a)(17) (2018); see also Child’s Bureau, Child Welfare Policy Manual: 8.4C Title IV-E, General Title IV-E Requirements, Child Support, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=170 [<https://perma.cc/8EPWJ9NA>] (last visited Aug. 8, 2024) (noting that Title IV-E agencies are also required to take steps to secure child support for children placed in foster care); John Sciamanna, *Less Than 2 in 5 Children Now Covered by Federal Foster Care Funding*, <https://www.cwla.org/less-than-2-in-5-children-now-covered-by-federal-foster-care-funding/> [<https://perma.cc/UNC7-AZM4>] (last visited Aug. 8, 2024) (noting that in 2020, approximately 40% of children in foster care were Title IV-E eligible). For a detailed discussion of this practice, see Hatcher, *Injustice, Inc.*, *supra* note 293, at ch. 3.

323. See Jill Duerr Berrick, *Imagining a New Future: Elimination of Child Support Obligations for Child Welfare-Involved Families*, 16 *J. Pub. Child Welfare* 295, 297 (2022) (noting that “fewer than five states” provide “explicit criteria” for offering child support exemptions to parents with children in foster care).

324. *Id.* at 296 (“[A] large proportion of non-custodial parents already have child support orders established; in these cases, child support obligations normally distributed to the custodial parent are re-directed to the state to offset the cost of care.” (citation omitted)).

325. See Gottlieb & Guggenheim, *supra* note 320, at 313 (citing N.Y. Dom. Rel. Law § 111(1)(d) (McKinney 2021)) (explaining that the state may terminate parental rights and place a child for adoption over the objection of an unmarried father who has failed to pay child support).

326. See *id.* (“[T]hough they are the biological parents and have been understood and treated as such by all parties involved in the cases, they do not count as ‘parents’ for legal purposes.”).

327. See *id.* at 317–18, 356, 358 (describing how social services agencies in New York require child support payments from unmarried fathers, but not from mothers or married fathers of children, in foster care).

wanting fathers' continued involvement with children.³²⁸ Domestic violence investigations, for example, serve as a double-edged sword. Women and girls, especially Black women and girls, who face threats of violence and abuse have historically been underprotected.³²⁹ Mandatory reporting, arrest, and prosecution laws, often enacted in response to complaints of underprotection, however, may override the survivor's preferences about appropriate responses.³³⁰ Survivors may face threats of child removal when they do not comply with child-protective demands, which often include insistence that the mother leave an abusive partner, obtain a protective order, and cooperate with law enforcement.³³¹ Failure to comply may result in charges that the survivor lacks "insight" into their circumstances, posing a danger to children.³³² The system thus puts unproductive and potentially harmful pressure on women to leave men, even when the mother believes that it would be better for her and the children for the family to stay together or for the children to have ongoing contact with the father if the parents separate.³³³

The state's overresponse is especially problematic given the circumstances of lower-income families. An increased incidence of violence correlates with lower socioeconomic status.³³⁴ This violence, which includes a greater incidence of intimate partner violence and more frequent use of corporal punishment,³³⁵ can vary considerably in severity,

328. See Kelley Fong, *Investigating Families* 119–23 (2023) (describing a case in which a mother was told to stop seeing an abusive man or lose her children); Washington, *supra* note 319, at 1138 (describing a family regulation case in which the mother had good reasons for wanting the continued involvement of her partner with the children and observing the coercive efforts made by the agency to break up the relationship).

329. See Washington, *supra* note 319, at 1117 (highlighting the "legacy of underprotection and targeting of Black women and girls by the criminal legal system").

330. *Id.* at 1118–19.

331. See Fong, *supra* note 328, at 119–21 ("[Child Protective Services (CPS)] had [a mother] sign a 'safety plan' stating that she would not allow [her male partner] . . . to have contact with her children."); Shanta Trivedi, *Mandating Support for Survivors*, 30 *Va. J. Soc. Pol'y & L.* 85, 92–93 (2023) ("CPS, rather than recognizing [the reason a survivor may not want to leave their partner] and trying to assist, tries to force survivors to leave by threatening to or actually removing . . . their children if they fail to comply.").

332. Fong, *supra* note 328, at 123–31; Trivedi, *supra* note 331, at 93.

333. See Washington, *supra* note 319, at 1120 ("[C]ourts do not interrogate the cycle of coercion and its impact on a survivor's progress or reliance on state actors.").

334. See Deborah M. Weissman, *Gender Violence, the Carceral State, and the Politics of Solidarity*, 55 *U.C. Davis L. Rev.* 801, 846–47 (2021) ("[D]ecades of research demonstrate the causal relationship between economic inequality and instability, and domestic violence."); *supra* text accompanying note 183.

335. For sources describing the use of corporal punishment, including by lower-income parents and parents of color, see Pew Rsch. Ctr., *Parenting in America: Outlook, Worries, Aspirations Are Strongly Linked to Financial Situation* 45–48 (2015), https://www.pewsocialtrends.org/wp-content/uploads/sites/3/2015/12/2015-12-17_parenting-in-america_FINAL.pdf [<https://perma.cc/Q79Q-M24J>]; Regina A. Corso, *Four in Five Americans Believe Parents Spanking Their Children Is Sometimes Appropriate*, PR Newswire (Sept. 26, 2013), <https://www.prnewswire.com/news-releases/four-in-five->

frequency, and dangerousness.³³⁶ Mainstream norms, which are less tolerant of any violence, and stereotypes of lower-income men and men of color as dangerous, contribute to the dismissal of survivors' preferences,³³⁷ reinforcing beliefs that the survivors favor the men over their children.³³⁸ The law thus discounts the many reasons a survivor may prefer not to leave a partner, including partners who have engaged in violence.³³⁹ Judgments about the appropriate responses to intimate partner violence have been difficult and contentious, and it is well-documented why many victims fail to support mandatory prosecution approaches.³⁴⁰ Threatening to take children away from a victim as a way of coercing the breakup of family relationships further undermines family autonomy and increases the fragility of father involvement.

americans-believe-parents-spanking-their-children-is-sometimes-appropriate-225314281.html [https://perma.cc/8NGK-VASC].

336. See, e.g., Peter G. Jaffee, Janet R. Johnston, Claire V. Crooks & Nicholas Bala, *Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans*, 46 *Fam. Ct. Rev.* 500, 500–01 (2008) (describing variations in types of domestic violence and potential responses); Joan B. Kelly & Michael P. Johnson, *Differentiation Among Type of Intimate Partner Violence: Research Update and Implications for Intervention*, 46 *Fam. Ct. Rev.* 476, 490–93 (2008) (describing negative effects of intimate partner violence on children and potential responses). But see Joan Meier, *Differentiating Domestic Violence Types: Profound Paradigm Shift or Old Wine in New Bottles?*, *Fam. & Intimate Partner Violence Q.*, Summer 2018, at 7, 12 (advising courts and practitioners to avoid the differentiation typology due to its scientific uncertainty and ability to minimize domestic violence).

337. See, e.g., *Nicholson v. Williams*, 203 F. Supp. 2d 153, 163 (E.D.N.Y. 2002) (reviewing challenges to the practice of summarily removing children from abused parents and observing that “[t]he pitiless double abuse of these mothers is not malicious, but is due to benign indifference, bureaucratic inefficiency, and outmoded institutional biases”); Weissman, *supra* note 334, at 856 (discussing the practice of removing children from non-abusive parents when a parent was thought to have engaged in domestic violence).

338. See Fong, *supra* note 328, at 119–31 (discussing cases in which CPS punished women for allegedly prioritizing their intimate relationships over their children); Washington, *supra* note 319, at 1121, 1141 (“The overarching narrative about those who have experienced domestic violence is that they are weak, that they are ‘bad mothers,’ and that they favor their partner over their children.”).

339. See Trivedi, *supra* note 331, at 93 (listing such reasons, including that the woman loves the partner, the partner is a good parent, and the woman cannot afford to leave or has nowhere else to go).

340. See, e.g., Amy E. Bonomi, Rashmi Gangamma, Chris R. Locke, Heather Katafiasz & David Martin, “Meet Me at the Hill Where We Used to Park”: Interpersonal Processes Associated With Victim Recantation, 73 *Soc. Sci. & Med.* 1054, 1054 (2011) (suggesting that as many as 80% of IPV victims recant or refuse to cooperate with criminal prosecutions); Leigh Goodmark, *Reimagining VAWA: Why Criminalization Is a Failed Policy and What a Non-Carceral VAWA Could Look Like*, 27 *Violence Against Women* 84, 85–92 (2021) (arguing that criminalization of domestic violence has been ineffective and arguing for alternative approaches); G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservatization of the Battered Women’s Movement*, 42 *Hous. L. Rev.* 237, 295 (2005) (“Criminalization does not address battered women’s need for housing and economic or emotional support.”); *id.* at 245–46 (discussing mandatory arrest and prosecution policies).

Finally, the family regulation system does not provide the support that many families need. The system mandates services for most families,³⁴¹ but these services are often unwanted, unhelpful, and not matched to the family's needs.³⁴² In this way, the family regulation system does not help strengthen families.

IV. ADAPTING FAMILY LAW: FROM ISOLATION TO INCLUSION

If family law, which often involves heavy-handed state interventions insensitive to community norms, contributes to the isolation of fathers without college degrees, why might family law offer a way to greater inclusion? The answer lies with the reinvention of family law institutions. As described in the previous Part, this reinvention is already underway for relatively well-off couples.³⁴³ The goal is to extend the more successful parts of family law to fathers on the periphery of family life. This requires new institutions built on the principles that represent the best of the transformations to tenBroek's private system of family law: parent-driven decisionmaking that allows parents to reach their own decisions, the identification of family needs and a connection to services, respect for community values, and personnel in tune with parents' values and circumstances and community norms.³⁴⁴

To be clear, there should also be a much more ambitious structural response to the social and economic isolation of boys and men. A comprehensive response should rebuild the pathways from childhood to an adulthood with secure employment and stable families.³⁴⁵ It would

341. See Restatement of Child. & the L. § 3.20 (Am. L. Inst. Tentative Draft No. 5, 2023) (describing various services a family court may order).

342. See Fong, *supra* note 328, at 132–61 (describing the coercive and ineffective “help” offered by state agencies). This is also true in cases involving intimate partner violence. See Miccio, *supra* note 340, at 295 (“Criminalization does not address battered women’s need for housing and economic or emotional support.”); Washington, *supra* note 319, at 1102 (describing unwanted domestic violence victim counseling).

343. See *supra* section III.B.1.

344. See Mary S. Marczak, Emily H. Becher, Alisha M. Hardman, Dylan L. Galos & Ebony Ruhland, *Strengthening the Role of Unmarried Fathers: Findings From the Co-Parent Court Project*, 54 *Fam. Process* 630, 637 (2015) (arguing that this kind of approach “attend[s] to some of the intersecting societal and structural barriers that parents, and particularly fathers, contend with that may hamper their ability to successfully co-parent together and be meaningfully involved in their children’s lives”).

345. For examples of book-length explorations of the problems and needed reforms, see, e.g., Dowd, *Reimagining Equality*, *supra* note 55, at 66–78 (explaining the role developmental inequality in creating disparate economic outcomes); Maxine Eichner, *The Free-Market Family* 142–46 (2020) (arguing that, across economic classes, market forces have negatively affected American families); Isabel Sawhill, *The Forgotten Americans* 67–69 (2018) (arguing that a focus on family stability would, in part, positively affect income growth in middle-class households). The broader context is also important because it frames family court adjudications. See generally Colleen F. Shanahan, Jessica K. Steinberg, Alyx Mark & Anna E. Carpenter, *The Institutional Mismatch of State Civil Courts*, 122 *Colum. L. Rev.* 1471 (2022) (maintaining that although state civil courts are designed for dispute

address the need for greater material support for moderate- and low-income families with young children, school policies and practices that disadvantage boys, the lack of stable employment opportunities for men without college degrees, and mass incarceration.³⁴⁶ And it would reduce unplanned pregnancies.³⁴⁷ We have both written about this broader agenda,³⁴⁸ but this Part focused on the particulars of family law, proposing reforms that encourage active fatherhood and are rooted in family law's

resolution, the courts "have become emergency rooms because people's social needs remain unmet").

346. To elaborate on one of these points—employment prospects—there is no dearth of proposals to improve employment and stabilize income. The most effective approaches would address these issues in a comprehensive way. A public jobs program, for example, would guarantee employment to anyone who seeks it. See Stephanie Kelton, *The Deficit Myth: Modern Monetary Theory and the Birth of the People's Economy* 63–64 (2020) (arguing for a federal job guarantee that establishes a "public option in the labor market" that would provide a job for anyone seeking employment). Universal basic income—that is, cash grants that would provide a cushion for all families—would ensure income stability for families. See Anne L. Alstott, *Work vs. Freedom: A Liberal Challenge to Employment Subsidies*, 108 *Yale L.J.* 967, 971–72 (1999) ("A program of unconditional cash grants would enhance the freedom and economic security of the least advantaged."). Programs such as the Earned Income Tax Credit (EITC) could be redesigned so lower-income nonresidential parents could earn a sizeable cash award for working, just as the program currently does for lower-income residential parents. See Huntington, *supra* note 56, at 234–35 (proposing an EITC for noncustodial parents and describing promising pilot programs that do so). And other approaches might embrace family allowances or tax credits tailored to support the ability of both residential and nonresidential parents to provide economic support for children. See, e.g., Jacob Goldin & Ariel Jurow Kleiman, *Whose Child Is This? Improving Child-Claiming Rules in Safety-Net Programs*, 131 *Yale L.J.* 1719, 1757–62 (2022) (discussing the trade-offs in designing such a program).

347. A significant difference between the relatively stable relationships of college-educated families and the more unstable relationships of lower-income couples is the dramatically higher rates of unintended pregnancy among the latter group. See *Unintended Pregnancy in the United States*, Guttmacher Inst. (Jan. 2019), <https://www.guttmacher.org/fact-sheet/unintended-pregnancy-united-states> [<https://perma.cc/P7PF-QTQZ>] (finding unintended pregnancy rates to be highest among low-income women and lowest among college graduates and married women). Couples who "drift into" parenthood are less likely to stay together. Isabel V. Sawhill, *Generation Unbound: Drifting Into Sex and Parenthood Without Marriage* 105–06 (2014). When lower-income women delay childbearing into their mid- to late twenties, they are more likely to find a stable partner with greater economic prospects. Cf. Bzostek et al., *supra* note 191, at 829 tbl.3 (finding that, of the mothers in the FFCWS, 31.8% of the unmarried mothers found subsequent partners with higher levels of education and income than the biological father).

348. See Carbone & Cahn, *Marriage Markets*, *supra* note 16, at 141–82 (presenting solutions to economic challenges, noting that "either we need a greater societal commitment to greater employment security . . . or we need greater societal provision for children whose parents cycle into and out of increasingly unstable relationships"); Huntington, *Failure to Flourish*, *supra* note 31, at 145–202 ("[T]he state should actively encourage the development of strong, stable, positive relationships within the family . . . [by] recognizing a broader range of families, encouraging a long-term commitment between parents, altering the physical context for family life, and supporting parents in their critical child-development work . . .").

shift toward nonadversarial procedures and supportive services. The proposals will not solve the crisis facing men and boys, or end the impact of that crisis on families, but they do offer a way to mitigate the isolation of fathers in their families.

A. *Reconnecting Fathers and Children*

Unmarried parents would benefit from the same approach that married parents currently enjoy: a move away from an adversarial, zero-sum model to a more holistic, supportive system that helps divorcing couples transition into a postdivorce family with two engaged parents.³⁴⁹ Given the challenges facing lower-income families, including the greater incidence of intimate partner violence,³⁵⁰ mental health issues,³⁵¹ and problems related to substance use,³⁵² the reforms need to incorporate a broad array of services and practices designed to ensure safety and diffuse conflict. The services should also contribute to remaking the images of unmarried fathers, who have been dismissed as “deadbeats” because of outmoded stereotypes tied to the role of marriage and fathers’ breadwinning roles.³⁵³

The most important needed change is a new institution. A principal advantage of nonmarriage is the ability of couples to stay out of court.³⁵⁴ Rather than bringing these families into court,³⁵⁵ the solution instead is to

349. See *supra* section III.B.1.

350. See *supra* note 183 and accompanying text.

351. See Young-Mee Kim & Sung-il Cho, Socioeconomic Status, Work–Life Conflict, and Mental Health, 63 Am. J. Indus. Med. 703, 703 (2020) (reporting that people of the lowest socioeconomic status are two to three times more likely to experience a mental illness than those of the highest socioeconomic status).

352. See Baptiste-Roberts & Hossain, *supra* note 15, at 120 (finding that among those who reported using alcohol and drugs, low-income users were more likely to have problems due to substance use disorder).

353. See Brito, *supra* note 278, at 1871, 1878 (describing the many ways low-income fathers, and especially low-income fathers of color, are portrayed as irresponsible fathers willfully shirking economic responsibility for their children—encapsulated in the common derogatory term “deadbeat”); Marczak et al., *supra* note 344, at 637 (emphasizing the importance of messaging that “affirms the value of the father above and beyond monetary contribution and emphasizes the inherent worth in the relationship between father and child”).

354. See Carbone & Cahn, Triple System, *supra* note 244, at 1211 (“[T]oday’s working-class families enjoy their greatest autonomy by staying out of court.”).

355. See Spinak, *supra* note 52, at 278–80 (describing the problematic history of family court trying to solve problems for children and families rather than resolve only factual and legal disputes, and arguing that courts should do only the latter). Scholars who examine the judicial role in an era of inequality add further that state civil courts generally “are institutions where people bring their social needs more than their disputes.” Shanahan et al., *supra* note 345, at 1474. Given the failure of the executive and legislative branches to create more support for families, courts have to address social needs when “they cannot decline the cases presented to them,” but courts are ill-equipped to do so. *Id.*

The problems with family court are one reason this Essay does not propose a program providing counsel for indigent fathers. Not only would such a program be

create state-funded, community-based centers that provide a range of services that include support for parenting partnerships.³⁵⁶ These centers would operate apart from the legal system, and participation would be voluntary.

1. *Guiding Principles.* — We propose several principles to guide an approach to bring men in from the periphery of family life. Each draws on the revolution within divorce processes that accelerate the move away from adversarial family law processes to supportive ones, and each is designed to address the isolation of men from their families.

The first principle is gender equality. As noted at the outset, the goal is not to recreate patriarchy, and this Essay opposes legal rules and processes that impose men on women without women's ongoing consent.³⁵⁷ This Essay's approach is to draw men back into family life while also promoting gender equality and relationships premised on equal respect. To this end, it is essential to build a relationship foundation between parents that supports a cooperative parenting relationship. The proposals are designed to help couples find a way to work together and to embrace shared parenting norms, where feasible and safe for all parties.³⁵⁸ As discussed below, this means addressing the reasons why women often find men to be unreliable partners.

A second and related principle is parental autonomy. The goal is for parents to work out their own settlements, including settlements a court could not order. This would bring the benefits of tenBroek's private system—with upper-income families enjoying a lawyer-directed system that gives litigants considerable autonomy in reaching resolutions that meet their needs—to the families historically in the public system or excluded from the family law system altogether.³⁵⁹ It would also help support

expensive, but it would also bring men into an institution that is unlikely to address the issues this Essay identifies.

356. See, e.g., Merle H. Weiner, A Parent-Partner Status for American Family Law 116–17 (2015) (discussing the legal treatment of “parent-partners”).

357. Indeed, conservatives such as William Kristol have historically argued that women and men must be taught to “grasp the following three points: the necessity of marriage, the importance of good morals and the necessity of inequality within marriage,” treating gender inequality within marriage as essential to family stability. Linda R. Hirshman, Against the Possibility of Equality, *L.A. Times* (Sept. 25, 1996), <https://www.latimes.com/archives/la-xpm-1996-09-25-me-47370-story.html> (on file with the *Columbia Law Review*).

358. See *infra* note 398 and accompanying text (discussing the importance of screening potential participants for intimate partner violence and making referrals to appropriate services).

359. See *supra* notes 238–239 and accompanying text. For an example of a proposal to do something similar in another area of family law, see Naomi Cahn, Clare Huntington & Elizabeth Scott, The 100-Year Life and the New Family Law, *in* *Law and the One-Hundred-Year Life* (Anne Alstott & Abbe Gluck, eds., forthcoming 2025) (manuscript at 19 n.35) (on file with the *Columbia Law Review*) (arguing that a family system that allowed older adults to tailor marriage or a registered relationship to their needs would help “break down the boundary between tenBroek's two systems of family law and give low-income families access to the benefits of the [private] system”).

broader access to the terms of the new egalitarian relationships model: the dismantling of gendered roles of breadwinner and homemaker in favor of shared parenting, the shared assumption of responsibility for children, and flexible and reciprocal adult relationships.³⁶⁰ In short, promoting parental autonomy for families shut out of family courts requires institutions that help the parties reach their own solutions.

The next principle is a focus on positive-sum outcomes. Allowing parents to realize the benefits of parent-directed agreements requires greater assistance for these parents to work through their disagreements. That, in turn, requires resources for addressing obstacles such as intimate partner violence, mental health challenges, substance use, and the trauma associated with economic precarity and discrimination. Family courts increasingly incorporate counseling services and alternative dispute resolution processes such as mediation, and so, too, should new institutions.³⁶¹

The final principle is context-specific decisionmaking. This means that interventions must be community-based, with respect for differing community values and customs.³⁶² Community-based personnel are likely to be more sensitive to individual needs and less judgmental about failures to correspond to dominant expectations about family constitution and behavior.³⁶³

2. *The Principles in Action.* — To realize these principles, this section proposes the introduction of community-based multidisciplinary centers.³⁶⁴ One model is the Australian family relationship centers:

360. See *supra* notes 204, 252, 257, 344 and accompanying text.

361. See *supra* notes 263, 266 and accompanying text.

362. For a discussion of the advantages of a community-based approach, see Brustin & Martin, *supra* note 285, at 1291–92.

363. See Stacy Brustin & Lisa Vollendorf Martin, Paved With Good Intentions: Unintended Consequences of Federal Proposals to Integrate Child Support and Parenting Time, 48 *Ind. L. Rev.* 803, 846 (2015) (discussing the trust and understanding community mediators acquire through their work); Jane C. Murphy & Jana B. Singer, Moving Family Dispute Resolution From the Court System to the Community, 75 *Md. L. Rev. Endnotes* 9, 12 (2016), <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1041&context=endnotes%20> [<https://perma.cc/A2UA-EN4Y>] (“Locating [family dispute] efforts in the community, rather than the court system, helps to normalize this reorganization process—recharacterizing it as a life-cycle challenge, rather than a quasi-criminal event that requires the full machinery of the state.”).

364. As with other successful policy reforms, a useful approach begins with securing philanthropic funding for pilot programs and rigorous evaluation; if studies find the pilot programs effectively achieve the articulated goals at a reasonable cost, this evidence lays the groundwork for broader adoption using governmental funds. See, e.g., David L. Kirp, *The Sandbox Investment* 152, 157–58, 160–65, 174–78 (2007) (describing a similar trajectory for universal prekindergarten). In addition, various proposals to defund the police or abolish the family regulation system have considered alternative systems designed to address mental health crises and family support. The proposed family centers should be seen as alternatives to the public funding currently spent on ineffective and punitive social services. See, e.g., Casey Fam. Programs, *Do Place-Based Programs, Such as Family Resource Centers, Reduce*

community-based centers wholly outside the court system that combine family dispute resolution services with employment, counseling, and other assistance that meets families where they are.³⁶⁵ There are also promising pilot programs in the United States, with smaller scale programs tailored to meet the needs of lower-income fathers and change the trajectories of their family involvement.³⁶⁶ And other countries are beginning to realize the need for integrated job centers that combine wide-ranging services with employment assistance and wage subsidies.³⁶⁷ The description in this section draws on these models.

The critical first step is encouraging unmarried fathers to walk through the door into the community-based centers. For lower-income couples, in particular, paying people for their time is an effective incentive, and subsidized employment opportunities or desired assistance in

Risk of Child Maltreatment and Entry Into Foster Care? 4 (2019), https://www.casey.org/media/SComm_Family-Resource-Centers.pdf [<https://perma.cc/XTH4-D2NV>] (summarizing research on family centers and finding, for example, “that for every \$1 invested in the Alabama Network of Family Resource Centers, the state of Alabama receives \$4.70 of immediate and long-term financial benefits”).

365. See Patrick Parkinson, *Family Law and the Indissolubility of Parenthood* 187–94 (2011) (describing the centers, including the goal of helping separating parents reach an agreement on parenting and further explaining the role of supportive services in helping separating couples address the barriers to parenting). Research demonstrates the successes of the centers. See Dale Bagshaw et al., *Family Violence and Family Law in Australia: The Experiences and Views of Children and Adults from Families Who Separated Post-1995 and Post-2006*, at 51, 58–59, 120 (2010), https://www.researchgate.net/publication/277841058_Family_violence_and_family_law_in_Australia_the_experiences_and_views_of_children_and_adults_from_families_who_separated_post-1995_and_post-2006 [<https://perma.cc/P2R5-KHAG>] (describing the widespread use of Family Relationship Centres and that participants, especially men, find them helpful); Ctr. for Int’l Econ., *Family and Relationship Services Economic Evaluation: Using Cost-Benefit Analysis to Assess the Value of Services* 84 tbl.7.3, 94 tbl.8.2 (2023), https://frsa.org.au/wp-content/uploads/2023/09/CIE-Final-Report_FRSA_Family-and-Relationship-Services-Evaluation-11092023.pdf [<https://perma.cc/9UTS-LYQT>] (finding that Family Relationship Centres are cost effective and show high levels of satisfaction among participants, including a high level of agreement among participants that the centers helped the participants with the issues they brought); Lawrie Moloney, Lixia Qu, Ruth Weston & Kelly Hand, *Evaluating the Work of Australia’s Family Relationship Centres: Evidence From the First 5 Years*, 51 *Fam. Ct. Rev.* 234, 235–36, 243–44 (2013) (finding that the introduction of centers increased families’ access to counselling and mediation services; most separating families who used the centers’ family dispute resolution services came to a parenting agreement that worked for both parents and children; and such agreements “tend to hold up in the medium term”).

366. See Marczak et al., *supra* note 344, at 631, 634–35 (describing a pilot program that offered a full range of services and reporting results: an increase in co-parenting quality and time fathers spent with children).

367. See Barnsley Council & Pathways to Work Comm’n, *Pathways to Work Commission Report 7–12* (2024), <https://www.barnsley.gov.uk/media/opbpxkz/bmbc-pathways-to-work-commission-report.pdf> [<https://perma.cc/D6D3-LZ8Y>] (describing the success of a model in the United Kingdom that tailors services to individuals who could work but are not; emphasizing the need for a broad range of services, including physical and mental health services; and noting the importance of wage subsidies).

navigating family relationships can encourage participation ideally before a relationship ends.³⁶⁸ These services can be varied, but in looking at the services that both support involved fatherhood and are attractive enough to encourage socially isolated fathers to come,³⁶⁹ the services should include those described below.

Employment services. Employment enhances fathers' status, contributes to their self-esteem, and increases their ability to contribute to their children's lives.³⁷⁰ Australia, which has developed comprehensive family services both in and outside of court, makes employment assistance, including referrals and coaching, integral to their family supportive services.³⁷¹ Most American states also provide employment assistance, whether as part of the child support services discussed above, or as part of other state-subsidized services.³⁷² These services cannot change the underlying economic shifts that have marginalized men without college degrees, but integrating employment assistance into family-focused centers would be a step in the right direction and may encourage fathers to come to the centers.³⁷³

Dispute resolution. Marriage has become, culturally and legally, a system that promotes two-parent involvement and enforces expectations that both parents will share parenting following dissolution of the adult relationship. The very strength of these expectations may contribute to decisions not to marry, particularly for women who view the fathers of their children as unlikely to assume a coequal parental role or, worse, having the potential to engage in behavior that threatens family well-being.³⁷⁴ The

368. See, e.g., Randles, *supra* note 208, at 84, 100, 102–03 (describing payment as an incentive for attending marriage education classes). The centers may complement or replace existing government activities, which would provide a potential source of funding.

369. See, e.g., Murphy & Singer, *Divorced From Reality*, *supra* note 243, at 131–32 (observing that the public has little awareness of existing community-based programs); see also Workforce Australia, *Fam. Servs. Austl.*, <https://familyservices.org.au/workforce-australia/> [<https://perma.cc/HL82-E97J>] (describing the “multi-disciplined” Australian model of employment coaching coupled with tech literacy trainings).

370. Moreover, male unemployment is the “most important demographic risk factor” for intimate partner violence. Leigh Goodmark, *Why Centering the Family Court System Won't Decrease Criminalization of Intimate Partner Violence—And Why That's a Problem*, 30 *Va. J. Soc. Pol'y & L.* 56, 65 (2023) (quoting Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 *Am. J. Pub. Health* 1089, 1092 (2003)).

371. See *Fam. Servs. Austl.*, *supra* note 369.

372. See, e.g., *infra* notes 422–424 and accompanying text.

373. See, e.g., Randles, *supra* note 208, at 74–75, 80–86, 187–88 (“[F]atherhood policies and programs should focus as much on supporting men's nurturance of their children as they do on promoting fathers' abilities to provide financially. . . . [F]inancial and emotional support are deeply interwoven in marginalized fathers' understandings of paternal provision.”). Nonetheless, employment assistance should not be designed to undercut initiatives that emphasize fathers' caretaking roles.

374. See Carbone & Cahn, *Triple System*, *supra* note 244, at 1190–91, 1201–04 (describing the shift from “breadwinner husband and homemaker wife to a more complex

fact that cultural expectations with respect to shared parenting differ within and outside of marriage, however, does not mean unmarried parenthood should be seen as a single-parent model, culturally or legally. Indeed, unmarried relationships have shifted significantly from a model that assumed that men who failed to marry the mothers of their children forfeited a right to *any* parental role, to a new norm that assumes fathers should find ways to contribute to their children and remain part of their lives.³⁷⁵ Unmarried parents do not necessarily expect equal involvement by both parents, but there is a growing norm and desire for some involvement.³⁷⁶ Thus, the goal is not to impose the marital norm of shared parenting on unmarried parents but instead to help unmarried parents achieve the contact that they want. Unmarried couples, after all, differ most from married couples not in their desire to encourage two-parent involvement in their children's lives but in their ability to overcome the obstacles to that involvement.³⁷⁷

A major impediment to fathers' greater involvement with their children is the opposition of mothers. As described above, sometimes this opposition is because the mother has a new partner, and her relationship with him is easier if she keeps the father at bay; but often mothers are opposed because of concerns about the fathers' behavior, including substance use and violence, or because the father does not assist the mother in caring for the child.³⁷⁸ More generally, a fraught relationship between the parents is a barrier to co-parenting.³⁷⁹ Community-based centers can help parents identify these issues and decide how to

partnership, in which both men and women seek partners likely to make comparable (if not identical) contributions" and how contingent, nonmarital relationships have proliferated for those who see their partners as "unreliable").

375. See *supra* text accompanying notes 292–294 (describing the expectations of child support regardless of marital status as well as the right—even if often unrealized—of unmarried fathers to see their children).

376. See *supra* text accompanying notes 196–203 (describing the paternal engagement of some unmarried fathers, especially unmarried Black fathers, when children are young); *supra* text accompanying notes 208–215 (describing the desire of both unmarried fathers and unmarried mothers for more paternal engagement in the family).

377. See Carbone & Cahn, *Triple System*, *supra* note 244, at 1222 (observing that "unmarried men have greater difficulty gaining access to formal custody orders, both because of the obstacles to establishing paternity and of using the legal system more generally").

378. See *supra* text accompanying notes 210–211.

379. See Randles, *supra* note 208, at 99–101 (describing how most participants in a fatherhood program say that their couple relationship with their children's mother is "nonexistent" and that they want help establishing a functional co-parenting relationship); see also Dale, *supra* note 267, at 339–40 (indicating that it is the "quality of family relationships that accounts for the positive association between joint physical custody and children's well-being" and that high levels of parental conflict require judicial interventions to protect children from the negative consequences).

proceed.³⁸⁰ As described below, the centers will provide resources—including counseling and referrals to mental health and substance use treatment—that help parents address underlying issues.³⁸¹ The centers will also provide alternative dispute resolution (ADR) mechanisms that help parents find an arrangement that is acceptable to both parties.³⁸² Legal adjudication sets up a zero-sum enterprise in which one parent prevails over the opposition of the other.³⁸³ By contrast, ADR allows the parties to retain greater control over the outcomes, assisting the parties in reaching their own settlements. Additionally, moving ADR out of the courts and into the community would allow parents to enlist the services of trained personnel who share their values.³⁸⁴

More specifically, to help parents decide custody and child support issues, the community-based centers could provide couples with a menu of options,³⁸⁵ illustrating possible resolutions but not limiting parents to these options. These menus could build off the parenting plan templates that many states offer in family court.³⁸⁶ Similarly, the centers could help parents access free technological tools that help parents co-parent.³⁸⁷

Managing the co-parenting relationship is an ongoing process, and the resolution of custody issues may require not only an initial agreement

380. See Parkinson, *supra* note 251, at 187–88 (describing how relationship counseling in Australian family relationship centers allows parents to navigate conflict throughout a separation or an ongoing romantic relationship).

381. See *infra* text accompanying notes 389–395.

382. Providing ADR might also help couples in ongoing relationships. Australian family centers, which were created with a mandate to help strengthen families and prevent separation, nonetheless found that the most frequent use of their services was by separating parents. Moloney et al., *supra* note 365, at 236; cf. Merle H. Weiner, *Thinking Outside the Custody Box: Moving Beyond Custody Law to Achieve Shared Parenting and Shared Custody*, 2016 U. Ill. L. Rev. 1535, 1561 (arguing that “society should use other laws to create supportive parental relationships from the moment of a child’s birth”).

383. Access to greater resources also increases the ability to reach settlements. See, e.g., Shanahan et al., *supra* note 345, at 1488 (“People who can afford counsel are nearly four times more likely to settle divorce-related matters without involving the court in more than a ministerial fashion.”).

384. See, e.g., Clare Huntington, *The Institutions of Family Law*, 102 B.U. L. Rev. 393, 441–42 (2022) (“Courts, formal dispute-resolution mechanisms such as court-based mediation, informal dispute-resolution processes such as community- and faith-based processes, and state and local agencies will each apply the same rules at times in significantly different ways.”).

385. Cf. Naomi Cahn, Clare Huntington & Elizabeth Scott, *Family Law for the One-Hundred Year Life*, 132 Yale L.J. 1691, 1745–54 (2023) (describing a similar menu of options for older adults seeking relationship recognition outside of marriage or who wish to tailor marriage to their preferences).

386. See *supra* text accompanying notes 258–260.

387. See, e.g., *Why Use FREE AppClose Over Paid Alternatives?*, AppClose, <https://appclose.com/why-use-appclose.html> [https://perma.cc/5Q48-6YV8] (last visited Aug. 10, 2024) (describing a free app that offers tools such as secure communications, parenting schedules, expense tracking and reimbursement systems, pick up/drop off/swap days requesting, storage of important documents related to the child, and so on).

but also addressing subsequent disputes.³⁸⁸ Accordingly, community-based family centers would provide parenting coordinators, currently available to divorcing parents, to help parents resolve subsequent disputes.³⁸⁹

Counseling and referral services. The best family court processes involve a form of triage: assessing a family's needs and then referring the family to the most appropriate form of dispute resolution and, if necessary, supplementary services.³⁹⁰ Within divorce proceedings, supplementary tools include psychological evaluations, assessments of the capacity of parents, co-parenting counseling, individual counseling, and supervised visitation.³⁹¹ Even then, family law attorneys have commented that “[n]early every family appearing before family court could benefit from some of these services” and that “in some families, there is a dire need of significant educational and psychological resources in order to move in the direction of a functional relationship that will serve the best interests of the children.”³⁹² Parents also need assistance addressing issues such as violence and substance use. Families at all income levels need these services, but the resources have historically been more limited for lower-income families.³⁹³

Accordingly, counseling services in community-based centers should emphasize the services needed to establish and maintain co-parenting relationships, including co-parenting education, relationship counseling, and mental health services.³⁹⁴ Community-based counseling is more than a dispute resolution system; it is a complement to proactive efforts designed to reform or replace other forms of state intervention.³⁹⁵

Adjudication. Formal adjudication is unlikely to play a major role in creating more robust roles for fathers. Still, the ability to claim greater

388. See, e.g., Murphy & Singer, *Divorced From Reality*, supra note 243, at 37 (describing the change in family courts toward treating family disputes not as “discrete legal events” but as “ongoing social and emotional processes”).

389. See supra note 266 and accompanying text (describing parenting coordinators).

390. See, e.g., Richard Altman & Jacqueline C. Hagerott, *Court Triage System Is Redefining Success, One Family at a Time*, *Disp. Resol. Mag.*, Spring 2019, at 6, 7 (defining these elements of a family court triage system).

391. Susan J.S. Abramowich, *Socioeconomic Bias in Family Court*, *Fam. Advoc.*, Winter 2022, at 38, 39; see also Shepard et al., supra note 273, at 29 (describing how alternatives to litigation may maximize “families’ collective emotional and economic welfare”).

392. Abramowich, supra note 391, at 38, 39.

393. See, e.g., Murphy & Singer, *Divorced From Reality*, supra note 243, at 62–64.

394. Evaluations of Australian family relationship centers have found “that complex cases (involving issues such as domestic violence, drug and alcohol abuse and mental health) represented the bulk of the work in most” centers. Moloney et al., supra note 365, at 236; see also Marczak et al., supra note 344, at 637 (observing that “[i]t is often more difficult to coparent together when one is experiencing major stressors such as joblessness, homelessness, domestic violence, and substance abuse issues” and arguing that community-based centers need to tailor services to the needs of parents).

395. See Raymond C. O’Brien, *Child Welfare Requires Adequate Remedial Services*, 92 *Miss. L.J.* 107, 147 (2022) (proposing greater use of community-based prevention programs promoting intervention strategies for issues including intimate partner violence).

custody rights is important to resetting the norms of paternal involvement and addressing cases of one parent obstructing the involvement of the other after an agreement is reached. Ninety percent of unmarried fathers who are present at the time of a child's birth sign a voluntary acknowledgment of paternity that establishes legal parentage.³⁹⁶ This means that the father has standing to seek custody and enjoy whatever presumptions state law confers on legal parents.

Community-based centers would make these rights more meaningful by helping fathers reach voluntary resolutions, formalizing the parents' agreement in writing, and helping the parents obtain services designed to make the co-parenting relationship functional. If fathers then choose to proceed to court, they would do so with this groundwork in place.

Addressing intimate partner violence (IPV). Given the high rate of IPV in all families and especially lower-income families,³⁹⁷ it is critical that the community-based centers address family violence. Family courts have developed tools to address IPV, but like other dispute-resolution tools, they are significantly less available to lower-income couples. The tools include a screening system to distinguish couples with a history of IPV and for whom any form of contact is clearly inappropriate³⁹⁸ from those couples who, with the right supports, could safely manage mediation or shared custody.³⁹⁹ Supervised visitation is one such tool, providing a mechanism

396. Cynthia Osborne & Daniel Dillon, Dads on the Dotted Line: A Look at the In-Hospital Paternity Establishment Process, 5 J. Applied Rsch. on Child., no.2, 2014, at 1, 8.

397. See *supra* notes 182–183 and accompanying text.

398. See, e.g., Linda Nielsen, Re-Examining the Research on Parental Conflict, Coparenting, and Custody Arrangements, 23 Psych. Pub. Pol'y & L. 211, 217 (2017) (maintaining that minor or isolated instances of domestic violence should not affect custody decisions and that the most damaging types of parental conflict involve "repeated incidents of violence between parents who have substantial psychiatric problems and personality disorders" (quoting Rae Kaspiew, Matthew Gray, Ruth Weston, Lawrie Moloney, Kelly Han, Lixia Qu & the Fam. L. Evaluation Team, Austl. Inst. of Fam. Stud., Evaluation of the 2006 Family Law Reforms 185 (2009))).

The Family Relationship Centres in Australia have been criticized for a failure to adequately screen for intimate partner violence. See, e.g., Bagshaw et al., *supra* note 365, at 5–6, 15–16 (finding that only 10% of the participants with a history of family violence had been screened out by the Family Relationship Centres and that participants reported problems, including an inability of staff to understand the nature and effects of family violence and an inability to respond to violent ex-partners); see also *id.* at 5–6 (noting that 40% of participants with a history of family violence did not disclose that violence, with some participants still satisfied with the outcome, while other participants were not and thought there should have been better screening measures in place).

399. For a discussion of how to tailor mediation screening and procedures to provide more appropriate treatment of cases involving domestic violence, see Mary Adkins, Moving Out of the 1990s: An Argument for Updating Protocol on Divorce Mediation in Domestic Abuse Cases, 22 Yale J.L. & Feminism 97, 99 (2010); see also Claudia Lanzetta, Mediation/Collaborative Law: Exploring A New Combination in Alternative Dispute Resolution in Cases of Divorce and Domestic Violence, 20 Cardozo J. Conflict Resol. 329, 342–43 (2019) (describing effective procedures for encouraging mediation in cases of domestic violence, including the elements described in the text); Nancy Ver Steegh, Yes,

for nonresident parents and their children to see each other while still addressing safety concerns.⁴⁰⁰ Parenting plans are another tool, permitting paternal involvement in ways that minimize contact between parents and ensure contact is on terms acceptable to both parents.⁴⁰¹ These tools are already in use in court-administered family law cases.⁴⁰² Incorporating the tools into community-based settings would increase confidence in the processes, because unlike judicial adjudications, the community-based resolution would require the cooperation of both parents.

* * *

In sum, community-based family centers would reinforce the norms of two-parent involvement that have remade the family-court based system. These centers would incorporate the best of the new procedures and empower parents to reach their own resolutions. Such practices would simultaneously eschew an approach that assumes that all families need to fit within a single model, recognize that shared parenting must be embraced rather than imposed to be effective, and reject the punitive approaches that often treat men as problems to be solved.

The effectiveness of these proposals requires reconsideration of how they fit together with the most oppressive parts of the existing system: the child support enforcement and family regulation systems. The next section turns to these issues.

B. *Child Support*

Child support presents a conundrum. On the one hand, children need financial support. On the other hand, imposing formulaic child support obligations on low-income fathers with variable and limited income is often, as discussed above, mindlessly punitive and counterproductive, driving fathers away from their children and failing to generate meaningful economic support.⁴⁰³ The solution is the same

No, and Maybe: Informed Decision Making About Divorce Mediation in the Presence of Domestic Violence, 9 Wm. & Mary J. Women & L. 145, 190 (2003) (reporting that “[v]iolent and nonviolent couples express equal levels of satisfaction with the mediation process”).

400. See Leigh Goodmark, Achieving Batterer Accountability in the Child Protection System, 93 Ky. L.J. 613, 650 (2005) (recommending supervised visitation to maintain fathers’ contacts with their children while parents complete counseling and other mandated interventions).

401. See Debra Poggrund Stark, Jessica M. Choplin & Sarah Elizabeth Wellard, Properly Accounting for Domestic Violence in Child Custody Cases: An Evidence-Based Analysis and Reform, 26 Mich. J. Gender & L. 1, 60 (2019) (“[T]he parenting plan should provide for clear boundaries and separation between the parents, and a time-sharing schedule that requires minimal communication between the parents and seeks to avoid direct parent–parent contact, but still provide stability and continuity in the child’s life.”).

402. See *id.* (detailing how court orders can delineate and enforce such parenting agreements).

403. See *supra* section III.C.

approach higher-income parents enjoy: greater ability to negotiate support terms.

For the last half century, the family law literature has acknowledged that parents who “bargain in the shadow of the law” engage in a variety of tradeoffs that balance custody and support.⁴⁰⁴ Empirical evidence indicates that lower-income couples do the same thing.⁴⁰⁵ The vast majority of custodial parents who do not have formal child support orders did not seek them because the other parent had no money or was already contributing; that is, the parties had worked out their own arrangements for custody and support.⁴⁰⁶ In addition, much like the couples who bargain in the shadow of the law using lawyers, some custodial parents did not seek support because they did not want the involvement of the other parent—although this was a much smaller group.⁴⁰⁷ By contrast, state-initiated child support actions, as discussed above, often impose child support obligations that fathers cannot pay and mothers do not necessarily want.⁴⁰⁸

A less formal, community-based system would allow parents to negotiate their own resolutions of child support disputes. These agreements would reflect a wide range of choices. For example, as many lower-income couples prefer,⁴⁰⁹ the agreement could count in-kind contributions rather than only cash. The agreement could also give credit to the noncustodial parent for co-parenting work, including efforts short of overnight visits. If the noncustodial parent helped care for a child after school, for example, this could offset that parent’s monetary obligations.⁴¹⁰ To be clear, both parents must agree to the child support arrangement.

Cases considering arbitration awards and mediated settlement of custody disputes provide a model for judicial deference to parent-determined outcomes on child support. In *Fawzy v. Fawzy*,⁴¹¹ for example, the New Jersey Supreme Court held that arbitration decrees, including those resolving child custody disputes, could be set aside only upon a

404. See Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 *Yale L.J.* 950, 964–66, 968 (1979) (explaining that parents may privately trade custody for support in ways that the legal system may not approve).

405. See *supra* text accompanying notes 307–312.

406. See *supra* text accompanying note 308.

407. See Grall, *supra* note 308, at 8 fig.4 (indicating that 16.9% of custodial parents did not have a child support order because they did not want contact with the other parent)

408. See *supra* text accompanying notes 307–312.

409. See *supra* text accompanying notes 308–311.

410. For a discussion of a similar proposal, albeit within the formal child support system, see Laura Lane-Steele, *Working it Off: Introducing a Service-Based Child Support Model*, 17 *U. Pa. J.L. & Soc. Change* 163, 175 (2016) (proposing a “service-based support program” in which “low-income noncustodial fathers” can meet their child support obligations by assisting in ways the custodial parent determines is needed, earning hourly credits towards a target number of hours, rather than through cash payments).

411. 973 A.2d 347 (N.J. 2009).

showing of “adverse impact or harm to the child.”⁴¹² Similarly, in *In re Lee*,⁴¹³ the Texas Supreme Court held that where a couple reached a mediation resolution of their child custody dispute, the trial court could not conduct an open-ended best interest inquiry in deciding whether to accept the settlement but instead required evidence that “a child’s welfare [was] in jeopardy” in order to reject the agreement.⁴¹⁴

Courts generally must justify departures from child support guidelines in writing but in fact tend to approve agreements in which both parties are represented by lawyers and reach their own settlements.⁴¹⁵ The same consideration should be extended to lower-income families who reach an agreement through community-based mediation. That is, couples who use services to reach agreements about custody and support should enjoy the same presumption in favor of their agreements.

This raises the question of the relationship between community-based resolutions and court orders. In addition to helping parents reach agreements, centers should help the parties resolve subsequent disputes. The couples should be able to formalize their agreements the same way other parents formalize parenting plans—and the parties ought to be able to specify a dispute resolution mechanism. For example, parenting plans today often include a provision for a parenting coordinator;⁴¹⁶ a comparable provision would specify that the parents must use community-center dispute resolution processes before going to court. And if the parties go to court, these agreements should have the same status as any other mediated settlements.⁴¹⁷

Finally, family law should sharply curtail state-initiated child support actions. It is important to acknowledge that “welfare as we knew it,” that is, the Aid to Families with Dependent Children (AFDC) program that supported low-income families, *has* been abolished and replaced with short-term awards, administered by states, designed to push parents off the

412. *Id.* at 361. But see *Kelm v. Kelm*, 749 N.E.2d 299, 301 (Ohio 2001) (holding that child custody disputes “cannot be resolved through arbitration,” and noting that “[o]nly the courts are empowered to resolve disputes relating to child custody and visitation”).

413. 411 S.W.3d 445 (Tex. 2013).

414. *Id.* at 458.

415. See, e.g., Raymond C. O’Brien, *Child Support and Joint Physical Custody*, 70 *Cath. U. L. Rev.* 229, 260 (2021) (discussing approval of parenting plans that involve deviation from state sanctioned child support guidelines, even where the parents agree to eliminate child support payments entirely to a parent with lesser income).

416. See *supra* note 266.

417. Resorting to the courts for enforcement, however, will still involve many of the same issues that discourage low-income couples from going to court under the existing system. For one thing, so long as the parental agreements remain informal, compliance with formal child support guidelines will not matter. Parties who wish to enforce such agreements, however, may encounter judges skeptical of deviations from child support guidelines or unwilling to enforce agreements that address exchanges between custodial contributions and monetary support that changes with the parents’ circumstances, a factor particularly important for low-income couples with unstable income or employment hours.

welfare role entirely.⁴¹⁸ Given the effective disappearance of state support specifically designed to substitute for missing breadwinners, the original rationale for the AFDC program,⁴¹⁹ the justification for the use of the child support system to offset state expenditures has become almost entirely punitive. In the Medicaid context, for example, lower-income noncustodial parents are often required to offset state subsidies.⁴²⁰ But a noncustodial parent whose co-parent has employer-provided health insurance, which the government subsidizes through tax deductions, has no obligation to repay the government for that subsidy.⁴²¹ In short, it is time to abolish the use of child support payments to extract money for state coffers altogether.

Consistent with this Essay's proposals, nascent reforms in this arena have begun to show promise. California, for example, amended its child support statutes in 2022 to suspend the accrual of obligations while a parent is incarcerated⁴²² and to give courts greater flexibility in determining ability to pay.⁴²³ Some states now require that child support payments must pass through to a custodial parent who receives state support.⁴²⁴ And at the federal level, in June 2023, the Biden Administration

418. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (abolishing AFDC); Andrew Hammond, *Welfare and Federalism's Peril*, 92 Wash. L. Rev. 1721, 1732 (2017) (describing elimination of family assistance programs as "entitlement[s]" and the limited number of families who receive the modern iteration: Temporary Assistance to Needy Families).

419. See Cahn & Carbone, *Uncoupling*, supra note 224, at 42 (describing a change in the basis for assistance as the position of mothers changed from intrinsically dependent to capable of self-support).

420. See Vicki Turetsky & Diana Azevedo-McCaffrey, *Understanding TANF Cost Recovery in the Child Support Program* 20 n.12 (2024), <https://www.cbpp.org/sites/default/files/1-3-24tanf.pdf> [<https://perma.cc/K8HX-8YE6>] (noting that "[f]ederal law requires child support cooperation by custodial parents receiving . . . Medicaid"; further noting that "child support assignment to reimburse Medicaid costs is limited to medical support payments designated in a support order and does not apply to regular child support payments").

421. See *How Does the Tax Exclusion for Employer-Sponsored Health Insurance Work?*, Tax Pol'y Ctr., <https://www.taxpolicycenter.org/briefing-book/how-does-tax-exclusion-employer-sponsored-health-insurance-work> [<https://perma.cc/Y2WW-Z4BB>] (last visited Aug. 9, 2024).

422. See Cal. Fam. Code §§ 4007.5, 4054, 4058(b)(3) (2024).

423. See *id.* § 4058(b)(1).

424. See *Child Support Pass-Through and Disregard Policies for Public Assistance Recipients*, Nat'l Conf. State Legislatures (May 30, 2023), <https://www.ncsl.org/human-services/child-support-pass-through-and-disregard-policies-for-public-assistance-recipients> [<https://perma.cc/N2EQ-LZUM>] (describing the pass-through legislation in roughly half of the states but also noting that many states allow only a limited pass-through amount, such as \$50, and that Colorado is the only state that allows 100% of the child support payment to go to a TANF recipient). While not perfect, bipartisan legislation was introduced into Congress in 2023, proposing greater pass-through of child support to families rather than the state. See *House Approves Child Support Reform and Fatherhood Package*, Women's Cong. Pol'y Inst., <https://www.wcpinst.org/source/house-approves-child-support-reform-and-fatherhood-package/> [<https://perma.cc/U5K9-46MW>] (last visited Aug. 9, 2024).

renamed the federal Office of Child Support Enforcement to the Office of Child Support Services.⁴²⁵ Rather than focusing on recouping welfare funds spent on a family, the office offers a range of services that support families so that both parents can help pay for children, including employment services and a focus on parental engagement.⁴²⁶ These reforms are moving the law of child support in the right direction, even if they still fall far short of needed reforms.

C. *The Family Regulation System*

Professor Dorothy Roberts and other scholars and advocates have led a movement to abolish the family regulation system.⁴²⁷ The proposals described below would not dismantle the current system, but they would be a sea change, moving power out of courts and into the hands of families and communities for the majority of cases.⁴²⁸ Given this Essay's focus on fathers, this section describes the proposals in terms of paternal engagement, but the proposals would also radically limit the family regulation system, to the benefit of the entire family.

An obvious reform is to decouple child support enforcement from the family regulation system. Fathers who have not paid child support should not lose parental rights simply for nonpayment.⁴²⁹ And the state must work to reunite fathers with their children even if the father has not paid child support.⁴³⁰ The harder reform is ensuring that fathers are engaged more broadly.

Consistent with this Essay's focus on increasing parental autonomy while also providing support to families, cases should be moved out of court and into the community. The community-based centers outlined above would play a central role in this new approach. The starting point is creating a screening system to identify the small minority of cases that

425. Information Memorandum From Tangler Gray, Comm'r, Off. of Child Support Servs., to State and Tribal IV-D Agencies (June 5, 2023), <https://www.acf.hhs.gov/css/policy-guidance/name-change-office-child-support-services-ocss> [https://perma.cc/LT9G-4VAW].

426. Id. (“[T]he child support program[’s] . . . focus has shifted from recovering state public assistance costs to meeting the needs of the entire family. . . . The program recognizes that the family structure has changed, and it must serve the entire family to improve the financial and emotional support of children.”).

427. See generally Roberts, *supra* note 44, at 289–303 (“We should be on a common mission to bring down all the regime’s damaging extensions and to create a common vision for meeting human needs, preventing violence, and caring for children, families, and communities.”); JMacForFamilies: Just Making a Change for Families, <https://jmacforfamilies.org/> [https://perma.cc/CP9E-5UNH] (last visited Aug. 10, 2024) (“Just Making a Change for Families is a non-profit organization working to dismantle the family policing system while simultaneously investing in community support that keeps families together.”).

428. See *supra* note 52.

429. See *supra* text accompanying notes 325–327 (describing this problem).

430. See *supra* text accompanying notes 322–327 (describing this problem).

involve serious allegations that threaten child well-being.⁴³¹ If substantiated, these cases may well require state intervention that removes children from the care of their parents.⁴³² Accordingly, these cases should stay in the court system. The family regulation system, however, tends to treat all allegations as potentially serious. It unnecessarily intervenes in families, either when no maltreatment has occurred or when interventions short of removal are likely to be effective.⁴³³ Among the cases that deserve a different approach are situations that involve fathers: when the mother agrees that separation from her partner is unnecessary, when the mother wants to separate from the father but agrees that the children should have ongoing contact with the father, and when a nonresident father is overlooked as a potential custodian for a child.⁴³⁴

If the initial screening determines that family preservation is possible—as it should be in most cases—then the next step is to close the case, ending state surveillance of the family.⁴³⁵ Families would receive a referral to the community-based centers for appropriate, voluntary

431. Many states use a “differential response” model, which seeks to divert cases from the courts by identifying low-risk cases and referring these cases for voluntary services. See Differential Response, Child Welfare Info. Gateway, <https://www.childwelfare.gov/topics/casework-practice/differential-response/> [<https://perma.cc/AFS8-2BLS>] (last visited Aug. 15, 2024). For a critique of this response, including its coercive elements, see Josh Gupta-Kagan, *Toward A Public Health Legal Structure for Child Welfare*, 92 *Neb. L. Rev.* 897, 937–41 (2014).

432. See Jane Waldfogel, *The Future of Child Protection: How to Break the Cycle of Abuse and Neglect* 124 (1998) (noting that about 10% of all family regulation cases involve child abuse or neglect severe enough to warrant criminal legal intervention).

433. See Lee, *supra* note 316, at 652 (discussing studies finding that one-third of children removed from their parents for alleged abuse were found not to have been maltreated at all and that the standards for maltreatment are so broad they can justify removal even when other responses are appropriate); see also *Nicholson v. Scopetta*, 820 N.E.2d 840, 845 (N.Y. 2004) (holding that in deciding whether to authorize state intervention in cases alleging neglect, the family court should “focus on serious harm or potential harm to the child, not just on what might be deemed undesirable parental behavior”).

434. See *supra* text accompanying notes 320–340. If the petition alleging child abuse or neglect does not name the father, the state must consider the father as a potential custodian for the child if the child is removed from the care of the mother. See Restatement of Child. & the L. § 2.45(a) (Am. L. Inst. Tentative Draft No. 6, 2024) (“If a court orders the removal of a child from the physical custody of a parent . . . , the court must order . . . (1) [the] temporary placement of the child in the care of a parent not named in the petition, if that parent is fit, available, and willing . . .”).

435. This response would be appropriate for at least two kinds of cases: cases diverted from agency investigation and slated for a differential response, and cases that are investigated and substantiated but not referred for court oversight. See Child. ’s Bureau, *The Child Welfare System*, *supra* note 313, at 4 (describing the different paths for a case after it is “screened in”). It could also be appropriate for cases investigated and substantiated and which lead to court supervision but not the removal of children. For this latter set of cases, the community-based approach would replace court supervision. It is beyond the scope of this Essay to identify the specific cases and circumstances that would lead to a community-based response versus a judicial response.

services *for both parents*.⁴³⁶ The centers would work with families to tailor support to the needs of the family.⁴³⁷

A new program in New York City—Family Enrichment Centers—provides a useful model for the community-based approach. Launched in 2017, these centers are based on a “primary prevention model,” designed to create a welcoming space where families can obtain resources such as clothing and food donations, meet and develop relationships with other families and community members, and share knowledge with each other through programs such as “Parent Cafés,” where parents come together in small, informal groups to discuss topics related to parenting and child-rearing.⁴³⁸ These programs are run by community members rather than

436. The centers would assist in designing plans that promote reunification. If two parents have been involved in caring for a child, the center would include both parents in the design of any resolution, taking seriously each parent’s views on including the other parent in the child’s life and any safety concerns each parent may have about the other. And if only one parent has been involved, the centers would work to find the other parent—likely the father—and engage him, too.

437. Cf. Huntington, *Rights Myopia*, *supra* note 52, at 681–82 (describing the role of family group conferencing in helping parents identify needed services).

438. NYC Admin. for Child.’s Servs., *Family Enrichment Centers 1*, <https://www.nyc.gov/assets/acs/pdf/ocep/2024/feconepager.pdf> [<https://perma.cc/M9KM-8XB9>] [hereinafter NYC Admin for Child.’s Servs., *FEC One Pager*] (last visited Aug. 10, 2024); Family Enrichment Centers (FEC), NYC Admin. for Child.’s Servs., <https://www.nyc.gov/site/acs/about/fec.page> [<https://perma.cc/2KU4-FV7X>] [hereinafter NYC Admin for Child.’s Servs., *About FEC*] (last visited Aug. 10, 2024). For other examples, see Family Resource Centers, S.F. Dep’t Early Childhood, <https://sfdec.org/family-resource-centers/> [<https://perma.cc/3XU3-JZG9>] (last visited Aug. 15, 2024) (describing San Francisco’s community-based centers, which offer free assistance with child development and parenting skills, family wellness support, playgroups for parent-child bonding, support groups for parents and caregivers to develop strong peer relationships, and case management assistance for employment, housing, and health); Family Success Centers, N.J. Dep’t of Child. & Fams., <https://www.nj.gov/dcf/families/support/success/> [<https://perma.cc/AFZ6-ZXF2>] (last visited Aug. 15, 2024) (mapping New Jersey’s free family centers that offer “child abuse prevention services to families” by providing information on child, maternal, and family health, economic self-sufficiency, housing services, parent-child activities, parental education, and so on); Texas Family Support Network, Tex. All. Child & Fam. Servs., <https://tacfs.org/wp-content/uploads/2022/08/Texas-Family-Support-Network-2022.pdf> [<https://perma.cc/L6HW-AGFT>] (last visited Aug. 10, 2024) (describing similar community-based family resource centers in Texas, created by the Texas Department of Family Protective Services, that offer parenting support, family development services, health and wellness activities, child development activities, and other services related to family wellness). Many of the centers and services offered by these cities take place in community organizations, such as the YMCA in the case of San Francisco, and involve programming led by and consisting of community members rather than professionals or government employees.

The Strong Communities model is another, even broader approach to strengthening families. See Gary B. Melton & Jill D. McLeigh, *The Nature, Logic, and Significance of Strong Communities for Children*, 3 *Int’l J. Child Maltreatment: Rsch., Pol’y & Prac.* 125, 126, 130–34 (2020) (describing the Strong Communities model of addressing the root causes of child maltreatment (high levels of parental stress and limited financial

professionals or government officials, and thus foster trust and bonding among community members.⁴³⁹ And while the programs, which are relatively new, have yet to be studied on a comprehensive basis, preliminary indications are that they have positive effects, particularly in reducing rates of child abuse and neglect.⁴⁴⁰ For many families, the immediate needs are financial support that allows the family to obtain stable housing, transportation to jobs and schools, and the ability to meet children's basic needs.⁴⁴¹ Reunification services that address mental health issues, substance use, parenting support, and domestic violence can then follow but are less likely to be effective in the face of homelessness or lack of basic resources.

Community members would staff the centers because these individuals can better help the parents determine needed services and appropriate resolutions than professionals removed from the family and the community.⁴⁴² Center staff could, for example, work with a parent who is experiencing intimate partner violence to determine what kinds of supports and protections that parent needs.⁴⁴³ In this way, staff would help parents tailor interventions to individual circumstances in accordance with parental wishes and community values.⁴⁴⁴

and social resources at the family and neighborhood level) by changing these conditions for all families in a neighborhood).

439. See NYC Admin. for Child.'s Servs., FEC One Pager, *supra* note 438, at 1. It is not clear whether social workers in the Family Enrichment Centers must report suspected child abuse, but the website does say the following: "There is no case management offered and participation is not tracked . . . by [the city child welfare agency]. Providing names, address and other identifying information is optional and not needed in order to participate in or visit an FEC. FEC participation is voluntary and open to all community members." See NYC Admin for Child.'s Servs., About FEC, *supra* note 438.

440. See Casey Fam. Programs, *supra* note 364, at 4 (summarizing research on family centers and finding that the results are consistently positive and cost-effective). One of the most dramatic studies reported a 45% reduction in cases of child abuse and neglect in Alachua County, Florida. *Id.*

441. See Marczak et al., *supra* note 344, at 637 ("It is often more difficult to co-parent together when one is experiencing major stressors such as joblessness, homelessness, domestic violence, and substance abuse issues.").

442. See Casey Fam. Programs, *supra* note 364, at 3 (describing the welcoming nature of centers staffed by community members that can help identify and support diverse family needs).

443. For a discussion of a different approach to intimate partner violence, which prioritizes therapeutic interventions and batterer prevention programs, see Michal Buchhandler-Raphael, *Overmedicalization of Domestic Violence in the Noncarceral State*, 94 *Temp. L. Rev.* 589, 612–14 (2022).

444. Cf. Shanta Trivedi & Matthew Fraidin, *A Role for Communities in Reasonable Efforts to Prevent Removal*, 12 *Colum. J. Race & L. Forum* 29, 40 (2022), <https://journals.library.columbia.edu/index.php/cjrl/article/view/9470/4837%20> [<https://perma.cc/KS2C-WCEW>] (describing a prevention initiative that used community facilities to work with families and arranged direct support for families); Rise Identifies Policy Priorities: Child Care, Mandated Reporting and Mental Health Supports, *Rise Mag.* (Feb. 15, 2022), <https://www.risemagazine.org/2022/02/rise-identifies-policy-priorities/>

Given the history of unhelpful services forced on families, it is critical that the services are both desired and effective. In all this work, fathers—including fathers accused of misconduct⁴⁴⁵—should have access to supportive services to promote their success.⁴⁴⁶ Although this Essay proposes that this community-based work replace coercive state intervention in most cases, if cases are not closed, the centers could play a complementary role to the family regulation system, ideally mitigating some of its harm. For example, if there is an ongoing court case, the centers could provide a mechanism for determining when conditions have been met, such as the completion of mandated therapy, and could provide supervised visitation while the reunification process is underway.

It is also critical that the community-based centers not further the surveillance efforts of the family regulation system. One essential issue to address, then, is the conditioning of federal foster care funds on states enacting mandated reporting laws, which requires specified professionals, including social workers, to report suspected cases of child abuse or neglect.⁴⁴⁷ To ensure that staff members in the centers are there only for support and not to play the dual role of also reporting parents,⁴⁴⁸ it may be necessary for states to develop exceptions to mandated reporting laws for staff working in the community-based centers.

Community-based centers are not a cure-all for the significant problems of the family regulation system, which overwhelmingly polices and punishes mothers. But consideration of the often-pernicious effect of state intervention on family integrity, including the involvement of fathers, is an important step in protecting the parent-child relationship and

[<https://perma.cc/988Z-GFYK>] (describing the kinds of services families in the family regulation system identify as needed, including childcare and mental health supports).

445. Misconduct should not include the failure to provide support. See, e.g., In re Amanda N., 112 N.Y.S.3d 490, 490 (App. Div. 2019) (addressing rights of fathers who have an established relationship with a child in foster care but who have not paid support); Gottlieb & Guggenheim, *supra* note 320, at 357 (recommending that a New York law remove the failure to provide child support as a basis for terminating parental rights).

446. See generally Gottlieb & Guggenheim, *supra* note 320, at 358–60 (indicating that social services agencies routinely discriminate against fathers in foster care arrangements and suggesting reforms). There should be no presumption against fathers simply because of lack of an existing relationship with the child, and thus the needed services might include assistance with paternity establishment and services that prepare the father to be a caregiver, as is done for third-party foster caregivers. See *id.* at 357 (describing how fathers whose children are in foster care can meet the standard for assuming custody).

447. See Child.'s Bureau, HHS, Mandatory Reporting of Child Abuse and Neglect 2 (May 2023), <https://cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/manda.pdf?VersionId=Gm9t7CW5XdPolnEMHHR3wCnsw782WZQ1> [<https://perma.cc/DGB6-3N9G>].

448. See Mandated Supporting, JMACForFamilies, <https://jmacforfamilies.org/mandated-supporting> [<https://perma.cc/2SWK-RAP6>] (last visited Aug. 11, 2024) (advocating for “mandated supporting,” not mandated reporting, as the “mandated supporting framework seeks to center families through equitable, harm reductionist, and anti-racist practices, while divesting from systems of surveillance and punishment”).

helping families to navigate preventable difficulties. Channeling at least some of the resources currently spent on the family regulation system to the community-based centers would further these goals.

CONCLUSION

Since *Jacobus tenBroek* posited the dual system of family law in the mid-1960s, there has been both radical change and considerable stasis. Extensive legal reforms to the private system, which governs disputes in relatively well-off families, reflect and encourage the new norm of parents sharing financial and caregiving responsibility for children.⁴⁴⁹ Dispute-resolution processes help create a foundation for an ongoing family that survives the dissolution of the adult union. Family courts encourage parents to create such a foundation together and give them considerable autonomy in doing so. By contrast, the public system of family law, which governs state-initiated actions that affect lower-income families, still treats the family as it did in the 1960s: It assumes that fathers should take responsibility for their families' financial needs and judges them in accordance with their success in doing so. And as it did in the 1960s, the public system continues to rob families of autonomy and place counterproductive and anachronistic emphasis on the financial contributions of lower-income men.

The problem is that the changes to the private system of family law are legally and practically beyond the reach of the men increasingly on the losing end of the new economy. And the inability of these men to access the private system contributes to the marginalization of fathers and their exclusion from supportive family life. The public system of family law is not only ineffective and unjust, but it also exacerbates the challenges lower-income men face if they try to embrace the new mainstream norms of cooperative parenting.

The proposed solutions bring the advantages of the private family law system to a much broader range of families. These solutions seek to increase the capacity of families to reach cooperative solutions that make shared parenting possible after dissolution of an adult relationship. They also seek to eliminate the punitive components of the public system, which are tied to outdated notions that treat financial contributions as a prerequisite for assumption of the paternal role and view child poverty as a consequence of fathers' failings. This Essay foresees a new family law

449. See *supra* text accompanying notes 250–268. These changes reach further than what this Essay addresses. As June Carbone and Naomi Cahn have argued elsewhere, the new values include investment in the capacity of girls and boys to generate income and the systematization of reproductive autonomy in ways that make emotional maturity and financial security a precondition for childrearing. See Carbone & Cahn, *Marriage Markets*, *supra* note 16, at 111 (describing the new upper-middle-class model as one that defers marriage and childbearing until after couples “achieve emotional maturity and financial independence” and have either “established earnings or high measures of the trust and the flexibility [necessary] to manage changing financial fortunes”).

model, rooted in supportive community centers, that empowers parents to reach and enforce agreements that commit both partners to their children's futures—on terms both parents can accept.

