

**ANSWERING MEIER: FAMILY VIOLENCE AND THE
IMPORTANCE OF PRIMARY PREVENTION**

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This Article suggests that Joan Meier's excellent article, Denial of Family Violence in Court: An Empirical Analysis and Path Forward for Family Law, could have been strengthened in several ways. First, Meier should have focused family law scholars on the ubiquity of family violence and the centrality of gender oppression in addition to her particular concern. Second, Meier should have distinguished between joint custody and supportive coparenting when she rejected shared parenting. Finally, Meier should not have chosen my book, A Parent-Partner Status for American Family Law, to support her argument that family law scholars insufficiently address domestic violence. In fact, the parent-partner status was designed to further primary prevention of domestic violence — a goal too often ignored by legal scholars.

INTRODUCTION

Joan Meier's article, *Denial of Family Violence in Court: An Empirical Analysis and Path Forward for Family Law*,¹ continues to advance her important scholarly agenda: to shed light on how women and children are harmed by family courts' adjudication of custody disputes when there is a history of family violence. Her impressive empirical research demonstrates that courts frequently award children to perpetrators.² Family court judges are highly skeptical of mothers' abuse claims,³ even though women seldom lie,⁴ and even when women produce corroborating evidence.⁵ These outcomes occur because judges rely heavily on custody evaluators and guardians ad litem who frequently lack relevant expertise and then dismiss or ignore evidence of family violence.⁶ Judges also accept unscientific claims of parental alienation.⁷ Meier advances useful policy recommendations to change outcomes, including that judges should reject the presumption that "if it is not proven true, then it is false,"⁸ and should "cabin" parental alienation allegations to avoid "short-circuit[ing] abuse

¹ Joan Meier, *Denial of Family Violence in Court: An Empirical Analysis and Path Forward for Family Law*, 110 GEO. L.J. 835 (2022).

² *Id.* at 837, 845-47. Even when judges believe the allegations, mothers, more than fathers, experience poor outcomes when alleging family violence. *Id.* at 852-53, 857-59.

³ *Id.* at 848, 851.

⁴ *Id.* at 850-51.

⁵ *Id.* at 841.

⁶ *Id.* at 854, 857, 840-41.

⁷ *Id.* at 839, 883.

⁸ *Id.* at 839-40.

investigations and brush[ing] aside children’s reported experiences and feelings.”⁹

Despite the article’s considerable strengths, it has two weaknesses. First, it unpersuasively implores scholars to address family violence in their scholarly analysis because otherwise they will contribute to these bad outcomes.¹⁰ Second, it overstates its claim that mainstream family law scholarship is blind to the reality of what is happening in custody proceedings and it unwisely and cavalierly rejects a potential solution, a parent-partner status.

This Article elaborates on these shortcomings. My purpose is to strengthen Meier’s call to family law scholars and to focus scholars’ attention on primary prevention.

I. CENTERING FAMILY VIOLENCE

Meier partly attributes the troubling family court outcomes to the marginalization of family violence in family law scholarship.¹¹ She wants scholars to bring family court outcomes “in from the margins”¹² and to modify shared parenting proposals until this problem is fixed.

A. Centering and Numbers

Meier’s plea to scholars feels like the tail is wagging the dog. As she acknowledges, few custody disputes go to trial.¹³ To enlarge the effected population, she claims (1) most separating parents have a history of family violence¹⁴ and (2) people bargain in the shadow of the law.¹⁵ Both claims are debatable and consequently detract from her salient broader point: that family law scholars should give family violence more attention.

First, research doesn’t exactly say that most separating parents have a history of family violence.¹⁶ No study captures rates of family violence among all separating parents, including those who separate without legal action. Some studies, with quite high numbers, involve unrepresentative

⁹ *Id.*

¹⁰ *Id.* at 861, 865, 870-71, 888.

¹¹ *Id.* at 837-38.

¹² *Id.* at 838, 840, 888-89.

¹³ *Id.* at 869 (citing ELEANOR E. MACCOBY & ROBERT H. MNOOKIN, *DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMAS OF CUSTODY* 150 (1994) for the statistic that only 4% to 9% of separating couples ultimately go to trial); *see also* Lee E. Teitelbaum, *Review: Divorce, Custody, Gender, and the Limits of Law: On “Dividing the Child,”* 92 MICH. L. REV. 1808, 1813 (1994). In addition, some unknown number of parents never go to court at all for their custody arrangements.

¹⁴ Meier, *supra* note 1, at 871 (“[A]buse in the family is more common than not among separating parents.”).

¹⁵ *Id.* at 867 & n.197 (citing Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 Yale L.J. (1979)).

¹⁶ *Id.* at 871.

samples.¹⁷ For example, Janet Johnston's studies involved couples who were referred to family counseling, often because of "high conflict, chronic litigation, and/or violence."¹⁸ Meier cites studies that indicate high rates of family violence among litigating and some separating couples,¹⁹ but she also cites research that contradicts the "most" characterization for a particular population.²⁰ Simply, the numbers are uncertain for all separating parents although they are admittedly high.

As for bargaining in the shadow of the law, existing trial outcomes only influence custody negotiations if the protective parent would litigate with more favorable trial prospects. However, survivors balance competing concerns.²¹ An unrepresented survivor may find trial a daunting prospect regardless of her chances.²² Moreover, family violence is not a monolith.²³ Custody trials often involve controlling and dangerous batterers who won't settle because they want to exert control over, and instill fear in, the other parent; the other parent won't settle for safety reasons when the abuser demands unsupervised visitation or custody. Some survivors with less serious violence may not oppose parenting-time or custody for the perpetrator.²⁴

Instead of relying on family court outcomes to galvanize the family law academy, Meier's call would have been stronger had she used the

¹⁷ See JANET R. JOHNSTON & LINDA E.G. CAMPBELL, *IMPASSES OF DIVORCE: THE DYNAMICS AND RESOLUTION OF FAMILY CONFLICT*, at xvii, 8 (1988); Janet R. Johnston et al., *Allegations and Substantiations of Abuse in Child-Disputing Families*, 43 FAM. CT. REV. 283, 288-89 tbls.2 & 3 (2005).

¹⁸ Johnston et al., *supra* note 17, at 286.

¹⁹ Meier, *supra* note 1, at 867-69. Meier's sources, such as in her footnote 208, appropriately cite Johnston when describing rates of violence among a subset of all separating parents.

²⁰ See, e.g., Jennifer S. Barber et al., *The Relationship Context of Young Pregnancies*, 35 L. & INEQ. 175, 193 tbl.4 (2017) (19% of sample experienced threats and 17% experienced physical assault, while 66% experienced fighting).

²¹ See Jennifer L. Hardesty & Lawrence H. Ganong, *How Women Make Custody Decisions and Manage Co-parenting With Abusive Former Husbands*, 23 J. SOC. & PERS. RELATIONSHIPS 543, 548, 559 (2006).

²² Most survivors in custody disputes are unrepresented. See Emmaline Campbell, *How Domestic Violence Batterers Use Custody Proceedings in Family Courts to Abuse Victims, and How Courts Can Put a Stop to It*, 24 UCLA WOMEN'S L.J. 41, 55 (2017).

²³ See Michael P. Johnson, *Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence against Women*, 57 J. MARRIAGE & FAM. 283, 283 (1995). While Meier convincingly critiques Johnson's categories, even she recognizes that different types of domestic violence exist with "differential impacts on children and adults." See Joan S. Meier, *Johnson's Differentiation Theory: Is It Really Empirically Supported?*, 12 J. CHILD CUSTODY 4, 20 (2015); see also Jennifer L. Hardesty et al., *Marital Violence and Coparenting Quality After Separation*, 30 J. FAM. PSYCH. 320, 327 (2016).

²⁴ Melanie F. Shepard et al., *Perspectives of Rural Women: Custody and Visitation with Abusive Ex-Partners*, 28 J. WOMEN & SOC. WORK 165, 172 (2013).

ubiquity and persistence of family violence generally to justify her “all-hands-on-deck” approach. The National Intimate Partner and Sexual Violence Survey reports that the lifetime prevalence rate of domestic violence, sexual violence or stalking by an intimate partner is 33.6% for men and 36.4% for women.²⁵ In addition, 26% of children are exposed to “at least one form of family violence during their lifetimes.”²⁶ These are shocking and unacceptable numbers.

The advantage of broadening the lens beyond custody trials is not limited to motivating scholars. It encourages scholars to identify other sub-populations for whom specific legal solutions are warranted. For example, many women seeking an abortion are impregnated by an abusive partner.²⁷ Legal access to abortion is critical for this population, but increasingly unavailable.²⁸ One study found that women who obtained an abortion experienced less physical violence over a two-and-a-half-year period following the abortion than women who were denied an abortion and had to give birth.²⁹ Importantly, broadening the lens also encourages scholars to consider primary prevention. After all, millions of children live in homes with family violence and their parents may never split or invoke the family law system,³⁰ and childless couples also experience family violence.³¹

B. Centering Gender Oppression

Meier’s call to scholars should have also included norms to guide scholars’ policy solutions beyond her implicit call for an evidence-based

²⁵ Sharon Smith et al., *The National Intimate Partner and Sexual Violence Survey: 2015 Data Brief – Updated Release*, CTR. FOR DISEASE CONTROL & PREVENTION 7-9 (2018).

²⁶ Sherry Hamby et al., *Children’s Exposure to Intimate Partner Violence and Other Family Violence* 1 (2011). See also Kristen Selleck et al., U.S. Dep’t Health & Human Serv., *Child Protection in Families Experiencing Domestic Violence* 57-58 (2d ed. 2018).

²⁷ Audrey F. Saftlas et al., *Prevalence of Intimate Partner Violence Among an Abortion Clinic Population*, 100 AM. J. PUB. HEALTH 1412, 1413 (2010); Jay G. Silverman et al., *Male Perpetration of Intimate Partner Violence and Involvement in Abortions and Abortion-Related Conflict*, 100 AM. J. PUB. HEALTH 1415, 1416 (2010).

²⁸ *Tracking the States Where Abortion is Now Banned*, N.Y. TIMES (updated Mar. 23, 2023), <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html> (listing ten states with total bans and no rape exception).

²⁹ Sarah C.M. Roberts et al., *Risk of Violence from the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, 14 BMC MED. 144, 147 (2014).

³⁰ Renee McDonald et al., *Estimating the Number of American Children Living in Partner-Violent Families*, 20 J. FAM. PSYCH. 137, 139-140 (2006).

³¹ Megan H. Bair-Merritt et al., *Does Intimate Partner Violence Epidemiology Differ Between Homes With and Without Children? A Population-Based Study of Annual Prevalence and Associated Risk Factors*, 23 J. FAM. VIOLENCE 325, 329 (2008).

approach.³² Addressing family violence is itself not normative. Obviously, no one would support lowering the rate of domestic violence by drastically limiting the number of women, such as by requiring pregnant women to abort all female fetuses, even if it were effective.

Scholars should be encouraged to center gender oppression (i.e., misogyny, sexism, implicit gender bias, and patriarchy) along with family violence.³³

Addressing gender oppression helps identify inappropriate proposals and, most importantly, it helps attack the root cause of family violence.³⁴ In 1979, Dobash and Dobash's influential book called for reforms that not only met "the immediate needs of women now suffering from violence," but also would eliminate "patriarchal domination," which causes the violence.³⁵

Unfortunately, gender oppression (even misogyny³⁶) persists, and continues to undermine legal responses to family violence. People inappropriately equate men's and women's victimization, although women typically experience more severe physical violence and coercive control,³⁷ and women's acts are often in self-defense or retaliatory.³⁸ Judges disbelieve women,³⁹ and some people claim men are the true victims of gender discrimination.⁴⁰ Decisionmakers penalize survivors represented by

³² Meier, *supra* note 1, at 882-83.

³³ Meier acknowledges that misogyny and patriarchal norms contribute to the custody trial outcomes, *id.* at 844-45 n.50 & 51, 851, 855 n.110, and "fuel" family violence generally, *id.* at 876, but she minimizes their importance, *id.* at 872, and doesn't address the importance of dismantling patriarchy.

³⁴ Samantha Pinson Wisley, *Feminist Theory and the Problem of Misogyny*, FEMINIST THEORY 15, at 8 (2021) (quoting KATE MANNE, DOWN GIRL: THE LOGIC OF MISOGYNY 88 (2017) ("misogyny upholds the social norms of patriarchies by policing and patrolling them")).

³⁵ R. EMERSON DOBASH & RUSSELL DOBASH, VIOLENCE AGAINST WIVES: A CASE AGAINST THE PATRIARCHY 242-43 (1979).

³⁶ See KATE MANNE, DOWN GIRL: THE LOGIC OF MISOGYNY 88, 101 (2017). Recent examples include the behavior revealed by #MeToo, the vitriol spewed at Amber Heard, the physical attacks on Gretchen Whitmer and Nancy Pelosi, the belittling and sexualizing of women by Donald Trump, the targeting of women with gun violence, and the removal of a woman's constitutional right to abortion.

³⁷ SHARON SMITH ET AL., THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2015 DATA BRIEF – UPDATED RELEASE 8, 9, 11 (Nov. 2018); Andy Myhill, *Measuring Coercive Control: What Can We Learn From National Population Surveys?*, 21 VIOLENCE AGAINST WOMEN 355, 364 (2015).

³⁸ MURRAY A. STRAUS & RICHARD J. GELLES, PHYSICAL VIOLENCE IN AMERICAN FAMILIES: RISK FACTORS AND ADAPTATIONS TO VIOLENCE IN 8,125 FAMILIES 98 (1992).

³⁹ DEBORAH TUERKHEIMER, CREDIBLE (2021).

⁴⁰ See KRISTIN J. ANDERSON, MODERN MISOGYNY: ANTI-FEMINISM IN A POST-FEMINIST ERA, at xii, 56 (2014).

female attorneys.⁴¹ Judicial personnel bend, interpret, and apply the law in ways that harm women.⁴² As Mackinnon explained, patriarchy has a vested interest in insuring the continuation of the root causes of women abuse;⁴³ and it shapes the law to accomplish that purpose.⁴⁴ This must include permitting the intergenerational transmission of abuse,⁴⁵ as well as the reproduction of gender.⁴⁶

Family law scholars can combat gender oppression in various ways. We can raise students' and readers' consciousness to it,⁴⁷ work to dismantle laws with misogynistic or sexist underpinnings, and propose egalitarian family structures. Thirty years ago, sociologists Straus and Gelles talked about the family's role in inculcating norms regarding sexual inequality and the acceptability of violence, and the imperative of primary prevention.⁴⁸ Family law scholars should consider other disciplines' insights and propose family structures that promote love for and respect of women.⁴⁹

⁴¹ Connie Lee, *Gender Bias in the Courtroom: Combating Implicit Bias Against Women Trial Attorneys and Litigators*, 22 CARDOZO J.L. & GENDER 229, 235-41 (2016).

⁴² See DAVID SAUNDERS ET AL., CHILD CUSTODY EVALUATORS' BELIEFS ABOUT DOMESTIC ABUSE ALLEGATIONS: THEIR RELATIONSHIP TO EVALUATOR DEMOGRAPHICS, BACKGROUND, DOMESTIC VIOLENCE KNOWLEDGE AND CUSTODY-VISITATION RECOMMENDATIONS 11 (2012) (explaining how evaluators' beliefs in patriarchal norms correlate with harmful custody recommendations in families with violence). Cf. Carol S. Bruch, *Parental Alienation Syndrome and Parental Alienation: Getting it Wrong in Child Custody Cases*, 35 FAM. L. Q. 527, 537 (2001) (noting PAS is frequently invoked with no inquiry "into its scientific validity"); Jennifer Hout, *The Evidentiary Admissibility of Parental Alienation Syndrome: Science, Law, and Policy*, 26 CHILD. LEGAL RTS. J. 1, 22 (2006) (noting PAS proponents misrepresent its "scientific and legal status" and relabel it to bypass "legal gate-keeping").

⁴³ Catharine MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 SIGNS 635, 643 (1983).

⁴⁴ *Id.* at 644-45.

⁴⁵ See SARAH HALPERN-MEEKIN, SOCIAL POVERTY: LOW-INCOME PARENTS AND THE STRUGGLE FOR FAMILY AND COMMUNITY TIES 86 (2019).

⁴⁶ SUSAN MOLLER OKIN, JUSTICE, GENDER, AND THE FAMILY 170, 176-77 (1989).

⁴⁷ Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 863-64 (1990); see also Wrisley, *supra* note 34, at 18 (noting misogyny "is based in a distorted judgement about the inferior moral value of women").

⁴⁸ STRAUS & GELLES, *supra* note 38, at 517, 523.

⁴⁹ Social psychologists, among others, describe the various ways gender reproduces itself. See, e.g., Thekla Morgenroth & Michelle K. Ryan, *Gender Trouble in Social Psychology: How Can Butler's Work Inform Experimental Social Psychologists' Conceptualization of Gender?*, FRONTIERS IN PSYCHOLOGY 4-5 (July 2018). Cf. DOROTHY DINNERSTEIN, THE MERMAID AND THE MINOTAUR (1979).

C. Centering as Process to Evaluate “Shared Parenting”

Assuming a scholar wants to center family violence and gender oppression,⁵⁰ what exactly does that mean? For me, centering is akin to asking “the woman question” but with a focus on family violence.⁵¹ The analysis involves considering the law’s impact on survivors, but also the law’s effect on others, its short-term and long-term impact on the prevalence of family violence, and its role in dismantling or enabling patriarchy.

Meier engages in some of this analysis when she says: “While shared parenting can surely be beneficial for some children in some families, its idealization across-the-board unfortunately undermines the safety of children in other families.”⁵² She then rejects that exceptions could adequately protect this population.⁵³

Meier’s categorical rejection of “shared parenting” is unfortunate. It minimizes a critical distinction between two concepts: joint custody and supportive coparenting.⁵⁴ Joint custody is the legal rule that requires courts to order joint legal and/or physical custody when the judge finds the arrangement is in the child’s best interest.⁵⁵ Supportive coparenting is a philosophy that guides parents to work as a team to maximize their joint effort and cooperation for their child’s benefit, and requires parents to act supportively toward each other.⁵⁶ By definition, domestic violence is inconsistent with supportive coparenting, although families with a history of family violence can strive for supportive coparenting by first and foremost ending the abuse.

These concepts need not, and should not, be conjoined. They generally apply to entirely different populations. Supportive coparenting requires parental agreement and ideally begins at or before the child’s birth. Parents who embrace supportive coparenting during the romantic relationship are more likely to share custody voluntarily if their romantic relationship ends regardless of what the law requires.⁵⁷ In contrast, joint custody

⁵⁰ The Roundtable at the University of Virginia was titled, “Centering Family Violence.” Meier did not use the phrase in her article.

⁵¹ Bartlett, *supra* note 47, at 836-37.

⁵² Meier, *supra* note 1, at 871.

⁵³ *Id.* at 870.

⁵⁴ See MERLE H. WEINER, A PARENT-PARTNER STATUS FOR AMERICAN FAMILY LAW 199-201 (2015). The term “shared parenting” is now used to reference joint custody. See Marsha Kline Pruett & J. Herbie DiFonzo, *Closing the Gap: Research, Policy, Practice, and Shared Parenting*, 52 FAM. CT. REV. 152 (2014). Therefore, I will no longer use “shared parenting” to refer to supportive coparenting.

⁵⁵ Merle H. Weiner, *Thinking Outside the Custody Box: Moving Beyond Custody Law to Achieve Shared Parenting and Shared Custody*, U. ILL. L. REV. 1535, 1544 (2016).

⁵⁶ *Id.* at 1549-50, 1552-53.

⁵⁷ *Id.* at 1551. Supportive coparenting after the relationship ends is also more likely if the broader relationship is a supportive one. *Id.* at 1552-54.

mostly affects parents who haven't coparented supportively, including parents with a history of family violence despite laws that seemingly exempt them.⁵⁸ Yet for this population, joint custody is highly problematic: it facilitates,⁵⁹ and exacerbates,⁶⁰ violence between the parties, and it can result in perpetrators obtaining sole custody.⁶¹

Meier argues that the two concepts cannot be disentangled, and that a commitment to supportive coparenting harms survivors of domestic violence. She bases this on the fact that people bargain in the shadow of the law.⁶² But the shadow would differ if the law disavowed joint custody without parental agreement. She also worries that neutral professionals, such as custody evaluators, will push people to accept joint custody settlements.⁶³ While potentially true, the answer is not to forsake supportive coparenting, but to emphasize the inappropriateness of joint custody for parents with a history of domestic violence and the need for violence to cease before supportive coparenting can begin.⁶⁴

By clarifying the distinction, society can continue the commitment to supportive coparenting for families without family violence *and* eliminate the law of joint custody (that mainly affects families with it). In fact, the law would arguably benefit the greatest number of children if it encouraged supportive coparenting but disallowed joint custody unless the parties agreed.⁶⁵ Meier's article never fully acknowledges the benefits of

⁵⁸ Margaret F. Brinig, *Shared Parenting Laws: Mistakes of Pooling*, Notre Dame Law School Legal Studies Research Paper No. 1426, available at SSRN, abstract no. 2480631, at 45; Margaret F. Brinig, Leslie Drozl & Loretta Frederick, *Perspectives on Joint Custody Parenting as Applied to Domestic Violence Cases*, 52 FAM. CT. REV. 272, 276-77 (2014).

⁵⁹ LUNDY BANCROFT & JAY G. SILVERMAN, THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS 201 (2002); Brinig, Drozl & Frederick, *supra* note 58, at 276; Weiner, *supra* note 54, at 508.

⁶⁰ Brinig, *supra* note 58, at 30, 42; Weiner, *supra* note 54, at 509.

⁶¹ See Douglas W. Allen & Margaret Brinig, *Do Joint Parenting Laws Make Any Difference?*, 8 J. EMPIRICAL LEGAL STUD. 304, 322 (2011).

⁶² Meier, *supra* note 1, at 867 n.197.

⁶³ *Id.*

⁶⁴ This is my book's position. See WEINER, *supra* note 54, at 203 (calling protective mother's behavior "understandable and commendable"); *id.* at 223 (noting the status does not require physical proximity nor change the existing custody laws); *id.* at 280, 296 (saying it is "understandable" that a person would not love a "vile" and "loathsome" parent-partner); *id.* at 491 (discussing how new social norms should not stop domestic violence victims from getting away from their abusers for reasons of safety); *id.* at 223 (arguing that survivors should not "acquiesce in the face of harm," but should seek to keep abusers away); *id.* at 223 (noting that the parent-partner framework is "flexible enough to accommodate protective action by a parent if the other parent engaged in or threatened harmful conduct").

⁶⁵ See generally Weiner, *supra* note 55.

supportive coparenting for families without violence,⁶⁶ or as a mechanism to discourage family violence itself. The next section discusses this latter possibility.

II. CENTERING AND PREVENTION

Meier extends her critique of shared parenting by disapproving of the idea of a parent-partner status. Meier cites my book, *A Parent-Partner Status for American Family Law*,⁶⁷ as one example of how mainstream family law scholars “marginalize” family violence,⁶⁸ thereby contributing to the poor outcomes in the custody context.⁶⁹ She asks, “How is it that well-intentioned scholars and judges appear to systematically minimize domestic abuse?”⁷⁰

As discussed below, my book does not support the heart of Meier’s argument about mainstream legal scholarship.⁷¹ Meier classifies me as a “mainstream family law” scholar instead of a “domestic violence” scholar,⁷² but my feet are in both camps. Additionally, I did not marginalize family violence when writing the book. Consequently, if a domestic violence scholar centered family violence and proposed the parent-partner status, then either attention to family violence doesn’t matter, or alternatively, Meier misunderstands how the status could benefit survivors. In fact, the parent-partner status is designed to further primary prevention. It would reduce the number of children growing up in violent households and challenge the patriarchal structure of families, thereby reducing the number of contested custody cases involving family violence and the prevalence of family violence more generally.

⁶⁶ *Id.* at 861-62, 868. *See also* Weiner, *supra* note 54, at 187-206, 216-220. Detailing the benefits are beyond the focus of this short Article.

⁶⁷ Weiner, *supra* note 54.

⁶⁸ Meier, *supra* note 1, at 837-38.

⁶⁹ *Id.* at 861.

⁷⁰ *Id.* at 871.

⁷¹ To be fair, Meier sought corrections by sending me a few pages from her draft that described my book. My response was far less detailed than here because I lacked the broader context for her critique. I also thought my reply would prompt more revision. Regardless, I do not fault Meier for her description, but I want to clarify matters publicly.

⁷² *See* Meier, *supra* note 1, at 869 n.215. Meier later calls me a “domestic violence lawyer and scholar,” *id.* at 867, but puts me in the other camp for purposes of her dichotomy. Family law scholars “prize co-parenting” and domestic violence scholars “challenge this value as destructive for families experiencing abuse.” *Id.* at 870.

A. *Centering and the Development of a Parent-Partner Status*

Let me briefly describe the parent-partner status. It would impose obligations between legal parents of the same child,⁷³ whether the parents are married or unmarried, together or split. These particular obligations would remedy particular injustices between the parents and/or foster supportive coparenting. For example, the obligations might include a financial remedy for the parent who unfairly and disproportionately performs more caregiving or might allow the invalidation of an unfair prenuptial agreement.⁷⁴ The cumulative effect of the legal obligations would be the creation of a legal status. This legal status would convey the idea that parent-partnerships are supposed to be supportive, cooperative, and healthy (i.e., without domestic violence). The legal status would promote these relationships directly through the specific legal obligations and indirectly by creating a social role. Social roles come with social expectations that guide conduct.⁷⁵ Concomitantly, the status and role would deter conception by people who are unlikely to have a relationship appropriate for the parent-partner status.

Centering family violence was instrumental to the status's development,⁷⁶ although I discuss family violence only occasionally throughout the book.⁷⁷ Consider these six points:

⁷³ See generally Merle H. Weiner, *When a Parent is Not Apparent*, 80 U. PITT. L. REV. 1 (2019).

⁷⁴ Five tentative obligations were proposed. See WEINER, *supra* note 54, at 136, 320.

⁷⁵ Clare Huntington, *Staging the Family*, 88 N.Y.U. L. REV. 589, 599, 607, 628 (2013); Solangel Maldonado, *Beyond Economic Fatherhood*, 153, U. PA. L. REV. 921, 1000-08 (2005).

⁷⁶ I spoke of this fact before the book's publication. See Merle H. Weiner, "The Utility of a Parent-Partner Status for Preventing Domestic Violence and Protecting Parents," 2014 Southwestern Law Review Symposium, *Locking Up Females, Failing to Protect Them, and Punishing Their Children and Families: Can a Human Rights Approach Eliminate Gender Bias That Is Currently Treated as Gender Neutral?* honoring Myrna Raeder, Los Angeles, Nov. 14, 2014.

⁷⁷ Nonetheless, I give more attention to family violence than Meier acknowledges. She mentions my "eighteen pages" discussing how protection orders could be improved, my recognition that "parents are often not up to the job of co-parenting well," my discussion of the importance of protecting children," and my critique of Clare Huntington's proposal. *Id.* at 866 & 866 n.193; *but see, e.g., supra* note 64 (discussing the survivor's role as a parent-partner); WEINER, *supra* note 54, at 173-74 (discussing the effect of nonconsensual sex on the parent-partner status); *id.* at 189-90 (illustrating that coparenthood impacts domestic violence dynamics); *id.* at 195-96 (criticizing popular culture for minimizing domestic violence's harm to children); *id.* at 222 (discussing batterers who use the legal system and visitation to continue their abuse); *id.* at 362-63, 376, 387, 391 (discussing domestic violence in the context of relationship work); *id.* at 471 (discussing the strength of domestic violence victim's autonomy claim); *cf. id.* at 504-08 (discussing that joint custody harms domestic violence survivors).

First, the legal response to domestic violence illustrates the feasibility of imposing legal obligations between parents qua parents. Civil protection orders exist for parents of the same child regardless of the parents' marital status. Just as parenthood triggers eligibility for protection orders, it should likewise trigger remedies for other types of wrongful behavior.

Second, family violence illustrates that parenthood provides opportunities for harmful behavior between the parents, especially for women.⁷⁸ "Women with children are three times more likely to experience domestic violence than childless women . . . , and the incidence of domestic violence is highest during pregnancy and following birth."⁷⁹ Just as parenthood can trigger or exacerbate family violence, so too parenthood can trigger or exacerbate other socially objectionable behavior, such as freeloading on the other parent's caregiving labor thereby harming the caregiver economically.⁸⁰ The law should address these other types of harms too; its disregard reinforces the patriarchal family.⁸¹

Third, family violence vividly demonstrates that parents' wrongful behavior toward each other can harm their child.⁸² Nonviolent behavior, including conflict⁸³ and noncooperation,⁸⁴ can also harm children. Consider, for example, the child whose injured parent dies after a car accident because the other parent refused to call 911 for help. Legal obligations between the parents can deter and remedy harms beyond family violence.⁸⁵

Fourth, focusing on family violence illustrates that existing law often inadequately recognizes the coexistence of *both* a coparental relationship and domestic violence. Consequently, restraining orders have gaps in their availability and adequacy for coparents.⁸⁶ Similarly, joint custody law insufficiently accounts for the fact that litigating coparents frequently have a history of domestic violence.⁸⁷

⁷⁸ JAMES PTACEK, *BATTERED WOMEN IN THE COURTROOM* 82-83 (1999).

⁷⁹ Fiona Buchanan, *Dramatic Impact of Domestic Violence on Mothers' Relationships with Their Infants*, *DOMESTIC VIOLENCE REP.* 5 (Oct./Nov. 2013).

⁸⁰ WEINER, *supra* note 54, at 413-17.

⁸¹ OKIN, *supra* note 46, at 170, 176-77.

⁸² See PETER JAFFE ET AL., *GROWING UP WITH DOMESTIC VIOLENCE* (2012); Cindy A. Sousa et al., *What Do We Know After Decades of Research About Parenting and IPV? A Systematic Scoping Review Integrating Findings*, 23 *TRAUMA, VIOLENCE, & ABUSE* 1629, 1638 (2022).

⁸³ WEINER, *supra* note 54, at 195-98.

⁸⁴ *Id.* at 201-06.

⁸⁵ *Id.* at 320-27.

⁸⁶ *Id.* at 327-45.

⁸⁷ Meier acknowledges that I do not promote joint custody. Meier, *supra* note 1, at 867 n.197; see also Weiner, *supra* note 54, at 507 ("[T]o be absolutely clear, the parent-partner status would not involve a change to the child custody laws."); *id.* at 506, 508-09; see also Weiner, *supra* note 55 at 1568-71; Merle H. Weiner, *Family Law for the Future: An Introduction to Merle H. Weiner's A Parent-Partner Status for American Family Law*, 50 *FAM. L. Q.* 327, 346 (2016).

Fifth, family violence reveals that parenthood is not always voluntary.⁸⁸ Consequently, I exempted any parent who was raped or coerced into pregnancy from parent-partner obligations but allowed these victims to enforce obligations against their perpetrators.⁸⁹

Sixth, and finally, the ubiquity and persistence of family violence suggests the importance of primary prevention, a goal identified by policy makers and scholars in various disciplines.⁹⁰ The parent-partner status is designed to reduce the amount of family violence in *future* families.

B. The Parent-Partner Status and Primary Prevention

Primary prevention strategies include using the law to shape social norms, which in turn shape behavior.⁹¹ Although the availability of restraining orders already signals that violence is unacceptable in coparenting relationships, one legal obligation does not create a legal status and the social role necessary to allow social norms to change behavior. A status needs multiple legal obligations so that people experience entry into a new role.⁹² The parent-partner status and each of its legal obligations convey the message that coparenting relationships should be supportive, respectful, and egalitarian. A “core obligation” is that parent-partners do not abuse each other.⁹³

Once the parent-partner status creates a new social role, primary prevention might occur through various pathways. For instance, the status would discourage childbearing among couples prone to violence. A parent-partner status would help adolescents internalize criteria for partners,⁹⁴ instead of relying primarily upon their failed relationships for information.⁹⁵ It would similarly discourage violence in relationships with children.⁹⁶ It would provide additional remedies to protect victims from

⁸⁸ See Kathleen C. Basile et al., *Prevalence of Intimate Partner Reproductive Coercion in the U.S.: Racial and Ethnic Differences*, 36 J. INTERPERSONAL VIOL. NP12324, NP12326, NP122335 (2021).

⁸⁹ WEINER, *supra* note 54, at 173.

⁹⁰ See, e.g., Sousa, *supra* note 82, at 1639; STRAUS & GELLES, *supra* note 38, at 98; SARA MCLANAHAN ET AL., AN EPIDEMIOLOGICAL STUDY OF CHILDREN'S EXPOSURE TO VIOLENCE IN THE FRAGILE FAMILIES STUDY 14 (2014).

⁹¹ See DIVISION OF VIOLENCE PREVENTION, NATIONAL CENTER FOR INJURY PREVENTION AND CONTROL, CENTERS FOR DISEASE CONTROL AND PREVENTION, INTIMATE PARTNER VIOLENCE ACROSS THE LIFESPAN: A TECHNICAL PACKAGE OF PROGRAMS, POLICIES, AND PRACTICES 8-9 (2017). See also STRAUS & GELLES, *supra* note 38, at 515-17.

⁹² WEINER, *supra* note 54, at 133-34, 226-32.

⁹³ WEINER, *supra* note 54, at 329.

⁹⁴ See WEINER, *supra* note 54, at 223, 236-60. See also HALPERN-MEEKIN, *supra* note 45, at 86; cf. Weiner, *supra* note 54, at 305-06.

⁹⁵ See Wendi L. Johnson et al., *Relationship Context and Intimate Partner Violence From Adolescence to Young Adulthood*, 57 J. ADOLESCENT HEALTH 631 (2015).

⁹⁶ WEINER, *supra* note 54, at 222-23.

violence.⁹⁷ It would justify exit if violence emerges.⁹⁸ Some specific legal obligations might themselves facilitate primary prevention (e.g., relationship work at the transition to parenthood),⁹⁹ but the acquisition of a new identity, with new social norms,¹⁰⁰ would do the bulk of the work. At its best, the status would promote healthy relationships as well as gender equality,¹⁰¹ and thereby attack the root causes of violence.

C. Meier's Specific Concerns

The above clarifications may change Meier's opinion of my proposal, but her specific concerns deserve a response.

First, Meier critiques the absence of an "explicit exemption for abusive relationships from the 'core set of legal obligations on [all] parents who have a child in common . . .'"¹⁰²

Yet such an exception would deny survivors the benefits from the legal obligations and might incentivize violence among people seeking to avoid the obligations. Unidirectional obligations (i.e., enforceable only against the perpetrator) are imperfect because both parties may commit violence. More importantly, even survivors should be obligated in basic ways (e.g., not to abuse the other parent, not to treat the other parent unfairly in prenuptial negotiations, and not to take advantage of the other parent's caregiving). Finally, an exclusion would undermine a central purpose of the status: to deter couples from having children when one party can't or won't live up to the parent-partner expectations (including nonviolence).¹⁰³

Second, Meier is particularly troubled that the duty of relationship work lacked an exception for survivors.¹⁰⁴ She suggested that I "overlooked the inappropriateness of such a requirement for victims of abuse" because I was "seduced" by "the co-parenting ideal,"¹⁰⁵ although I later "conceded" such an exception was appropriate.¹⁰⁶

To set the record straight, I did not "overlook[] the inappropriateness" of such a requirement. I cited research that found "relationship work"

⁹⁷ *Id.* at 223.

⁹⁸ *Id.*

⁹⁹ See *infra* text accompanying notes 110-116. See Johnson, *supra* note 95, at 635.

¹⁰⁰ WEINER, *supra* note 54, at 136.

¹⁰¹ *Id.* at 264, 308, 312, 462, 502-03.

¹⁰² Meier, *supra* note 1, at 866.

¹⁰³ William J. Doherty, *Commentary: Jennifer Barber's Landmark Research on the Connection Between Intimate Partner Violence and the Onset of Pregnancy*, 35 L. & INEQ. 217, 218 (2017).

¹⁰⁴ Meier, *supra* note 1, at 866-67.

¹⁰⁵ *Id.* at 867.

¹⁰⁶ *Id.* at 866-67 (referencing my response to Leigh Goodmark's review on Concurring Opinions).

inappropriate in these circumstances.¹⁰⁷ Nonetheless, denying survivors a remedy seemed too paternalistic and too pessimistic. Some survivors want these programs,¹⁰⁸ and a categorical exclusion would hinder them. Consider, for example, that the transition to parenthood is a time with “heightened risk.”¹⁰⁹ Some programs produce important benefits,¹¹⁰ especially for “distressed (and disadvantaged)” couples,¹¹¹ with “no evidence” of increased risk for intimate partner violence.¹¹² Other programs, such as Fathers for Change,¹¹³ have been found to decrease family violence significantly.¹¹⁴ Some programs help survivors figure out how to leave the

¹⁰⁷ See, e.g., WEINER, *supra* note 54, at 362, 376.

¹⁰⁸ See HALPERN-MEEKIN, *supra* note 45, at 196, 199. Cf. Becky Antle et al., *The Impact of the Within My Reach Relationship Training on Relationship Skills and Outcomes for Low-Income Individuals*, 39 J. MARITAL & FAM. THERAPY 346, 353 (2013); Leslie J. Harris, *Family Policy After Fragile Families and Relationship Dynamics Studies*, 35 L. & INEQ. 223, 231 (2017) (citing presentation by Jennifer Barber).

¹⁰⁹ W. Kim Halford et al., *Intimate Partner Violence in Couples Seeking Relationship Education for the Transition to Parenthood*, 10 J. COUPLE & RELATIONSHIP THERAPY 152, 155 (2011).

¹¹⁰ Howard J. Markman et al., *Helping Couples Achieve Relationship Success: A Decade of Progress in Couple Relationship Education Research and Practice, 2010-2019*, 48 J. MARITAL & FAM. THERAPY 251, 267 (2022). See Alan J. Hawkins et al., *Do Couple Relationship Education Programs Affect Coparenting, Parenting, and Child Outcomes? A Meta-Analytic Study*, 31 J. CHILD & FAM. STUD. 593, 595 (2022); Cindy Eira Nunes et al., *Co-Parenting Programs: A Systematic Review and Meta-Analysis*, 70 FAM. RELS. 759, 771 (2021).

¹¹¹ Markman, *supra* note 110, at 268; see Damon E. Jones et al., *Family and Child Outcomes 2 Years After a Transition to Parenthood Intervention*, 67 FAM. RELS. 270, 281 (2018) (evaluating Family Foundations).

¹¹² Markman, *supra* note 110, at 268.

¹¹³ See Carla Smith Stover et al., *Evaluation of a Statewide Implementation of Fathers for Change: a Fathering Intervention for Families Impacted by Partner Violence*, 37 J. FAM. VIOLENCE 449, 456 (2022) (noting “significantly reduced abusive behaviors” falling to “a non-abusive level”).

¹¹⁴ Some successful programs are not aimed at the transition to parenthood, but presumably could be adapted. See *id.*, at 456-57. Other studies with encouraging outcomes include James P. McHale et al., *Randomized Controlled Trial of a Prenatal Focused Coparenting Consultation for Unmarried Black Fathers and Mothers: One-Year Infant and Family Outcomes*, INFANT MENT. HEALTH J. 1, 36-37 (2022); Mark E. Feinberg et al., *Couple-Focused Prevention at the Transition to Parenthood, a Randomized Trial: Effects on Coparenting, Parenting, Family Violence, and Parent and Child Adjustment*, 17 PREVENTION SCI. 751, 756, 758 tbl.2, 760 (2016); Scott R. Braithwaite & Frank D. Fincham, *Computer-based Prevention of Intimate Partner Violence in Marriage*, 54 BEHAV. RSCH. & THERAPY 12 (2014); Becky Antle et al., *The Impact of the Within My Reach Relationship Training on Relationship Skills and Outcomes for Low-Income Individuals*, 39 J. MARITAL & FAM. THERAPY 346, 353 (2013); Becky F. Antle et al., *Gender Differences in Outcomes of a Healthy Relationships Program to Prevent Intimate Partner Violence*, 24 J. LOSS & TRAUMA 322, 331-332 (2019); Paul

violent relationship safely if they want to get out.¹¹⁵ And the field continues to progress.¹¹⁶

It would obviously be highly problematic if an abuser could force his victim into relationship work,¹¹⁷ and the proposed obligation would never allow that result. Both parents must want to engage in it.¹¹⁸ While an abuser could initiate a court action if the other parent refused to participate, the *sole* remedy proposed for nonparticipation is “an order to attend an informational session” explaining relationship work.¹¹⁹ The informational session should include education about the risks of relationship work for survivors,¹²⁰ provide resource referrals,¹²¹ and require separate attendance to protect the survivor’s safety.¹²² No other repercussion would exist for noncompliance because no survivor should ever be penalized for failing to participate in relationship work. I discuss how a more punitive remedy could become a tool of perpetrators.¹²³

I purposefully rejected a defense for survivors, not because I was seduced by the coparenting ideal but because survivors might find a defense more problematic than the proposed limited remedy. Proving a defense is costly (and therefore sometimes “unavailable to those who really need it”¹²⁴) and can escalate hostility. Nonetheless, after the book’s publication, Leigh Goodmark’s comments made me realize that the law should provide *both* a limited remedy *and* a defense for domestic violence survivors. The combination would maximize survivors’ options for avoiding relationship work.

Finally, Meier thinks that I am “idealistic” about whether the status will change “bad men,” like abusers.¹²⁵ I’m not. I said, “No one should be so naïve as to think that the parent-partner status could deter . . . harmful

Florsheim et al., *The Young Parenthood Program: Preventing Intimate Partner Violence Between Adolescent Mothers and Young Fathers*, 10 J. COUPLE & RELATIONSHIP THERAPY 117, 127, 137 (2011).

¹¹⁵ See Galena K. Rhoades et al., *Physical Aggression in Unmarried Relationships: The Roles of Commitment and Constraints*, 24 J. FAM. PSYCHOL. 678, 686 (2010); Hawkins, *supra* note 110, at 594; Marni L. Kan et al., *Preventing Intimate Partner Violence Among Teen Mothers: A Pilot Study*, 30 J. CHILD & FAM. STUD. 87 (2021); HALPERN-MEEKIN, *supra* note 45, at 191-92.

¹¹⁶ Michel Labarre et al., *Intervening with Fathers in the Context of Intimate Partner Violence: An Analysis of Ten Programs and Suggestions for a Research Agenda*, 13 J. CHILD CUSTODY 1, 11, 14 (2016); Markman, *supra* note 110, at 273-74; Halford, *supra* note 109, at 164-65.

¹¹⁷ WEINER, *supra* note 54, at 376.

¹¹⁸ *Id.* at 360.

¹¹⁹ *Id.* at 361, 363, 387.

¹²⁰ *Id.* at 373-74.

¹²¹ *Id.* at 363.

¹²² *Id.* at 363.

¹²³ *Id.* at 362-63.

¹²⁴ *Id.* at 362.

¹²⁵ Meier, *supra* note 1, at 871 n.221.

acts of some really bad actors who might invoke the status's partnership ideology as a tool to pursue nefarious ends."¹²⁶ I worry about whether perpetrators would misuse the status, and the ideology behind it, to maintain or increase their access to their victims.¹²⁷ They, and the patriarchal system itself, will predictably try to undermine efforts to create egalitarian families that exist without domestic violence, and will likely twist the concept of the parent-partner status to do so. We must be vigilant and responsive.¹²⁸

But I can envision a future with less family violence. As I say in the book, "The fact that some fathers will commit socially deviant acts should not halt legal reform that would benefit most people. Rather, the deviance itself must be addressed . . ." ¹²⁹ "Eternal pessimists" focus only on short-term risks,¹³⁰ but meaningful social change requires consideration of the long-term benefits, too.

CONCLUSION

The ubiquity and persistence of family violence makes it imperative that family law scholars pay attention to it, including how society might prevent it. Primary prevention offers an important component of any strategy to address family violence. Primary prevention will be furthered by reducing the number of children born into violent relationships, by encouraging supportive coparenting in nonviolent relationships from the get-go, and by emphasizing the incompatibility of violence with supportive coparenting. In considering primary prevention, law professors should heed the insights from other disciplines, such as the importance of social roles for influencing behavior. After all, the legal system can create a new legal status and concomitant social role while simultaneously creating specific obligations to remedy particular injustices. In that way, the law can advance primary prevention, including by attacking the root cause of family violence itself.

¹²⁶ WEINER, *supra* note 54, at 297.

¹²⁷ *Id.* at 222.

¹²⁸ *Id.* at 222-24.

¹²⁹ *Id.* at 224.

¹³⁰ *Id.*