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# Power in the Age of In/Equality: Economic Abuse, Masculinities, and the Long Road to Marriage Equality

Arianne Renan Barzilay

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## POWER IN THE AGE OF IN/EQUALITY: ECONOMIC ABUSE, MASCULINITIES, AND THE LONG ROAD TO MARRIAGE EQUALITY

*Arianne Renan Barzilay\**

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“[N]ew insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged” – *Obergefell v. Hodges*<sup>1</sup>

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1. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2603 (2015).

## I. PROLOGUE

In an era when women have achieved formal legal equality in the labor market and in the family, patriarchal power endures.<sup>2</sup> In this Article I take on what remains one of the “final frontiers of the multi-century legal project”<sup>3</sup> of securing women’s economic emancipation: economic abuse.<sup>4</sup> Economic abuse is a form of intimate partner violence that has recently begun to generate attention,<sup>5</sup> yet still takes a back seat in our collective consciousness.<sup>6</sup>

Importantly, economic abuse as a socio-legal phenomenon currently lacks a specific theory and history with which to deeply understand it. A failure to recognize the profound roots enabling economic abuse contributes to its perpetuation, trivialization, and marginalization in legal thought. Such a failure has broad implications for gender equality. This Article offers a history and a theory through which to understand the phenomenon’s deep roots, as well as a way to think critically about power and equality in family-life in this new, seemingly more egalitarian era.<sup>7</sup>

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2. June Carbone & Naomi Cahn, *Unequal Terms: Gender, Power, and the Recreation of Hierarchy*, in 69 *STUD. IN L., POL., AND SOC’Y* 189, 208 (Austin Sarat ed., 2016).

3. Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 *CAL. L. REV.* 951, 955 (2012).

4. When one thinks of intimate partner violence, one tends to imagine physical violence, such as battering, and sexual violence, such as marital rape. See ELIZABETH M. SCHNEIDER, ET AL., *DOMESTIC VIOLENCE AND THE LAW: THEORY AND PRACTICE* 5-6, 162, 202-04 (3rd ed. 2013) (noting that while domestic violence is often thought of as primarily physical, other forms of abuse that are intended to affect the victims may be involved, but that the legal system often focuses on battering).

5. Littwin, *supra* note 3; see Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 *U.C. DAVIS L. REV.* 1107 (2009) [hereinafter Johnson, *Redefining Harm*].

6. LEIGH GOODMARK, *A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM* 38–42 (2013).

7. On the need for a theory of power in family-life in this era of formal legal equality, see Carbone & Cahn, *supra* note 2, at 192. Of course, family today takes many forms. However, this Article pertains to a heterosexual family and its gendered features, which are not shared by all heterosexual families. For the importance of class and race in understanding how inequality is being reproduced in families, see JUNE CARBONE & NAOMI CAHN, *MARRIAGE MARKETS: HOW INEQUALITY IS REMAKING THE AMERICAN FAMILY* 2-7, 77-80 (2014). Similarly, the Article in no way seeks to render all women as essentially experiencing the same oppressions, discriminations, liberties, and resources, see Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *STAN. L. REV.* 1241 (1991), albeit studies of economic abuse concerned mostly lower-income women, Littwin, *supra* note 3, at 962, important studies on the intersection of class, race, and disabilities with regards to economic abuse are necessary for future examination. Currently, my purpose is to ignite a conversation on some of the shared structural features enabling this phenomenon. Similarly, the Article acknowledges the different masculinities at play, but focuses on hegemonic masculinity as the most relevant social structure to the perpetuation of economic abuse. See Nancy E. Dowd et al., *Feminist Legal Theory Meets Masculinities Theory*, in *MASCULINITIES AND THE LAW: A MULTIDIMENSIONAL APPROACH* 25 (Frank Rudy Cooper & Ann

Awareness and research of economic abuse are relatively new but growing, both in law<sup>8</sup> and social sciences,<sup>9</sup> indicating that myriad forms of economic abuse and financial coercion take place within families. Most research on economic abuse in the family has focused on intimate partners,<sup>10</sup> and most research shows that economic abuse is a gendered phenomenon<sup>11</sup> with devastating consequences for women's safety, agency, and economic sustainability. Economic abuse can occur at any stage of a relationship and may take place both independently and in conjunction with other types of violence: including physical, sexual, and

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C. McGinley eds., 2012); NANCY E. DOWD, *THE MAN QUESTION: MALE SUBORDINATION AND PRIVILEGE* 21 (2010) [hereinafter DOWD, *THE MAN QUESTION*]. Additionally, the division between masculinity and femininity in a world in which identity is performed in various ways carries the risk of entrenching stereotypes. However, the goal here is to acknowledge that for the most part, economic abuse is a gendered phenomenon, and to challenge the gendered premises that enable it to occur.

8. Dana Harrington Conner, *Financial Freedom: Women, Money, and Domestic Abuse*, 20 WM. & MARY J. WOMEN & L. 339 (2014); Littwin, *supra* note 3; Angela Littwin, *Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence*, 161 U. PA. L. REV. 363 (2013) [hereinafter Littwin, *Escaping Battered Credit*]; Margaret E. Johnson, *Changing Course in the Anti-Domestic Violence Legal Movement: From Safety to Security*, 60 VILL. L. REV. 145 (2015) [hereinafter Johnson, *Changing Course*]; Johnson, *Redefining Harm*, *supra* note 5.

9. Adrienne E. Adams et al., *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN 563 (2008); Olufunmilayo I. Fawole, *Economic Violence to Women and Girls: Is it Receiving the Necessary Attention?*, 9 TRAUMA, VIOLENCE & ABUSE 167 (2008); Judy L. Postmus et al., *Measuring Economic Abuse in the Lives of Survivors: Revising the Scale of Economic Abuse*, 22 VIOLENCE AGAINST WOMEN 692 (2015); Judy L. Postmus et al., *Understanding Economic Abuse in the Lives of Survivors*, 27 J. INTERPERSONAL VIOLENCE 411, 412 (2012); Cynthia K. Sanders, *Economic Abuse in the Lives of Women Abused by an Intimate Partner: A Qualitative Study*, 21 VIOLENCE AGAINST WOMEN 3 (2015); Amanda Mathisen Stylianou et al., *Measuring Abusive Behaviors: Is Economic Abuse a Unique Form of Abuse?*, 28 J. INTERPERSONAL VIOLENCE 3186 (2013); Prue Cameron, *Relationship Problems and Money: Women Talk about Financial Abuse*, WIRE WOMEN'S INFORMATION 4 (2014), <http://www.aph.gov.au/DocumentStore.ashx?id=3938c7bf-ab6b-4b0e-b2d3-5617777334b&subId=411337> [http://perma.cc/2ZL2-NRD5]; Marilyn Howard & Amy Skipp, *Unequal, Trapped and Controlled: Women's Experience of Financial Abuse and Potential Implications for Universal Credit*, WOMEN'S AID & TRADE UNION CONGRESS (2015), <https://www.tuc.org.uk/sites/default/files/UnequalTrappedControlled.pdf> [http://perma.cc/KF3J-FKCX]; Nicola Sharp-Jeffs, *A Review of Research and Policy on Financial Abuse Within Intimate Partner Relationships* (Child and Woman Abuse Studies Unit (CWASU)), LONDON METRO. UNIV. 2015, <http://www.londonmet.ac.uk/media/london-metropolitan-university/london-met-documents/faculties/faculty-of-social-sciences-and-humanities/research/child-and-woman-abuse-studies-unit/Review-of-Research-and-Policy-on-Financial-Abuse.pdf> [http://perma.cc/E728-SKRG].

10. See *supra* note 9. For a study focused on elderly abuse, see Thomas L. Hafemeister, *Financial Abuse of the Elderly in Domestic Settings*, in *ELDER MISTREATMENT: ABUSE, NEGLECT AND EXPLOITATION IN AN AGING AMERICA* 382 (Richard J. Bonnie & Robert B. Wallace eds., 2003).

11. Although gender is somewhat controversial in social sciences literature on domestic violence, it is apparent that dimensions of domestic violence that implicate control are gendered. Littwin, *supra* note 3, at 978–81. See EVAN STARK, *COERCIVE CONTROL: THE ENTRAPMENT OF WOMEN IN PERSONAL LIVES* 198–227 (2007); see also Susan L. Pollet, *Economic Abuse: The Unseen Side of Domestic Violence*, N.Y. ST. B. J. 40, 41 (2011).

emotional violence.<sup>12</sup> However, it is important to understand economic abuse in its own right because it has broad implications for women's economic emancipation more generally, and because without a deeper understanding of the determinants of economic abuse, a legal response can do little to end the cycle of violence.<sup>13</sup> Producing fundamental legal change requires understanding the premises underlying the phenomenon and then imagining a path towards change.<sup>14</sup>

This Article illustrates how economic abuse is socio-legally made possible, through the use of new insights derived from the growing literature on masculinities theory and through an examination of the legal history of male power in the family and the market. Explanations about intimate partner violence, mainly physical and sexual abuse, tend to see the violence primarily as an exertion of male control over women.<sup>15</sup> Masculinities theory offers an additional theoretical underpinning for understanding (rather than accepting) economic abuse, and along with the history of breadwinning, points to the deep roots that provide a fertile ground for it to occur. It shows that eradicating economic abuse is extremely difficult because it is deeply ingrained in the interplay of hegemonic masculinity as violent, aggressive, and economically domineering and is long embedded in institutions, such as the family and the market.

This Article demonstrates how economic abuse is ingrained in notions of violence that are endemic to hegemonic masculinity and linked to seemingly more benign notions of male breadwinning, which are also closely tied to hegemonic masculinity. Both violence and breadwinning have historically been gendered male.<sup>16</sup> Dimensions of control and

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12. Chien-Chung Huang et al., *Economic Abuse, Physical Violence and Union Formation*, 35 CHILDREN & YOUTH SERV. REV. 780, 785–86 (2013).

13. See Deborah M. Weissman, *The Personal is Political—and Economic: Rethinking Domestic Violence*, 2007 BYU L. REV. 387 (2007) (arguing that global economic changes, greater economic strains, and domestic violence are correlated).

14. See Kathryn Abrams, *Destabilizing Domesticity*, 32 CONN. L. REV. 281, 282 (1999).

15. See Leigh Goodmark, *Hands Up at Home: Militarized Masculinity and Police Officers Who Commit Intimate Partner Abuse*, 2015 BYU L. REV. 1183 (2016) [hereinafter Goodmark, *Hands Up at Home*] (explaining that domestic violence of police officers has been linked to masculinity).

16. Of course, women have always worked, and for decades many have supported themselves and their families. See Arianne Renan Barzilay, *Back to the Future: Introducing Constructive Feminism for the Twenty-First Century – A New Paradigm for the Family and Medical Leave Act*, 6 HARV. L. & POL'Y REV. 407 (2012) [hereinafter Renan Barzilay, *Back to the Future*]; Arianne Renan Barzilay, *Labor Regulation as Family Regulation: Decent Work and Decent Families*, 33 BERKELEY J. EMP. & LAB. L. 119, 147 (2012) [hereinafter Renan Barzilay, *Labor Regulation as Family Regulation*] (distinguishing ideas on marriage based on class, immigration, and work status and showing how the male-breadwinner ideal was inscribed in law); Arianne Renan Barzilay, *Parenting Title VII: Rethinking the History of the Sex Discrimination Prohibition*, 28 YALE J.L. & FEMINISM 55

breadwinning are rife in hegemonic masculinity and have made economic abuse seem all the more “natural,” all the less problematic, and extremely difficult to overcome. This Article contends that neglecting to account for and be cognizant of the significance of hegemonic masculinity and the history which enables it, may significantly limit seeing possible avenues of potential redress. It is through the complex understanding of economic abuse that we can contemplate measures to unravel the bonds between masculinities, money, and control that are at the heart of economic abuse. Moreover, this Article illustrates how gender identity, which is widely recognized as germane to domestic violence, but is also often critiqued for its disregard of other structures of power,<sup>17</sup> is embedded in a historical, socio-legal structure of the market and the family. This Article is therefore an effort to bring domestic violence gender-based analysis into a broader conversation about the market and the family by making the connection between the construction of hegemonic masculinity through these institutions and the way law has enabled economic abuse to be perpetuated.

This Article shows how identity is embedded in social structure and contends that economic abuse is not merely an “individual” matter requiring individual-oriented solutions, but rather a social one, based on a particular historically based construction of relationships between the law, the market, and the family. This link between identity and social structure promotes the possibility to imagine not only individual-based remedies, but structural transformations to put an end to economic abuse. Such intervention requires an undertaking much larger and more diffuse than suggesting a revision to criminal statutes to account for economic abuse or an expansion of the purview of civil protection orders, although such expansion may be required. I suggest two overarching principles: (1) destabilizing hegemonic masculinity, including a relinquishment of economic dominance as its staple, on the one hand, and an expansion of men’s other productive roles in the family, on the other;<sup>18</sup> and (2) promoting women’s agency by enhancing their economic and social resilience through resources and legal institutions.

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(2016) [hereinafter Renan Barzilay, *Parenting Title VII*]. Similarly, violence also is not merely the province of men, but women are disproportionately facing the threat of violence in their intimate lives. See Ruth Colker, *Freedom to Choose to Marry*, 30 COLUM. J. GENDER & L. 383 (2016).

17. Deborah M. Weissman, *Law, Social Movements, and the Political Economy of Domestic Violence*, 20 DUKE J. GENDER L. & POL’Y 221, 224 (2013).

18. Some men, of course, may already take important caretaking roles in their families, yet according to masculinities theory, hegemonic masculinity, nonetheless, pressures men into certain gendered roles. See Dowd et al., *supra* note 7, at 28, and *infra* parts III and IV.

Part II provides an overview of the existing literature on economic abuse and describes the social science data on its manifestations, outlining its characteristics. Part III provides a legal history of male control within the family, pointing to the the market, the family, and the law as interdependent institutions that evolved in tandem. It also explains how these institutions form the background to the “naturalization” of economic abuse and how they currently provide socio-legal structure that enables economic control by husbands. It shows that the law’s construction of the “ideal worker” norm has contributed to men’s economic supremacy. Moreover, the law’s “laissez-faire” approach to financial management during marriage has been complacent in the perpetuation of economic abuse and is misguided, given new insights from masculinities theories that stress the Gordian knot between hegemonic masculinity and economic control over the family. These insights, illustrated in Part IV, concern the way hegemonic masculinity is constructed through economic providership, control, violence, and the differentiation from women. Taken together, Parts III and IV explain how economic abuse is enabled and provide a way to think about power in this new age of marriage equality. Part V points to possible avenues for change and the fundamental transformations that ending economic abuse entails. The epilogue, Part VI, concludes on an optimistic note, hoping that such transformations are within reach.

## II. INTRODUCING ECONOMIC ABUSE

Social scientists have defined economic abuse as tactics that control a woman’s ability to acquire, use, and maintain economic resources, thus threatening her economic security and potential for self-sufficiency.<sup>19</sup> Yet economic abuse has largely been ignored by the legal system, which has focused on physical and sexual harms, rather than on manifestations of coercive control.<sup>20</sup> Economic abuse is rarely publicly discussed,<sup>21</sup> perhaps because it may occur in what otherwise seem like non-violent intimate

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19. Adams et al., *supra* note 9, at 565. While economic abuse may occur in the reverse, most of the literature suggests it is usually operated on women. *See supra* note 11.

20. GOODMARK, *supra* note 6, at 38–42. *See Johnson, Changing Course, supra* note 8, at 149 (“Domestic violence policy has . . . prioritized the narratives of physical violence, crime and danger over women’s experience of the broad-range of abuse to which they are subjected.”).

21. As exceptions, *see* Ginger Dean, *Financial Abuse: 6 Signs and What You Can Do About It*, HUFFINGTON POST (Sept. 27, 2014), [http://www.huffingtonpost.com/ginger-dean/financial-abuse-6-signs-a\\_b\\_5627463.html](http://www.huffingtonpost.com/ginger-dean/financial-abuse-6-signs-a_b_5627463.html) [<http://perma.cc/8LFC-7S9T>]; Laura Shin, ‘I’ll Take Care Of The Bills’: The Slippery Slope Into Financial Abuse, FORBES (Mar. 19, 2015), [www.forbes.com/sites/laurashin/2015/03/19/ill-take-care-of-the-bills-the-slippery-slope-into-financial-abuse](http://www.forbes.com/sites/laurashin/2015/03/19/ill-take-care-of-the-bills-the-slippery-slope-into-financial-abuse) [<http://perma.cc/8JNY-C3V3>].

partner relationships. Some claim economic abuse is becoming a bigger problem during volatile economic times and that it is now on the rise.<sup>22</sup> Economic abuse often results in growing economic dependence, lack of resources, uncertain economic future, homelessness, poverty, and decreased health.<sup>23</sup> In this Part, I present the practice of economic abuse, describe the data accumulated thus far on its myriad manifestations, and outline its characteristics.

Economic abuse can be defined as limiting control over economic and financial resources to which a person is entitled, by an intimate partner, in order to accomplish control by the partner or make that person dependent upon the partner.<sup>24</sup> Examples documented include stark quotidian images of women being forced to beg for money from their husbands,<sup>25</sup> being put on allowances even when the family is well-off,<sup>26</sup> or being denied access to basic necessities by the husbands' withholding of them under lock and key.<sup>27</sup> Common manifestations of economic abuse may include forbidding work, sabotaging employment opportunities, preventing the abused partner from attending job training or advancement opportunities, controlling how money is spent, not allowing the abused partner access to bank accounts or credit cards, restricting access to financial information, liquidating joint accounts, charging items on the abused partner's credit cards, not consulting the abused partner in investment or banking decisions, forcing the abused partner to run up large amounts of debt on joint accounts, hiding assets and financial resources, or forcing the abused partner to turn over public benefits.<sup>28</sup>

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22. Pollet, *supra* note 11, at 41. See Scott M. Stringer, *Economic Abuse: Untold Cost of Domestic Violence*, OFFICE OF THE MANHATTAN BOROUGH PRESIDENT, (Oct. 2012), <https://www.ilr.cornell.edu/sites/ilr.cornell.edu/files/Economic-Abuse-Untold-Cost-of-DV.pdf> [http://perma.cc/8CJN-2PDT].

23. Adams et al., *supra* note 9, at 568; Johnson, *Redefining Harm*, *supra* note 5, at 1123. Some note the special susceptibility of immigrant women, who have limited economic resources, limited English proficiency, weak connections to their community, or weak networks of support to economic abuse. See Conner, *supra* note 8. *But see* Pollet, *supra* note 11 (arguing economic abuse affects women of all social strata).

24. Adams et al., *supra* note 9, at 565; see Maureen Outlaw, *No One Type of Intimate Partner Abuse: Exploring Physical and Non-Physical Abuse Among Intimate Partners*, 24 J. FAMILY VIOLENCE 263 (2009).

25. Although economic abuse affects non-married partners, most literature refers to husbands/wives. Outlaw, *supra* note 24.

26. Howard & Skipp, *supra* note 9; see Susan Lloyd & Nina Taluc, *The Effects of Male Violence on Female Employment*, 5 VIOLENCE AGAINST WOMEN 370 (1999); Angela M. Moe & Myrtle P. Bell, *Abject Economics: The Effects of Battering and Violence on Women's Work and Employability*, 10 VIOLENCE AGAINST WOMEN 29 (2004).

27. Johnson, *Redefining Harm*, *supra* note 5, at 1109.

28. See Conner, *supra* note 8, at 364–66; Littwin, *supra* note 3, at 983–92; *About Financial Abuse*, NAT'L NETWORK TO END DOMESTIC VIOLENCE, <https://nnedv.org/content/about-financial->



Other features include preventing financial support (which may be necessary for leading a reasonable lifestyle), forcing the abused partner to cede control of her assets, preventing the abused partner from making decisions in relation to the household economy, and creating debts by one partner while imposing them on the abused partner.<sup>29</sup> Economic abuse may manifest in registering all the family property in the name of only one of the spouses, stealing money and destroying family assets, withholding information about money, not complying with one's undertaking to care for children, and imposing the financial burden on the caretaking party.<sup>30</sup> Such features often have long term effects on women's employment, credit scores, and financial sustainability.

These features have been organized by social scientists into three main categories.<sup>31</sup> The first is restrictions on accumulating resources. This category includes behaviors that prevent the abused partner from earning a living with her own capabilities. At times, the abused partner is prevented by means of an outright restriction, and other times by means of thwarting her attempts to arrive at work interviews, preventing the issuance of a driver's license, imposing child-care responsibilities, restricting her ability to procure financial resources independently, or to acquire education.<sup>32</sup> The second category is restrictions on the use of available resources and prevention of information.<sup>33</sup> Examples of this category include restricting the abused partner from withdrawing cash from joint accounts, or allocating small amounts of money to her while preventing access to such accounts; restricting the use of a car, credit card, or check book; and concealing information concerning the financial situation of the spouses. The third category of economic abuse includes

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abuse/ [http://perma.cc/YJ6X-7WWN] (last visited Oct. 24, 2016); see also *Economic Abuse Fact Sheet*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, [http://www.mmgconnect.com/projects/userfiles/file/dce-stop\\_now/ncadv\\_economic\\_abuse\\_fact\\_sheet.pdf](http://www.mmgconnect.com/projects/userfiles/file/dce-stop_now/ncadv_economic_abuse_fact_sheet.pdf)

[http://perma.cc/VK5W-2KXS] (last visited Oct. 24, 2016); Research Report from Eve Buzawa, Gerald T. Hotaling, Andrew Klein, & James Byrne, *Response to Domestic Violence in a Pro-Active Court Setting—Final Report*, to U.S. DEP'T JUSTICE (Mar. 15, 2000) (unpublished report); Cynthia K. Sanders, *Domestic Violence, Economic Abuse, and Implications of a Program for Building Economic Resources for Low-Income Women: Findings from Interviews with Participants in a Women's Economic Action Program*, CTR. SOC. DEV., GEORGE WARREN BROWN SCH. SOC. WORK (Apr. 2007), <https://csd.wustl.edu/publications/documents/rp07-12.pdf> [http://perma.cc/YQN3-KEK5].

29. Cameron, *supra* note 9, at 5. See Conner, *supra* note 8; Johnson, *Redefining Harm*, *supra* note 5.

30. Pollet, *supra* note 11, at 41. See *Moving Ahead Through Financial Management*, ALLSTATE FOUND. (May 2010), [http://purplepurse.com/wp-content/uploads/2015/05/moving\\_ahead\\_through\\_financial\\_management\\_module\\_two.pdf](http://purplepurse.com/wp-content/uploads/2015/05/moving_ahead_through_financial_management_module_two.pdf) [http://perma.cc/TU4A-Q49B].

31. Adams et al., *supra* note 9, at 563, 565–67.

32. Adams et al., *supra* note 9, at 565.

33. *Id.* at 566.

exploitation of resources.<sup>34</sup> This category consists of stealing family money, betting on it, and destroying property. Such exploitation can also manifest itself in forcing the abused partner to work while controlling her earnings<sup>35</sup> or creating a coerced debt (a nonconsensual, credit-related transaction which includes taking out credit cards in a partner's name); forcing her to take out a loan or sign a quitclaim deed to a home; or excessively charging a partner's credit card.<sup>36</sup> The common denominator of all these forms of behavior is that the spouse creates an increased dependence of the abused partner on her spouse, and also that these behaviors constitute a means for continuing such dependence.

This phenomenon is not unique to the United States. Notwithstanding the cultural and social variations, economic abuse is increasingly gaining recognition as a social problem in countries as

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34. *Id.* at 567.

35. *Id.* at 566.

36. Littwin, *supra* note 3, at 986–1000.

diverse as Australia,<sup>37</sup> Egypt,<sup>38</sup> England,<sup>39</sup> Israel,<sup>40</sup> Lebanon,<sup>41</sup> and Turkey,<sup>42</sup> yet with the core centrality of gender apparent. Within the

37. In Australia, more than 200 documented cases' descriptions were remarkably alike; thus, for example, on a regular basis a woman was prevented from driving a car to visit friends or family members because of the costs of gas; a woman was required to keep a book accounting for every dollar spent; and a mother of three was not allowed to do the shopping for the household, and when she was allowed her husband would check each item in the shopping cart and would decide which goods were necessary to be bought. Women also reported that their spouses would use all their financial resources for gambling purposes. See Cameron, *supra* note 9. Another study in Australia discovered a phenomenon of men who had deprived their spouses of money to the point where they had no possibility of buying food, clothing, hygienic products, and travelling on public transport. It was further discovered that men made use of the family money for themselves, pursuant to their wish alone, to the extent that the wife was barred from making any financial decisions. Elizabeth Branigan, "His Money or Our Money?" *Financial Abuse of Women in Intimate Partner Relationships*, REPORT BY THE COBURG BRUNSWICK CMTY. LEGAL & FIN. COUNSELLING CTR. INC. 20–22 (2004), [www.communitylaw.org.au/clc\\_morelandhome/cb\\_pages/images/238\\_Financial\\_Abuse\\_Projec.pdf](http://www.communitylaw.org.au/clc_morelandhome/cb_pages/images/238_Financial_Abuse_Projec.pdf) [<http://perma.cc/NXS4-DHCX>].

38. A study conducted in Egypt among women who experienced economic abuse discovered that 25% of the women reported that their spouse had forced them to take out a loan for family purposes in their names exclusively, and 14% of the women said that their spouses refused to withdraw money for their personal expenses. Ibrahim F. Kharboush et al., *Spousal Violence in Egypt*, POPULATION REFERENCE BUREAU (Sept. 2010), <http://www.prb.org/pdf10/spousalviolence-egypt.pdf> [<http://perma.cc/U5S7-VNSH>]; Jinan Usta et al., *Economic Abuse in Lebanon: Experiences and Perceptions*, 19 *VIOLENCE AGAINST WOMEN* 356, 358 (2013).

39. In England, women stated that when they were allowed to use credit they were forced to explain and justify every charge, and they were constantly in fear since their needs and the reasons they gave for them were never considered justifiable reasons in the eyes of their spouses. There were also descriptions of cases where women worked and their husbands would react with jealousy and suspicion, confiscating their credit cards while allocating them a daily cash allowance. When interviewees were asked how the economic abuse had expressed itself, 76% of them responded that their spouses concealed financial information from them, 68% noted that important financial decisions were passed without their knowledge, 65% were required to detail how they spent their money, and 54% described how their spouses forced them to ask them for money when they needed it. Howard & Skipp, *supra* note 9, at 22–23, 29.

40. In Israel, a survey found that 5% of the women who live with spouses and who run a joint household report that they are not free to independently manage their own or the joint bank account, even when it comes to daily expenses such as buying food and medicine; 21% of those surveyed reported that their spouses examine their economic expenses; and 9% of those surveyed noted that they required the approval of their spouse to make any purchase or to buy anything; and 14% noted that they had no information about their spouses' income and property. Other studies reveal that among applications for social services in the hospitals and in the community with respect to spousal violence, approximately 4% of the applicants complained about economic abuse and/or withholding economic rights. See Arianne Renan Barzilay & Shirley Youseri, *Economic Abuse in the Family*, 39 *TEL AVIV L. REV.* 613 (2016) (on file with author).

41. A study conducted among women in Lebanon found that 45% of the women who were interviewed experienced violence which was expressed in an economic way on the part of their spouse. Usta et al., *supra* note 38, at 358.

42. In a study in Turkey in which more than one thousand women took part, it was discovered that approximately 25% of them experienced or were experiencing economic abuse. Taner Akar et al., *The Prevalence of Domestic Violence Against Women Among a Group Woman: Ankara, Turkey: Domestic Violence Against Women in Ankara*, 25 *J. FAM. VIOLENCE* 449, 451 (2010).

framework of the family, economic abuse has gender features, and most studies show that the man was preventing the woman from access to the money.<sup>43</sup>

Economic abuse has begun to gain recognition as a genuine form of domestic violence. The U.S. Department of Justice curiously includes it in its definition of domestic violence.<sup>44</sup> Yet economic abuse remains rather peripheral in domestic violence law, policy, and scholarship, which still primarily focuses on physical and sexual harms.<sup>45</sup> Economic abuse lacks a history and a theory with which to understand it, which may inform possible avenues of redress. Scholars have claimed that economic abuse is a real harm to women, and several organizations<sup>46</sup> have responded by articulating the manifestations of economic abuse. However, economic abuse still suffers marginal recognition at best. This may be because, unlike physical domestic violence, which we have been educated on by feminist lawmaking to reject as a prerogative of the marital relationship,<sup>47</sup> economic abuse seems more benign, more ordinary, and even more natural (except perhaps in circumstances when accompanied by physical or sexual harm). Its seemingly naturalness stems from its deep roots in both coverture and the history of gender roles in the market and in the family. I now turn to this history.<sup>48</sup>

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43. Pollet, *supra* note 11, at 41. There were also few reported cases of same-sex economic abuse. See Cameron, *supra* note 9, at 15.

44. It defines domestic violence as “a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.” *Domestic Violence*, U.S. DEP’T JUSTICE, <https://www.justice.gov/ovw/domestic-violence> [http://perma.cc/3ECH-7EJF] (last visited Oct. 25, 2016).

45. On the marginal place of economic abuse, see GOODMARK, *supra* note 6, at 38–42; Johnson, *Changing Course*, *supra* note 8.

46. These include the National Coalition Against Domestic Violence, *Home*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE, <http://www.ncadv.org/> [http://perma.cc/MM8X-ZMSP] (last visited Oct. 25, 2016); Redevelopment Opportunities for Women’s Economic Action (REAP) in St. Louis, Missouri, *Home*, FAMILY RES. CTR., <https://www.frmo.org/services/row/> [http://perma.cc/9ZJ4-EB8G] (last visited Oct. 25, 2016); The Allstate Foundation in partnership with the National Network to End Violence (NNEDV); *NNEDV & The Allstate Foundation Celebrate 10 Years of Economic Empowerment Programs for Survivors*, NAT’L NETWORK TO END DOMESTIC VIOLENCE, [https://nnedv.org/latest\\_update/nnedv-the-allstate-foundation-celebrate-10-years-of-economic-empowerment-programs-for-survivors/](https://nnedv.org/latest_update/nnedv-the-allstate-foundation-celebrate-10-years-of-economic-empowerment-programs-for-survivors/) [http://perma.cc/Y37B-JH2R] (last visited Oct. 25, 2016).

47. See ELIZABETH M. SCHNEIDER, *BATTERED WOMEN AND FEMINIST LAWMAKING* 5, 13–16, 20 (2000).

48. A comprehensive history of women’s subordination in the family and the market since coverture is beyond the scope of this Article. See NANCY F. COTT, *PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION* 3, 93–94 (2000); ALICE KESSLER-HARRIS, *IN PURSUIT OF EQUITY: WOMEN, MEN, AND THE QUEST FOR ECONOMIC CITIZENSHIP IN 20TH-CENTURY AMERICA* 22 (2001);

### III. BETWEEN COVERTURE AND BREADWINNING

The family, the market, and the law are interrelated institutions. This Part shows that economic abuse is a remnant of coverture ideology, modified through the supremacy of the male-breadwinner/female-dependent model, and that it is enabled through the primacy of “ideal-worker” norms and a general legal aversion to interfere in the private financial matters in an ongoing marriage. It seems that an important part of the marginalization of economic abuse and its trivialization stems from two basic assumptions, which are still significantly conceived of as natural: (1) the family as a private, autonomous space in which government should not intervene,<sup>49</sup> and (2) the conception of the husband as the main breadwinner and therefore the domineering economic figure.<sup>50</sup> These two assumptions, both the myth of the family as a private autonomous space and the conception of the husband as financial controller, are related to the age-old legal doctrine of coverture, features of which continue to reverberate still today.<sup>51</sup> The marginal recognition of economic abuse in the legal system<sup>52</sup> is entrenched in the fear of entering into the private sphere of the family and “interfering” with the intimate economic relationship, where the husband’s day-to-day control of the family’s finances is conceived as natural and generally inappropriate for judicial intervention.

Historically, the law has formed gendered identities for wives and husbands.<sup>53</sup> Marriage was a profoundly hierarchical relationship.<sup>54</sup> The coverture doctrine that existed in Anglo-American law for centuries

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HENDRIK HARTOG, *MAN AND WIFE IN AMERICA: A HISTORY* 93-166 (2000); Deborah Dinner, *The Costs of Reproduction: History and the Legal Construction of Sex Equality*, 46 HARV. C.R.–C.L. L. REV. 415 (2011). My aim is to highlight the features in the history of gender, law, work, and family that have allowed and continue to enable economic abuse to take hold.

49. See LYNN D. WARDLE & LAURENCE C. NOLAN, *FUNDAMENTAL PRINCIPLES OF FAMILY LAW* 40 (2002). For the theoretical incoherence of the non-intervention doctrine, see Frances E. Olsen, *The Myth of State Intervention in the Family*, 18 U. MICH. J.L. REFORM 835 (1985). For the historical inaccuracy of this myth, see Renan Barzilay, *Labor Regulation as Family Regulation*, *supra* note 16 (showing that labor regulation has constructed a particular family model).

50. Kathryn Abrams has critiqued the “widely-held” notion that when the husband is the primary wage earner and the wife does the lion’s share of family-care work, the man “owns” the property. Abrams, *supra* note 14, at 281.

51. JILL ELAINE HASDAY, *FAMILY LAW REIMAGINED*, 97–120 (2014); Reva B. Siegel, *The Modernization of Marital Status Law: Adjudicating Wives’ Rights to Earnings, 1860-1930*, 82 GEO. L.J. 2127 (1994) [hereinafter Siegel, *The Modernization of Marital Status Law*]; Reva B. Siegel, “*The Rule of Love*”: *Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117 (1996) [hereinafter Siegel, *The Rule of Love*].

52. See *supra* note 200 and *infra* notes 220-264.

53. Naomi Cahn, *The Power of Caretaking*, 12 YALE J.L. & FEMINISM 177, 186 (2000).

54. HARTOG, *supra* note 48, at 2.

transformed a man and a woman who entered in marriage into husband and wife.<sup>55</sup> Marriage consolidated the legal persona of both individuals into the legal persona of the husband. The wife became “covered” by her husband and was submerged into his legal existence. The significance of this submergence, *inter alia*, was that the wife lost control of her property, and control of her property and performance of activities with her financial resources was granted to the husband,<sup>56</sup> who in turn was required to support her.<sup>57</sup>

For generations, under the widespread family model, the husband acquired his wife and her services, and his role was to provide for her.<sup>58</sup> The coverture doctrine enabled physical violence in the family as a “natural” offshoot thereof. Because the husband was responsible for his wife’s behavior, he was given the power to “educate” her, even by physical force.<sup>59</sup> Anglo-American common law authorized a husband to strike his wife so long as he did not cause her permanent damage, as an aspect of male control of the family.<sup>60</sup> Violence was protected from legal intervention by the husband’s prerogative and by the veil of family privacy.<sup>61</sup> The idea of family privacy over ongoing mundane family affairs perpetuated the gendered power relationship and contributed to the subjugation of women by men within the family.<sup>62</sup> The feminist struggle, regarding physical and sexual abuse, raised awareness to the need to understand what was happening in the domestic sphere.<sup>63</sup> Ultimately, it was established that the husband has no right to act with physical violence toward his wife. However, the courts still continued to relate differently to the striking of a woman within the framework of marriage, for fear of interfering in the privacy of the family.<sup>64</sup> Hence, through the doctrine of

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55. “By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection and cover, she performs everything.” WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 442 (1765).

56. HARTOG, *supra* note 48, at 93–106.

57. *Id.* at 115–18, 136–37.

58. Zvi Triger, *Introducing the Political Family: A New Road Map for Critical Family Law*, 13 THEORETICAL INQUIRES IN L. 361, 367–68 (2012).

59. HARTOG, *supra* note 48, at 115–16.

60. Siegel, *The Rule of Love*, *supra* note 51, at 2118.

61. *Id.* at 2196–206.

62. SCHNEIDER, *supra* note 47, at 87.

63. JEANNIE SUK, AT HOME IN THE LAW: HOW THE DOMESTIC VIOLENCE REVOLUTION IS TRANSFORMING PRIVACY 4 (2009).

64. Littwin, *supra* note 3, at 955–57.

coverture and its ideological remnants, such as the assumption of family autonomy, different types of violence in the family have been condoned.<sup>65</sup>

Even after coverture was critiqued by feminists and was changed as a result of their efforts and other socio-economic forces,<sup>66</sup> courts have continued to invoke it in “an idiom peculiar to the industrial era,”<sup>67</sup> defining the role of the husband in the family as the family breadwinner.<sup>68</sup> Reva Siegel notes that “notwithstanding the putative abolition of coverture, women in the industrial era found themselves economically disempowered in marriage and impoverished at divorce—and still find themselves so today.”<sup>69</sup> She argues that the changes in that antiquated body of law were merely modernized to enable the continuation of regulated gender relations.<sup>70</sup> While coverture doctrine formally changed, the deep conception of the husband’s financial control of family assets has continued to dominate, given most husbands’ traditional breadwinning roles. These roles were constructed via the Industrial Revolution, which created a separation between the domestic-private sphere and the market-public sphere.<sup>71</sup>

The Industrial Revolution transformed the majority of working people from self-employed agricultural workers to wage earners working for large industrial firms.<sup>72</sup> Unlike the pre-industrial, agrarian era, in which all members of the family worked together to sustain the family, the Industrial Revolution invented an iconic figure of dependency—the housewife.<sup>73</sup> This figure melded women’s traditional sociological and

65. Siegel, *The Rule of Love*, *supra* note 51, at 2150-74.

66. Serena Mayeri, *Marriage (In)equality and the Historical Legacies of Feminism*, 6 CAL. L. REV. CIR. 126 (2015).

67. Siegel, *The Modernization of Marital Status Law*, *supra* note 51, at 2129.

68. *Id.* at 2127 (citing *Lewis v. Lewis*, 245 S.W. 509, 511 (Ky. 1922)), “[A]t common law the husband and wife are under obligation to each other to perform certain duties. The husband to bring home the bacon, so to speak, and to furnish a home, while on the wife devolved the duty to keep said home in a habitable condition.”)

69. Siegel, *The Modernization of Marital Status Law*, *supra* note 51, at 2131.

70. *Id.* at 2132, 2140. See Reva B. Siegel, *Home As Work: The First Woman’s Rights Claims Concerning Wives’ Household Labor, 1850-1880*, 103 YALE L.J. 1073 (1994) (explaining that the women’s rights movement originally sought to abolish the doctrine of marital service by enacting joint property laws that would give husbands and wives equal rights in family assets).

71. See Cahn, *supra* note 53. For a critique of the separation narrative, see HASDAY, *supra* note 51, at 67–96; Frances Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497, 1499–501, 1507 (1983).

72. See Arianne Renan Barzilay, *Women at Work: Towards an Inclusive Narrative of the Rise of the Regulatory State*, 31 HARV. J.L. & GENDER 169, 175 (2008) [hereinafter Renan Barzilay, *Women at Work*].

73. Nancy Fraser & Linda Gordon, *A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State*, 19 SIGNS 309, 318 (1994).

political subordination with new economic dependence.<sup>74</sup> The Industrial Revolution reorganized work and family and created a stark line between the public and the private spheres.<sup>75</sup> Men and women were engaged in separate spheres of activity in the nineteenth century: men in the market, business, and the professions, and women in the home.<sup>76</sup> Women were largely “drafted” into motherhood and family-care, while men’s caretaking was “voluntary.”<sup>77</sup> The male-breadwinner/woman-dependent model established a gender system that sent men to the marketplace while requiring women to perform unpaid domestic work.<sup>78</sup> Family-care work and productive work became separated, rendering women’s work economically invisible and making them economically dependent on the earnings of men.<sup>79</sup> Subsequently and pragmatically that usually meant that authority over resources and allocation of duties rested with the husband.<sup>80</sup> Although the husband-breadwinner/wife-dependent model was unrealistic for many groups,<sup>81</sup> this model assumed a “naturalness,” which was institutionalized and supported by the law,<sup>82</sup> with the marriage relationship constituting a pillar of the family.<sup>83</sup>

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74. *Id.* Although not all families conformed to this ideal, especially many working-class, immigrants, and black women, whom have long worked in the market. See LYNN Y. WEINER, FROM WORKING GIRL TO WORKING MOTHER: THE FEMALE LABOR FORCE IN THE UNITED STATES, 1820-1980 13-30 (1985); Renan Barzilay, *Women at Work*, *supra* note 72, at 175; Marion Crain, “Where Have All the Cowboys Gone?” *Marriage and Breadwinning in Postindustrial Society*, 60 OHIO ST. L.J. 1877, 1903 (1999).

75. JUDITH STACEY, BRAVE NEW FAMILIES: STORIES OF DOMESTIC UPHEAVAL IN LATE-TWENTIETH-CENTURY AMERICA 8 (1998); see Pierre Bourdieu, *On the Family as a Realized Category*, 13 THEORY, CULTURE & SOC’Y 19, 20-21 (1996) (considering the family “a well-founded fiction”); Katharine Silbaugh, *Turning Labor into Love: Housework and the Law*, 91 NW. U. L. REV. 1 (1996).

76. Of course, some women, particularly immigrant, black, and working-class women had worked in the marketplace. See JOANNE J. MEYEROWITZ, WOMEN ADRIFT: INDEPENDENT WAGE EARNERS IN CHICAGO 1880-1930, at xvii (1988); WEINER, *supra* note 74, at 4.

77. Karen Czapskiy, *Volunteers and Draftees: The Struggle for Parental Equality*, 38 UCLA L. REV. 1415, 1451-57 (1991).

78. See ALICE KESSLER-HARRIS, OUT TO WORK: A HISTORY OF WAGE-EARNING WOMEN IN THE UNITED STATES 120, 128 (20th anniversary ed. 2003); Laura T. Kessler, *Feminism for Everyone*, 34 SEATTLE U. L. REV. 679, 686 (2011) (discussing the price women pay for domesticity); Laura T. Kessler, *Transgressive Caregiving*, 33 FLA. ST. U. L. REV. 1, 44-45 (2005) (explaining the impracticalities of the family wage system).

79. STACEY, *supra* note 75, at 8 (“Women devoted increased attention to nurturing fewer . . . children as mothering came to be . . . [a] demanding vocation [and] . . . [l]ove and companionship became the ideal purposes of marriages . . .”).

80. Renan Barzilay, *Labor Regulation as Family Regulation*, *supra* note 16, at 127.

81. STACEY, *supra* note 75, at 5-10.

82. MARTHA ALBERTSON FINEMAN, THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES 150 (1995).

83. Alice Ristoph & Melissa Murray, *Disestablishing the Family*, 119 YALE L.J. 1236, 1251-52 (2010).



Women have historically been marginalized and excluded from the locus of money-making. Although women have always worked inside the home, and increasingly in the market, their market work was often considered a mere detour until marriage.<sup>84</sup> When women engaged in marketplace labor they were paid less than men for the same jobs. Wages were for the breadwinners: men supporting their families.<sup>85</sup> Women were not considered real workers or family breadwinners deserving of adequate wages. Money women earned in the market was considered “special money,” coined as “pin money” or “allowance,” marking it as different from wages.<sup>86</sup> Even after women had begun to enter in growing numbers into the paid workforce in the early decades of the twentieth century,<sup>87</sup> during times of economic downturn, the focus of public concern about unemployment was on working men, who were understood as providers for their families.<sup>88</sup> Scholars contend that the New Deal helped re-erect the husband’s place in the family as the necessary breadwinner and provider:<sup>89</sup> laws were aimed at breadwinners and heads of families, resting on the assumption that women were not real workers and family providers.<sup>90</sup> To this day, scholars note that the labor market is gendered male. It is premised on an “ideal worker,” one that is unencumbered by familial caregiving responsibilities and is free to work long hours at any time.<sup>91</sup> Law itself has structured workplace norms that favor “ideal workers,” and has largely failed to accommodate those with family-care responsibility.<sup>92</sup> Today, concentration of wealth and power in the market is linked to top executive ranks and the most lucrative professions—which are still disproportionately male.<sup>93</sup> Despite advances in women’s

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84. Renan Barzilay, *Labor Regulation as Family Regulation*, *supra* note 16, at 133, 145.

85. ALICE KESSLER-HARRIS, *A WOMAN’S WAGE: HISTORICAL MEANINGS AND SOCIAL CONSEQUENCES* 7 (updated ed. 1990); Cahn, *supra* note 53, at 191.

86. Viviana A. Zelizer, *The Social Meaning of Money: “Special Monies,”* 95 *AM. J. SOCIOLOGY* 342, 344 (1989).

87. Renan Barzilay, *Labor Regulation as Family Regulation*, *supra* note 16, at 140.

88. *See* COTT, *supra* note 48, at 172.

89. *Id.* at 158, 172–74; Renan Barzilay, *Labor Regulation as Family Regulation*, *supra* note 16, at 143.

90. *See* Renan Barzilay, *Labor Regulation as Family Regulation*, *supra* note 16, at 144–45.

91. In regards to the ideal worker norm, *see* JOAN WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT*, 20 (2000) [hereinafter WILLIAMS, *UNBENDING GENDER*].

92. *Id.*; Renan Barzilay, *Back to the Future*, *supra* note 16; Renan Barzilay, *Parenting Title VII*, *supra* note 16; Joan C. Williams & Nancy Segal, *Beyond the Maternal Wall: Relief for Family Caregivers who are Discriminated Against on the Job*, 26 *HARV. WOMEN’S L.J.* 77 (2003).

93. Carbone & Cahn, *supra* note 2, at 190.

marketplace labor participation and earning,<sup>94</sup> women still earn less than men, and mothers, in particular, have even lower earnings.<sup>95</sup>

Within marriage, women are disproportionately the individuals who provide care to others.<sup>96</sup> Men still take fewer parental leaves and actual parental roles have changed relatively little.<sup>97</sup> Mothers and caregivers are often marginalized in the workforce because of “ideal worker” norms of extremely long hours that assume a full-time family caretaker at home, and are also marginalized in their families because of the notion that he who earns the money owns it. As Kathryn Abrams observed, it is a widely held premise or assumption that when the husband is the primary wage earner and the wife does the lion’s share of family-care work, the man “owns” the property.<sup>98</sup> Even as women earn more money, these deep-rooted assumptions about men’s economic roles and privileges seem to continue.

As the twentieth century neared a close, a postindustrial labor market enmeshed in a postindustrial society gave increasing rise to post-modern families.<sup>99</sup> Today, law and society have opened up a diverse array of familial relationships, as same-sex partnerships, single-parent households, and dual-earner households are becoming increasingly common.<sup>100</sup> Yet, for most heterosexual relationships, elements of the traditional family have remained intact. Many feminists have identified caregiving as a practice to which a wide range of women are still socialized.<sup>101</sup> Women still conduct more family-care work and earn less in the market than men, thus making them more dependent on male earners.<sup>102</sup> The current

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94. Vicki Schultz, *Taking Sex Discrimination Seriously*, 91 DENV. U. L. REV. 995 (2015) (noting the progress that women have made in the labor market). The gaps have nonetheless narrowed mostly at the lower paying, non-skilled jobs. See Carbone & Cahn, *supra* note 2, at 197.

95. Cahn, *supra* note 53, at 188.

96. Colker, *supra* note 16, at 388.

97. Cahn, *supra* note 53, at 184. Notwithstanding changes from previous generations, and changes due to times of economic unrest, see KATHRYN EDIN & TIMOTHY J. NELSON, *DOING THE BEST I CAN: FATHERHOOD IN THE INNER CITY* 16-18, 179-88 (2013) (asserting that economic and cultural changes have transformed the meaning of fatherhood among the urban poor).

98. Abrams, *supra* note 14, at 281–82.

99. STACEY, *supra* note 75, at 16–17.

100. Ariela R. Dubler, *Constructing the Modern American Family: The Stories of Troxel v. Granville*, in *FAMILY LAW STORIES* 95, 111 (Carol Sanger ed., 2008).

101. FINEMAN, *supra* note 82, at 7-9, 47-48; Kathryn Abrams, *From Autonomy to Agency: Feminist Perspectives on Self-Direction*, 40 WM. & MARY L. REV. 805, 816 (1999) [hereinafter Abrams, *From Autonomy to Agency*].

102. See Heather Boushey, *The New Breadwinners*, CTR. AM. PROGRESS, at 32 (2009), <http://www.americanprogress.org/wp-content/uploads/issues/2009/10/pdf/awn/chapters/economy.pdf> [<http://perma.cc/PW4F-LH4P>] (stating that women still conduct more family-care work and earn less in the market than men).

marketplace workforce includes significantly larger numbers of fathers than mothers with children under eighteen years old,<sup>103</sup> although single-parent families are predominantly led by females.<sup>104</sup> In financially rewarding industries, workplace culture and the practice of working extremely long hours remain intact.<sup>105</sup> More generally, the hours now worked by the average American worker equate to roughly five extra workweeks a year for the Swedish worker, and are substantially more than those worked by workers in Canada, Germany, or France.<sup>106</sup> American employment structures have largely remained premised on the male-breadwinner family model, which assumes a caregiver at home, thus furthering the prevalence of “ideal worker” norms.<sup>107</sup> Part-time and flexible work, often unaccompanied by benefits, is severely penalized financially and unavailable for many rewarding jobs.<sup>108</sup>

Notwithstanding significant changes, remnants of coverture continue to reverberate today.<sup>109</sup> The history of casting males as breadwinners, in which women belonged to the domestic sphere and men to the market sphere, strengthened the husband’s financial control in the family, making the hetero-normative family model one in which female dependency persists.<sup>110</sup> It emerges therefore, that in the past the financial control of the husband in the family was understood as natural owing to the coverture doctrine, while nowadays, in a significant sense, it is still conceived of as natural owing to the establishment of the husband as the main breadwinner. Male domination over economic resources continues to fuel intimate partner violence in general,<sup>111</sup> and more specifically makes

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103. See HILDA L. SOLIS & KEITH HALL, U.S. DEP’T LABOR & U.S. BUREAU LABOR STATISTICS, REPORT 1018, WOMEN IN THE LABOR FORCE: A DATABOOK 13 (2009), <http://www.bls.gov/cps/wlf-databook-2009.pdf> [<http://perma.cc/464C-MYQD>]; U.S. DEP’T OF COMMERCE & EXEC. OF OFFICE THE PRESIDENT, WOMEN IN AMERICA: INDICATORS OF SOCIAL AND ECON. WELL-BEING 27 (2011), [http://www.whitehouse.gov/sites/default/files/rss\\_viewer/Women\\_in\\_America.pdf](http://www.whitehouse.gov/sites/default/files/rss_viewer/Women_in_America.pdf) [<http://perma.cc/U3BQ-Y7Z2>] [hereinafter WOMEN IN AMERICA].

104. WOMEN IN AMERICA, *supra* note 103, at 13.

105. See JANET C. GORNICK & MARCIA K. MEYERS, FAMILIES THAT WORK: POLICIES FOR RECONCILING PARENTHOOD AND EMPLOYMENT 59 (2003).

106. *Statistical Index*, ORG. ECON. CO-OPERATION & DEV. (2012), <http://stats.oecd.org/Index.aspx?DataSetCode=ANHRS> [<http://perma.cc/HX2M-N6JA>].

107. See WILLIAMS, UNBENDING GENDER, *supra* note 91, at 20.

108. See GORNICK & MEYERS, *supra* note 105, at 23–24; Michelle A. Travis, *Equality in the Virtual Workplace*, 24 BERKELEY J. EMP. & LAB. L. 283 (2003).

109. HASDAY, *supra* note 51, at 97–120; Siegel, *The Modernization of Marital Status Law*, *supra* note 51, at 2127; Siegel, *The Rule of Love*, *supra* note 51, at 2117.

110. Arianne Renan Barzilay, *You’re on Your Own, Baby: Reflections on Capato’s Legacy*, 46 IND. L. REV. 557, 570 (2013) [hereinafter Renan Barzilay, *You’re on Your Own*]; Fraser & Gordon, *supra* note 73, at 318; STACY, *supra* note 75, at 8.

111. Conner, *supra* note 8, at 363; Pollet, *supra* note 11, at 41.

economic abuse seem natural and benign. Although unmarried perpetrators may inflict economic abuse, features of marriage, such as joint bank accounts, property titled only in a husband's name,<sup>112</sup> and the general convention of "what's mine is yours" may make economic abuse easier to carry out and much harder to resist.

Law has played a significant role in the perpetuation of economic abuse. Notwithstanding that women have made progress in the workforce by narrowing some income and earnings gaps between the sexes,<sup>113</sup> what happens outside the home does not linearly translate into what happens inside the home because women's earning of money does not necessarily lead to them controlling income.<sup>114</sup> Sociologists note that "[r]egardless of how money is earned outside the home, only a minority of households manage money within the home in ways that equitably benefit both women and men,"<sup>115</sup> and that most families' money management work to the disadvantage of women.<sup>116</sup> Today women enter into contracts, own property, and earn wages, but as Angela Littwin noticed, "although the law retreated from its de jure commitment to male economic supremacy, it does not monitor de facto economic rights husbands and wives conferred on each other during their marriages."<sup>117</sup> Importantly, during a

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112. Conner, *supra* note 8, at 363; Sanders, *supra* note 28, at 32.

113. Elizabeth R. Carter, *The Illusion of Equality: The Failure of the Community Property Reform to Achieve Management Equality*, 48 IND. L. REV. 853, 853 (2015).

114. Catherine T. Kenney, *The Power of the Purse: Allocative Systems and Inequality in Couple Households*, 20 GENDER & SOC'Y 354, 359–62 (2006) (explaining that many women, already disadvantaged in earnings, either absolutely or relative to their partners, are in couples in which men's control over or withholding of income may reproduce or exacerbate their earnings disadvantage).

115. Jeffrey Dew et al., *Examining the Relationship Between Financial Issues and Divorce*, 61 FAM. REL. 615, 617 (2012).

116. Kenney, *supra* note 114, at 354; Carter, *supra* note 113, at 853–54.

117. Littwin, *supra* note 3, at 955. Discriminatory "head-and-master" laws which de jure granted the husband the exclusive right to manage and control marital property in both community property and title states were successfully challenged under the Fourteenth Amendment. See *Kirchberg v. Feenstra*, 450 U.S. 455 (1981); Marsha Levick, *The Era and Family Law: Making Equality Work for Men and Women*, 23 J. FAM. L. 521, 539 (1984). Yet because of the doctrine of marital privacy, courts generally do not intervene in families' decision-making practices even when the husband is the one making these decisions, rather than the family. Littwin, *supra* note 3, at 983–85. The famous case of *McGuire v. McGuire* (59 N.W.2d 336, 342 (Neb. 1953)), which declined to intervene when a husband refused to purchase more than bare necessities for his wife, is still representative of the courts' inclination today. Littwin, *supra* note 3, at 984. Yet others have noted that "much of recent family law has grown from rights developed under the family privacy theory, which positively permits pluralism and a diversity of family forms to flourish." Jane K. Stoever, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 VAND. L. REV. 1015, 1039 (2014). Specifically, the doctrine of marital privacy has afforded women a number of crucial protections, including access to abortion, see *Roe v. Wade*, 410 U.S. 113 (1973) (holding that the right to choose abortion is premised on right to privacy), and birth control, see *Griswold v. Connecticut*, 381 U.S. 479 (1965) (holding that privacy rights grant a right to use contraceptives). For

marriage, in common law states, the spouse that owns title controls the assets, and given that men generally earn more money than women in the market, men control most assets in the home.<sup>118</sup> Resource allocation within the family thus “naturally” follows market outcomes.<sup>119</sup>

The law remains generally supportive of earner-husbands’ decisions on how to allocate resources within the family.<sup>120</sup> Even divorce, which formally enables judicial distribution of property, usually results in each party coming away from the marriage to return to the marketplace to make their own way.<sup>121</sup> The law in most common law states perpetuates this problem<sup>122</sup> by taking a hands-off approach on how spouses manage money once it is brought into the home.<sup>123</sup> The practical and predictable consequence of this “laissez-faire” approach is that the existing gender power gap remains intact within heterosexual couples.<sup>124</sup> Anne Alstott has posited that such privileging of private ordering without the right to challenge market outcomes is itself an outcome of neoliberalism’s architecture of tragedies as private.<sup>125</sup> This architecture coincides with courts’ aversion to micromanage financial decisions during marriage.<sup>126</sup>

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a critique arguing that these reproductive rights cases should not have been decided on privacy grounds but rather on the basis of equality, see Catharine MacKinnon, *Roe v. Wade: A Study in Male Ideology*, in *ABORTION: MORAL AND LEGAL PERSPECTIVES* 45, 52–53 (Jay L. Garfield & Patricia Hennessey eds., 1984).

118. Cahn, *supra* note 53, at 187.

119. Anne L. Alstott, *Neoliberalism in U.S. Family Law: Negative Liberty and Laissez-Faire Markets in the Minimal State*, 77 L. & CONTEMP. PROBS. 25, 28 (2014).

120. *Id.* at 33. See Ann Laquer Estin, *Love and Obligation: Family Law and the Romance of Economics*, 36 WM. & MARY L. REV. 989, 998 (1995).

121. Alstott, *supra* note 119, at 34–35.

122. Carter, *supra* note 113, at 854. Community property states (in which the couple owns marital assets jointly during the marriage) are not that different in this respect. In the past, formal rules of male superiority in management of the community assets were common, making the husband the sole manager of the property. Over time, the community property states began imposing more meaningful limitations to the husband’s control by granting the wife some power to veto important transactions and de jure male preference (the old head-and-master laws) was completely abandoned by the 1980s. Yet, the gender neutral property management systems put instead, did not significantly benefit women, because “money management remains a highly gendered activity—one that typically operates to the disadvantage of the wife.” *Id.* at 863–70.

123. Alstott, *supra* note 119, at 33–34; Carter, *supra* note 113, at 854.

124. Alstott, *supra* note 119, at 33–34; Carter, *supra* note 113, at 854; Littwin, *supra* note 3, at 955.

125. Alstott, *supra* note 119, at 33. While Alstott notes domestic violence as an exception, economic abuse is largely unrecognized and therefore her assertion remains representative in our context.

126. On courts’ aversion to micromanage marriage, see Mary Anne Case, *Enforcing Bargains in an Ongoing Marriage*, 35 WASH. U. J.L. & POL’Y 225 (2011); Sarah M. Buel, *Access to Meaningful Remedy: Overcoming Doctrinal Obstacles in Tort Litigation Against Domestic Violence Offenders*, 83 OR. L. REV. 945, 949 (2004) (“[F]amily law is largely premised on the belief that only minimal state intervention is warranted absent the most egregious, near-fatal conduct, with the greatest

The fact that the law does not de facto monitor the economic allocations during marriage makes the legal system rely, to a significant extent, on “male cooperation in the project of female economic independence.”<sup>127</sup> Given new insights from masculinities theory, this reliance seems grossly misguided. Insights from masculinities theory demonstrate the inextricable relationship between economic control and men’s sense of their masculinity, suggesting that relinquishing such power is intrinsically tied to a denunciation of men’s sense of themselves as masculine. It is these insights that the next Part explains.

#### IV. MASCULINITIES AND ECONOMIC ABUSE

##### A. *Preliminary Skepticism*

A preliminary question may be asked: Why should masculinities theory be relevant to a phenomenon that primarily negatively affects women when one of the professed goals of masculinities theory is bringing attention to men, their experiences, and how they are constructed?<sup>128</sup> Yet it is exactly by coming to terms with the effects of masculinities on gender relationships that masculinities theory, which centers on men and their relationships among themselves almost exclusively,<sup>129</sup> can produce insights that might help promote gender equality for both men and women. Moreover, even masculinities scholars do not suggest turning away from women because gender power dynamics are asymmetrical,<sup>130</sup> and because of the fear that masculinities theory would be used to reproduce patriarchy rather than eradicate it.<sup>131</sup> On the other hand, feminist theorists might wonder why masculinities theory should be taken into account at all and why it is necessary to unpack economic abuse through the lens of masculinities. A possible response is that masculinities theory may teach us vital lessons about how men acquire control and subjugate their subordinates. This understanding is an

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emphasis on no-fault divorce as the means to expeditious resolution of the cases.”).

127. Littwin, *supra* note 3, at 955.

128. Martha Albertson Fineman has more broadly questioned the use of identity-based theories as equality enhancing mechanisms. See Martha Albertson Fineman, *Feminism and Masculinities: Questioning the Lure of Multiple Identities*, in *EXPLORING MASCULINITIES: FEMINIST LEGAL THEORY REFLECTIONS* 16 (Martha Albertson Fineman & Michael Thomson eds., 2013); Martha Albertson Fineman, *Feminism, Masculinities, and Multiple Identities*, 13 *NEV. L.J.* 619 (2013).

129. Dowd et al., *supra* note 7, at 27.

130. DOWD, *THE MAN QUESTION*, *supra* note 7, at 65.

131. *Id.* at 105–20; Nancy E. Dowd, *Asking the Man Question: Masculinities Analysis and Feminist Theory*, 33 *HARV. J.L. & GENDER* 415, 419 (2010) [hereinafter Dowd, *Asking the Man Question*].

important step in dismantling patriarchy and promoting gender equality.<sup>132</sup> It may be helpful for two additional, related reasons. First, discussing masculinities theory seems like a promising opportunity to bring men on board with the gender equality project. Such discussion may promote awareness to the prices men pay for gender social constructs, and may mobilize men towards changing these constructs. Second, understanding the Gordian knot that is the connection between the construction of hegemonic masculinity, domination of the family, and economic domination, supports contemplating appropriate reactions to the phenomenon that are informed by the way hegemonic masculinity is established. This can effect a change in the connection between hegemonic masculinity and economic control over the family, which is particularly relevant in the context of economic abuse.

This potential to effect change is also why the perspective of masculinities theory cannot be considered separately from insights provided through feminist theories.<sup>133</sup> Thus, this Part explores “the man question” of masculinities theory<sup>134</sup>—interrogating where and how men are situated in relation to the initiation and perpetration of economic abuse.<sup>135</sup> Specifically, it explores whether and how hegemonic masculinity works to provide a basis for economic abuse. However, it asks “the man question” in a manner that is not often present in masculinities scholarship. For instance, in the context of physical domestic violence, masculinities researchers often suggest shifting the lens toward men, noting that they too are victims of domestic abuse, and seeing how they reproduce as adults the abuse they experienced during their childhood.<sup>136</sup> The path this Part follows is different, even if only because the study of economic abuse is in its early stages of recognition and appears to have a clear gender dimension. It does not inquire whether there are men who are victims of economic abuse at the hands of their female partners (surely there may be in certain contexts, although most research points to women who suffer from economic abuse), but rather investigates the elements in hegemonic masculinity that are related to the phenomenon—to violence on one hand, and the family economy on the other. A similar path was offered by masculinities researchers, but has not been applied for the most

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132. DOWD, THE MAN QUESTION, *supra* note 7, at 30; Dowd, *Asking the Man Question*, *supra* note 131, at 419.

133. DOWD, THE MAN QUESTION, *supra* note 7, at 56.

134. *Id.* at 66.

135. See Naomi Cahn & Fionnuala Ni Aoláin, *Gender, Masculinities, and Transition in Conflicted Societies*, 44 NEW ENG. L. REV. 1, 14–15 (2009).

136. DOWD, THE MAN QUESTION, *supra* note 7, at 73–139.

part.<sup>137</sup> Understanding economic abuse and using the perspective of masculinities theory provides insights for feminist legal theorists to contemplate a reaction to economic abuse.<sup>138</sup> More broadly, it also sheds light on the way power is established and reinforced in the family.

### B. *Masculinities and Feminist Theories*

Masculinities theory cannot be considered separately from insights provided through feminist theories.<sup>139</sup> Such an analysis might stop at understanding the social constructions, or worse, justify abusive behaviors based on these social constructions. Along with the descriptive understanding offered by masculinities theory, feminist theories provide critique and the normative goal of advancing gender equality. Therefore, masculinities theory should be considered in conjunction with feminist theories.<sup>140</sup>

Feminist analysis of the phenomenon of economic abuse focuses primarily on understanding the phenomenon as an expression of male dominance.<sup>141</sup> Specifically, dominance feminism emphasizes the hierarchy between men and women; the manner by which men dominate women, highlighting sexual control; and challenging social institutions, such as the law to examine the way in which they reproduce patriarchy.<sup>142</sup> Dominance feminism advocates that the “personal is the political” and calls for the politicization of the domestic sphere, and the exposure of gender subordination in the family before public, judicial, and political forums.<sup>143</sup>

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137. DOWD, *THE MAN QUESTION*, *supra* note 7, at 66. A similar approach was recently espoused by Leigh Goodmark. *See* Goodmark, *Hands Up at Home*, *supra* note 15.

138. For the importance of this approach, see Ann C. McGinley & Frank Rudy Cooper, *Masculinities, Multidimensionality, and Law: Why They Need One Another*, in *MASCULINITIES AND THE LAW: A MULTIDIMENSIONAL APPROACH* 1, 4 (Ann C. McGinley & Frank Rudy Cooper eds., 2012) [McGinley & Cooper, *Masculinities, Multidimensionality, and Law*].

139. DOWD, *THE MAN QUESTION*, *supra* note 7, at 66-67 (noting the importance of masculinities theory to men’s self-understandings and to their assuming responsibilities over their privileges).

140. DOWD, *THE MAN QUESTION*, *supra* note 7, at 121 (“Masculinities scholarship can be enormously helpful in further exposing the place of violence in masculinity norms and therefore the necessity for proactive policies; feminist scholarship can be helpful in pushing masculinities scholars to analyze how power is replicated and how it might be undermined.”).

141. Branigan, *supra* note 37, at 7.

142. CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 3 (1987) [hereinafter MACKINNON, *FEMINISM UNMODIFIED*].

143. CAROL HANISCH, “*The Personal is Political*,” in *RADICAL FEMINISM: A DOCUMENTARY READER* 113, 113 (Barbara Crow ed., 2000).



Some have dichotomized this feminist position from that of masculinities theory regarding intimate partner violence.<sup>144</sup> According to this dichotomy, feminists argue that intimate partner abuse is an assertion of power and control by the abuser over his partner. This is in line with the long-standing dominance feminist understanding of what causes intimate partner abuse<sup>145</sup>—the quest for domination and abuse as a means of asserting power and control.<sup>146</sup> By contrast, those employing masculinities theory posit that intimate partner abuse may follow a narrative of diffused, generalized violence, specifically in a hyper-masculine context, such as the police or the military.<sup>147</sup> This Article points to the fact that hegemonic masculinity embeds a notion of controlling others in and of itself, while also focusing on the larger, structural reasons for exerting that control in an abusive manner towards wives/intimate partners and in an economic context.

### C. *Masculinities as Performance*

Masculinities theory, an interdisciplinary field that draws from sociology, psychology, feminist theories, and queer theories<sup>148</sup> argues that masculinity is a performance, something that men “do” rather than innately “have” or to which they are biologically preordained.<sup>149</sup> Masculinities theory examines the role that males’ gender plays in social situations<sup>150</sup> and in social institutions.<sup>151</sup> Sociologist R.W. Connell, one of the field’s pioneers, posited that gender is not an a priori basket of characteristics, but rather a collection of experiences which are built through social interaction.<sup>152</sup> Masculine behaviors and identities manifest and establish power relationships that exist within society, not only between men and women, but also between men and other men.

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144. Goodmark, *Hands Up at Home*, *supra* note 15, at 1204-05.

145. Jana L. Jasinski, *Theoretical Explanations for Violence Against Women*, in SOURCEBOOK ON VIOLENCE AGAINST WOMEN 12 (Claire M. Renzetti et al. eds., 2001).

146. See, e.g., V. Pualani Enos, *Prosecuting Battered Mothers: State Laws’ Failure to Protect Battered Women and Abused Children*, 19 HARV. WOMEN’S L.J. 229, 233 (1996).

147. Goodmark, *Hands Up at Home*, *supra* note 15, at 1204-05.

148. DOWD, THE MAN QUESTION, *supra* note 7, at 18–20; Ann C. McGinley, *Ricci v. DeStefano: A Masculinities Theory Analysis*, 33 HARV. J.L. & GENDER 581 (2010) [hereinafter McGinley, *A Masculinities Theory Analysis*].

149. Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 782 (2000) (noting that other identity factors such as race, class, and sexual orientation give rise to multiple masculinities).

150. See Ann C. McGinley, *Policing and the Clash of Masculinities*, 59 HOW. L.J. 221 (2015) [hereinafter McGinley, *Policing*].

151. McGinley & Cooper, *Masculinities, Multidimensionality, and Law*, *supra* note 138, at 1.

152. R.W. CONNELL, *MASCULINITIES* 71 (2d ed. 2005).

Masculinity is “socially constructed through performances. That is, men construct their masculine identities through relationships with others”<sup>153</sup> oftentimes by acting differently than women.<sup>154</sup> Moreover, masculinity is performed and activated in relation to social institutions, like the family.<sup>155</sup>

A growing body of legal writing is now exploring how masculinities theory can shed light on gendered institutions, norms, and practices.<sup>156</sup> Legal scholars, such as Ann McGinley, have argued that masculinities theory<sup>157</sup> may prove helpful in understanding the motives underlying the harmful behaviors of men<sup>158</sup> and will eventually lead to increased gender equality.<sup>159</sup> Nancy Dowd maintains that masculinities theory may prove helpful in understanding how male privilege and dominance become established.<sup>160</sup>

#### D. Hegemonic Masculinity

Masculinities theorists contend that most men “attain” their masculinity through conforming to the social expectations and codes

153. McGinley, *A Masculinities Theory Analysis*, *supra* note 148, at 586.

154. JAMES MESSERSCHMIDT, *MASCULINITIES AND CRIME: CRITIQUE AND RECONCEPTUALIZATION OF THEORY* 182 (1993).

155. MICHAEL S. KIMMEL, *THE GENDERED SOCIETY* 113 (2d ed. 2004).

156. *See, e.g.*, ANN C. MCGINLEY, *MASCULINITY AT WORK: EMPLOYMENT DISCRIMINATION THROUGH A DIFFERENT LENS* 17 (2016); NANCY E. DOWD, *REDEFINING FATHERHOOD* 181-212 (2000); NANCY LEVIT, *THE GENDER LINE: MEN, WOMEN, AND THE LAW* 105-122 (1998); Frank Rudy Cooper, *Against Bipolar Black Masculinity: Intersectionality, Assimilation, Identity Performance, and Hierarchy*, 39 U.C. DAVIS L. REV. 853, 896 (2006) [hereinafter Cooper, *Against Bipolar Black Masculinity*]; Gail Dines, *The White Man's Burden: Gonzo Pornography and the Construction of Black Masculinity*, 18 YALE J.L. & FEMINISM 283 (2006); Fadi Hanna, *Punishing Masculinity in Gay Asylum Claims*, 114 YALE L.J. 913 (2005); Joan W. Howarth, *Executing White Masculinities: Learning from Karla Faye Tucker*, 81 OR. L. REV. 183 (2002); Nancy Levit, *Separating Equals: Educational Research and the Long-Term Consequences of Sex Segregation*, 67 GEO. WASH. L. REV. 451 (1999); Rachel L. Toker, *Multiple Masculinities: A New Vision for Same-Sex Harassment Law*, 34 HARV. C.R.-C.L. L. REV. 577 (1999); Valorie K. Vojdik, *Gender Outlaws: Challenging Masculinity in Traditionally Male Institutions*, 17 BERKELEY WOMEN'S L.J. 68 (2002); *see also* Richard Collier, *Masculinities, Law, and Personal Life: Towards a New Framework for Understanding Men, Law, and Gender*, 33 HARV. J.L. & GENDER 431, 433 (2010) (discussing the emergence of masculinities theory among law and society scholars).

157. The term is in plural to note the variety of male intersectionality and experience. McGinley & Cooper, *Masculinities, Multidimensionality, and Law*, *supra* note 138, at 6-7.

158. Nancy E. Dowd, *Masculinities and Feminist Legal Theory*, 32 WIS. J.L. GENDER & SOC'Y 201, 211-21 (2008); McGinley, *A Masculinities Theory Analysis*, *supra* note 148, at 585; Ann C. McGinley, *Creating Masculine Identities: Bullying and Harassment "Because of Sex."* 79 U. COLO. L. REV. 1151 (2008).

159. Ann C. McGinley, *Work, Caregiving, and Masculinities*, 24 SEATTLE U. L. REV. 703, 706 (2011).

160. Dowd, *Asking the Man Question*, *supra* note 131, at 416.

regarding males and masculinity, and through the performance of masculinity pursuant to the social constructs.<sup>161</sup> They see a structure, framework, ideology, or social norm that demands from men that they behave like “real men.”<sup>162</sup> Despite the fact that the definition of real men is variable, “hegemonic masculinity” describes the male “ideal” as one who has the most power at all times and in any given context.<sup>163</sup> Although there are multiple masculinities, certain aspects of masculinity are so dominant and honored by society that they are considered “hegemonic.”<sup>164</sup>

Hegemonic masculinity is perceived as the ideal or normative masculinity.<sup>165</sup> Hegemonic masculinity is about power: the power that men have and the power that men wield over others.<sup>166</sup> Hegemonic masculinity’s defining characteristics include aggression, competitiveness, and stoicism.<sup>167</sup> Hegemonic masculinity is white, middle-class, and heterosexual; striving towards hegemonic masculinity requires that a man continually prove that he is neither feminine nor gay.<sup>168</sup> Because most men cannot achieve normative or hegemonic

161. DOWD, THE MAN QUESTION, *supra* note 7, at 26; David S. Cohen, *Sex Segregation, Masculinities, and Gender-Variant Individuals*, in MASCULINITIES AND THE LAW: A MULTIDIMENSIONAL APPROACH 167 (Frank Rudy Cooper & Ann C. McGinley eds., 2012).

162. My use of the terms ideology/norm or ideal/normative in the context of hegemonic masculinity is not in the sense that those who use the term hegemonic masculinity consider it an ideal, of course, or normatively desirable, but rather that it is descriptive of the type of masculinity that is generally most powerful. Some scholars critique this notion even as a description, *see, e.g.*, Jeff Hearn, *From Hegemonic Masculinity to the Hegemony of Men*, 5 FEMINIST THEORY 49 (2004). But others endorse an approach that “uses the idea of hegemonic (norm-setting) masculinity to explain why women and some men are disadvantaged in a given cultural context.” McGinley & Cooper, *Masculinities, Multidimensionality, and Law*, *supra* note 138, at 5; *see also* MESSERSCHMIDT, *supra* note 154, at 79-81; R.W. Connell & James W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 GENDER & SOC’Y 829 (2005); Stephan Whitehead, *Hegemonic Masculinity Revisited*, 6 GENDER, WORK & ORG. 58 (1999). Hegemonic masculinity, first coined by CONNELL, *supra* note 152, has since acted as an organizing concept in masculinities theory. *See, e.g.*, Jamie R. Abrams, *The Collateral Consequences of Masculinizing Violence*, 16 WM. & MARY J. WOMEN & L. 703 (2010) (explaining that expanded opportunities for women in the military further entrench hegemonic masculinity); Mike Donaldson, *What Is Hegemonic Masculinity?*, 22 THEORY & SOC’Y 643, 645 (1993) (explaining hegemonic masculinity as a strategy for women’s subordination).

163. CONNELL, *supra* note 152, at 77-78.

164. *Id.* at 78-81.

165. *See* Frank Rudy Cooper, “Who’s the Man?”: *Masculinities Studies, Terry Stops, and Police Training*, 18 COLUM. J. GENDER & L. 671, 686-87 (2009) [hereinafter Cooper, *Who’s the Man?*].

166. Michael S. Kimmel, *Masculinity as Homophobia: Fear, Shame, and Silence in the Construction of Gender Identity*, in SEX, GENDER AND SEXUALITY: THE NEW BASICS, AN ANTHOLOGY 58, 61 (Abby L. Ferber et al. eds., 2009).

167. David S. Cohen, *No Boy Left Behind? Single-Sex Education and the Essentialist Myth of Masculinity*, 84 IND. L.J. 135, 144 (2009).

168. Cooper, *Who’s the Man?*, *supra* note 165, at 689-90; McGinley, *A Masculinities Theory*

masculinity, although they continuously strive for it, many men engage in behaviors intended to prove that they are, in fact, masculine.<sup>169</sup>

Despite the increased emphasis in masculinities theory being placed on the relationship between men and other men, for example, between black and white men or between men of different social classes,<sup>170</sup> it is important to consider that hegemonic masculinity is internalized, and its performance is executed in contexts where it may not necessarily be manifested only vis-à-vis other men. Hegemonic masculinity does not only exert its influence in all-male interactions, but also on the self-conception that men have of themselves. Therefore, the performance of masculinity is not a feature exclusive to cases where one is performing in front of other men. At times, it could be directed towards women in the privacy of one's home, and may be used for the purpose of aggrandizing one's self-conception of one's own masculinity.

In most western societies, hegemonic masculinity focuses on competition, aggression, control, subjugating the other, family patriarchy, and readiness to commit violence.<sup>171</sup> Repudiation, dominance over, and mistreatment of women are powerful methods of asserting masculinity.<sup>172</sup> For the most part, hegemonic masculinity is focused on being the family's provider or breadwinner.<sup>173</sup> Researchers claim that this practice helps men preserve their power over women.<sup>174</sup> Western society identifies the ability to be the economic provider of the family as masculine, and often money constitutes a "yardstick" for one's masculinity.<sup>175</sup> Scholars note that the ability to earn money, to control it, and to use it to provide for the family proves to many men their own masculinity and accordingly, strengthens their sense of self-worth.<sup>176</sup>

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*Analysis, supra* note 148, at 586.

169. McGinley, *A Masculinities Theory Analysis, supra* note 148, at 586.

170. *Id.*

171. JAMES W. MESSERSCHMIDT, *NINE LIVES: ADOLESCENT MASCULINITIES, THE BODY, AND VIOLENCE* 10 (2000); MICHAEL S. KIMMEL, *THE GENDER OF DESIRE: ESSAYS ON MALE SEXUALITY* 30 (2005).

172. Cooper, *Against Bipolar Black Masculinity, supra* note 156, at 896.

173. Dowd et al., *supra* note 7, at 43. *See also* RICHARD COLLIER, *MASCULINITY, LAW AND THE FAMILY* 195 (1995), and *infra* notes 186-208.

174. Ann C. McGinley, *Masculinities at Work*, 83 OR. L. REV. 359, 364 (2004).

175. AMALIA ROSENBLUM & ZVI TRIGER, *SPEECHLESS* 90-92 (2007); Ann C. McGinley, *Masculinity, Labor, and Sexual Power*, 93 B.U. L. Rev. 795, 802 (2013) [hereinafter McGinley, *Masculinity, Labor, and Sexual Power*].

176. Keith Cunningham-Parmeter, *Men at Work, Fathers at Home: Uncovering the Masculine Face of Caregiver Discrimination*, 24 COLUM. J. GENDER & L. 253 (2013); McGinley, *A Masculinities Theory Analysis, supra* note 148, at 614; McGinley, *Masculinity, Labor, and Sexual Power, supra* note 175.

E. *The Relationship Between Hegemonic Masculinity, Violence, and Coercive Control*

Scholars note that violence as an element of masculinity is profoundly tied to the assertion of social stature and ingrained in the edifice of the masculine self.<sup>177</sup> Others have noticed that given the association of violence and criminality with hegemonic masculinity, men may deploy violence and crime to separate themselves from women, thereby constituting their masculinity.<sup>178</sup> Men are not essentially violent, of course, and “[c]rime by men is not simply an extension of the ‘male sex role.’ Rather, crime by men is a form of social practice invoked as a resource, when other resources are unavailable, for accomplishing masculinity.”<sup>179</sup> Acting violently is therefore “one socially recognized way of being a man.”<sup>180</sup>

Various researchers contend that crime and violence are ways of performing hegemonic masculinity.<sup>181</sup> Humiliation, shaming, and competition between men are also important components in establishing hegemonic masculinity. The subjugation of women is an additional way of establishing male identity.<sup>182</sup> Thus, performance of hegemonic masculinity sometimes includes the harassment, contempt, shaming, and subjugation of the other.<sup>183</sup> Scholars claim that some men are occupied in the performance of their masculinity by aggression in order to differentiate themselves from their wives and thereby strengthen their sense of masculinity.<sup>184</sup> As Naomi Cahn observed, power within the household remains an assertion of identity.<sup>185</sup>

F. *The Relationship between Hegemonic Masculinity, Breadwinning, and the Home*

Men are commonly socialized into male roles as traditional heads of households or breadwinners.<sup>186</sup> Scholars agree that breadwinning shapes

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177. Cahn & Ni Aoláin, *supra* note 135, at 6.

178. MESSERSCHMIDT, *supra* note 154, at 84–85.

179. *Id.* at 85.

180. Harris, *supra* note 149, at 782.

181. MESSERSCHMIDT, *supra* note 154, at 83–85.

182. McGinley, *Policing*, *supra* note 150, at 245 (“[M]ale police officers denigrate female officers as well as women in the community as a means of enhancing their own masculinity.”); Goodmark, *Hands Up at Home*, *supra* note 15.

183. McGinley, *A Masculinities Theory Analysis*, *supra* note 148, at 601–03.

184. McGinley, *Masculinity, Labor, and Sexual Power*, *supra* note 175, at 801–02.

185. Cahn, *supra* note 53, at 202.

186. Cahn & Ni Aoláin, *supra* note 135, at 118.

most men's sense of self, gender, and manhood,<sup>187</sup> and note that a "providership requirement represents hegemonic masculinity in its purest form."<sup>188</sup> A key element of hegemonic masculinity is wage earning.<sup>189</sup> While men's roles cannot be essentialized, and there are important variations within different racial, ethnic, and socio-economic communities,<sup>190</sup> with regard to how men understand and perform masculinity, hegemonic masculinity posits male breadwinning as an enduring staple of manhood. To perform hegemonic masculinity, men must establish their status as breadwinners, whether through proving their physical strength in blue collar jobs, or their heroic stamina by working long hours in professional settings.<sup>191</sup> McGinley notes that today work is a site in which men earn their identities; work is competitive, and through work, men prove their masculinity by aggregating power: be it by accumulating wealth for professionals, making good salaries by middle-class men, or performing tough physical labor by men of the working-class.<sup>192</sup>

Whereas money had been coded in patriarchal culture as "masculine,"<sup>193</sup> some claim that patriarchy created a dangerous liaison between women and money.<sup>194</sup> According to this claim, femininity is characterized by patriarchal culture as passive and dependent, and women are characterized as lacking knowledge and skills in every aspect pertaining to money and finances.<sup>195</sup> Culture is saturated, according to this view, with images that express women's apparent lack of skill in everything finance-related, but shows their desire for money and their lightheadedness when using it.<sup>196</sup>

Under masculinities theory, one of the strongest commands which hegemonic masculinity makes is that one may not, at any price, act as a

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187. ROBERT L. GRISWOLD, *FATHERHOOD IN AMERICA: A HISTORY* 2 (1993).

188. Cunningham-Parmeter, *supra* note 176, at 279; Kari Palazzari, *The Daddy Double-Bind: How the Family and Medical Leave Act Perpetuates Sex Inequality Across All Class Levels*, 16 COLUM. J. GENDER & L. 429, 442–43 (2007).

189. Beth A. Burkstrand-Reid, *Dirty Harry Meets Dirty Diapers: Masculinities, At-home Fathers, and Making the Law Work for Families*, 22 TEX. J. WOMEN & L. 1, 21 (2012).

190. *Id.* at 21–23 (noting that even stay-at-home dads aim to preserve their masculinity by maintaining breadwinner status through engaging in limited, paid work allowing them to meet the breadwinning requirement "at least in spirit").

191. JOAN C. WILLIAMS, *RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER* 86 (2010); Cunningham-Parmeter, *supra* note 176, at 274–75.

192. See MCGINLEY, *supra* note 156, at 6–7, 15–16.

193. Zvi Triger, *Money, Contracts and Gender*, 18 L. & BUS. 135, 136 (2014).

194. *Id.* at 142, 150.

195. *Id.* at 139–40.

196. *Id.*

woman.<sup>197</sup> It is not surprising, therefore, that as women establish their socio-economic status in the market, this may create a fear among men as to their own manhood.<sup>198</sup> When women obtain jobs and positions historically held by men, this may threaten some men's sense of masculine identity, and some may react to this threat by engaging in harassing behaviors in the workplace.<sup>199</sup> Thus, one may, similarly, interpret incidents of economic abuse, in which men restrict their wives' employment as fear of "losing" their own masculinity.

Men face significant pressures in the workplace to abide by the breadwinning code,<sup>200</sup> and scholars have recognized the fact that the working norms in the most sought-after industries are "masculine."<sup>201</sup> This is not to suggest that all men have power in the market, but rather that the market has traditionally been gendered male. Hegemonic masculinity is intrinsically tied with men's roles as providers so much so that scholars note that "no social construct bears more power over men than the expectation that they serve as the family breadwinner,"<sup>202</sup> as the person who "brings home the bacon." As a result, women's increased economic roles as providers are "shaking men's identities to their foundations."<sup>203</sup> Furthermore, in today's volatile economy of long work hours and weak social safety nets,<sup>204</sup> fewer American men are able to satisfy the providership expectation.<sup>205</sup>

By contrast, caregiving is usually not "masculine."<sup>206</sup> Most men are still reluctant to fully take on care-work, which remains a highly feminized form of work.<sup>207</sup> Household labor symbolizes women's gender

197. Dowd et al., *supra* note 7, at 29.

198. Triger, *supra* note at 193, at 149–50; Richard H. Thaler, *Breadwinning Wives and Nervous Husbands*, N.Y. TIMES (June 1, 2013), <http://www.nytimes.com/2013/06/02/business/breadwinner-wives-and-nervous-husbands.html> [<http://perma.cc/2R8E-9B2F>].

199. See MCGINLEY, *supra* note 156, at 17 & Introduction (explaining that men are pressured to serve as breadwinners and harassing/violent behavior is a way to claim masculinity).

200. Cunningham-Parmeter, *supra* note 176, at 258.

201. Richard Collier, *Rethinking Men and Masculinities in the Contemporary Legal Profession: The Example of Fatherhood, Transnational Business Masculinities, and Work Life Balance in Large Law Firms*, 13 NEV. L.J. 410, 414 (2013).

202. KATHLEEN GERSON, NO MAN'S LAND: MEN'S CHANGING COMMITMENTS TO FAMILY AND WORK 259 (1993) ("If men no longer share a distinctive identity based on their economic role as family providers, then what is a man?").

203. MICHAEL KIMMEL, MANHOOD IN AMERICA: A CULTURAL HISTORY 288 (3d ed. 2012).

204. See Crain, *supra* note 74, at 1918–19 (arguing that post-industrialism has made the family wage unattainable for most families); Cunningham-Parmeter, *supra* note 176, at 280.

205. See Nancy E. Dowd, *Rethinking Fatherhood*, 48 FLA. L. REV. 523, 523–24 (1996) (discussing men's work patterns).

206. NANCY E. DOWD, REDEFINING FATHERHOOD 31–33 (2000).

207. Cunningham-Parmeter, *supra* note 176, at 254.

role conformance, while breadwinning symbolizes men's gender conformance. Men are often reluctant to engage in the feminine occupation of family-work, fearing their status as real men will diminish.<sup>208</sup>

*G. Economic Abuse as a Misguided Interpretation of Hegemonic Masculinity*

Masculinities theory claims that there is constant pressure on men as individuals to aspire toward the ideal of hegemonic masculinity.<sup>209</sup> Despite the fact that men try to conform to the social ideal of hegemonic masculinity, it is an ideal that many feel is unobtainable.<sup>210</sup> In an era where workers must work longer hours with fewer safety nets, the race to attain hegemonic masculinity is very difficult indeed.

As a result, some men are likely to develop interpretations or objections to hegemonic masculinity.<sup>211</sup> At times it is precisely the performance of the interpretation of hegemonic masculinity which is especially belligerent.<sup>212</sup> A significant insight from masculinities theory is that men, as a group, enjoy the "patriarchal dividends" from the power and resources of being men; however, because of the pressures exerted on men to act pursuant to masculine norms, as individuals, they often feel powerless.<sup>213</sup> It is precisely this feeling of powerlessness which creates the need to control others.<sup>214</sup> This may be more pronounced in times of economic hardship. The imperative to differentiate from women promotes some men's greater assertion of control over the family economy.

Against this backdrop it is possible to think of economic abuse as an interpretation of hegemonic masculinity. As noted, according to masculinities theorists, violence is a type of resource that men exercise when they do not possess other resources in order to perform masculinity.<sup>215</sup> Wielding economic abuse is therefore a way for certain men to perform masculinity and hold on to their power over their family

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208. Cahn, *supra* note 53, at 200–01.

209. CONNELL, *supra* note 152, at 121–24; Kimmel, *supra* note 166, at 61–62.

210. BARRIE THORNE, GENDER PLAY: GIRLS AND BOYS IN SCHOOLS 106 (1993); Dowd, *Asking the Man Question*, *supra* note 131, at 421. ("[M]asculinity requires constant proof of one's manhood: it is a status never achieved but one constantly to be established and tested.").

211. THORNE, *supra* note 210, at 106.

212. See MESSERSCHMIDT, *supra* note 154, at 11–12; McGinley, *A Masculinities Theory Analysis*, *supra* note 148.

213. CONNELL, *supra* note 152, at 79, 229–30; DOWD, THE MAN QUESTION, *supra* note 7, at 30–31; Kimmel, *supra* note 166, at 68.

214. DOWD, THE MAN QUESTION, *supra* note 7, at 31.

215. *Id.* at 33; MESSERSCHMIDT, *supra* note 154, at 85.



through economic resources. Economic abuse over one's wife and coercive control with respect to the family's resources may thus represent a performance of hegemonic masculinity.

Nonetheless, masculinities theory also shows that men pay a price for their superfluous rights in society.<sup>216</sup> Men pay a price in their parenting and a price for their very control. Controlling the family economy, while granting power, also imposes burdens (for men in the lower social-strata to obtain money, and for men in higher echelons to preserve and cultivate capital). Additionally, the very control of the other induces tension, guilt, and fear. Importantly, researchers emphasize that despite the fact that men are molded by social constructs, they are also, as a category and as individuals and at certain time periods, agents of social practices.<sup>217</sup> Potentially, at least, they are likely also to deviate from the script dictated by hegemonic masculinity.

Masculinities theory explains the centrality of economic control, breadwinning, coercive control, and even violence to the construction of hegemonic masculinity and, therefore, can shed light on the myriad social factors that enable economic abuse. Insights from masculinities theory on the ways by which male identity is established, on the importance of economic control as part of hegemonic masculinity, and on the use of violence as a resource for establishing masculinity may explain the existence of economic abuse as a socio-legal phenomenon.<sup>218</sup> Masculinity theory points to the ways by which men attain and preserve power, but also the prices they pay for their control. While economic control may be an element of hegemonic masculinity that may be used coercively and that may be difficult for some men to relinquish on their own, it is also socially constructed and historically contingent. It is therefore changeable. There is nothing natural or inevitable about this notion of masculinity as aggressive, controlling, and economically domineering. Today hegemonic masculinity, backed by social, historical, legal, and economic gender inequities provides a foundation for economic abuse to occur. Clearly a change of hegemonic masculinity, which is now based on providership, control, and violence requires a separation from privileges from which men derive benefit<sup>219</sup> and an untangling of the relationship between masculinity, control, and money.

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216. DOWD, *THE MAN QUESTION*, *supra* note 7, at 59.

217. Hearn, *supra* note 162.

218. See McGinley, *Masculinity, Labor, and Sexual Power*, *supra* note 175, at 800.

219. Dowd et al., *supra* note 7, at 30.

## V. BETWEEN REMEDIES AND FUNDAMENTAL CHANGES

Economic abuse is a complex problem, with myriad manifestations, and no easy solutions. This Part presents and provides justification for some remedies, while critiquing others, based on the insights provided earlier. More broadly, it contemplates some fundamental changes that are required to mitigate economic abuse.

Currently, the legal system's general tendency to focus on physical harm presents significant challenges to women who are economically abused.<sup>220</sup> Economic abuse is rarely recognized as domestic violence by state criminal and civil laws because of the focus on physical assaults,<sup>221</sup> and seldom falls neatly into the enumerated categories of abuse that provide legal protection.<sup>222</sup> A recent report conducted at Cornell University found a dearth of effective systems in place to remedy the impacts of economic abuse.<sup>223</sup> A critique of domestic violence policies has been that they focus on physical and sexual violence as paradigmatic of intimate partner abuse, while neglecting other harms such as economic abuse.<sup>224</sup> The policies' goal is immediate crisis control rather than promotion of long term security.<sup>225</sup> The policies favor separation, often neglecting the desires of the abused partner and the web of relationships that de facto keep partners in contact.<sup>226</sup>

Scholars note the centrality of the criminal justice system is focused on physical harms in U.S. domestic violence law and policy.<sup>227</sup> At present,

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220. Conner, *supra* note 8, at 363; Pollet, *supra* note 11, at 41.

221. GOODMARK, *supra* note 6, at 38-42; Johnson, *Redefining Harm*, *supra* note 5, at 1112.

222. Conner, *supra* note 8, at 362.

223. Stringer, *supra* note 22.

224. Johnson, *Redefining Harm*, *supra* note 5, at 1112.

225. Johnson, *Changing Course*, *supra* note 8, at 157.

226. *Id.*

227. Goodmark, *Hands Up at Home*, *supra* note 15, at 1195. This centrality must also be understood against the background of the state's initial absence of a response to domestic violence and the feminist focus on reacting to this void. The many services developed, such as protective orders, emergency shelters, and counselling were accomplished due to these efforts. See Johnson, *Changing Course*, *supra* note 8, at 155-57. Goodmark explains the historical developments: In 1984, the Attorney General's Task Force on Family Violence framed domestic violence as a criminal justice issue and strongly recommended expanding the criminal justice response to domestic violence. Although the first developments in domestic violence law were civil, in the form of protection orders, changes to the criminal law soon followed, with states passing laws creating substantive crimes of domestic violence. Goodmark, *Hands Up at Home*, *supra* note 15, at 102. See JEFFREY FAGAN, THE CRIMINALIZATION OF DOMESTIC VIOLENCE: PROMISES AND LIMITS 4-5, 8-9 (1996); Leigh Goodmark, *When is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75, 92-96 (2008); Goodmark, *Hands Up at Home*, *supra* note 15, at 140-45; Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1857-60 (1996); Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Law Policy*, 2004 WIS. L. REV. 1657, 1668-75 (2004); Deborah

every state has criminal laws that enable it to intervene on behalf of women, primarily in the case of physical abuse.<sup>228</sup> The criminal justice system is an important means of addressing intimate partner abuse.<sup>229</sup> Specifically, some have suggested criminalizing domestic oppression, dynamics, and patterns of coercive control, which would encompass economic abuse.<sup>230</sup>

In recent years, however, scholars have critiqued both the fit and the desirability of the criminal justice response to ameliorate intimate partner abuse. Some have challenged its effectiveness,<sup>231</sup> while others have challenged its disproportionate impact on the poor and on people of color.<sup>232</sup> Others have claimed that the focus on criminality ignores the larger structural issues that drive intimate partner abuse, such as economic insecurity.<sup>233</sup> While some scholars note that the criminal system merely substitutes the abusers' authority over the abused with that of the

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Tuerkheimer, *Recognizing and Remediating the Harm of Battering: A Call to Criminalize Domestic Violence*, 94 J. CRIM. L. & CRIMINOLOGY 959, 970–71 (2004). Following the cancellation of the civil rights remedy in the Violence Against Women Act (VAWA) in 1994, Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (codified in pertinent part at 42 U.S.C.A. § 13981) (West, Westlaw through P.L. 111-62), invalidated by *United States v. Morrison*, 529 U.S. 598 (2000). VAWA funds most of the programs concerning domestic violence, with the largest federal appropriations granted to the criminal justice system. See Johnson, *Changing Course*, *supra* note 8, at 161. For more on the VAWA, see Julie Goldscheid, *Advancing Equality in Domestic Violence Law Reform*, 11 AM. U. J. GENDER SOC. POL'Y & L. 417, 418–21 (2003); Julie Goldscheid, *Elusive Equality in Domestic and Sexual Violence Law Reform*, 34 FLA. ST. U. L. REV. 731, 736 (2007); Julie Goldscheid, *The Civil Rights Remedy of the 1994 Violence Against Women Act: Struck Down but Not Ruled Out*, 39 FAM. L.Q. 157, 165–71 (2005); Rashida Manjoo, *The Continuum of Violence against Women and the Challenges of Effective Redress*, 1 INT'L HUM. RTS. L. REV. 1 (2012). For the influence of the Act, see Weissman, *supra* note 17, at 227.

228. GOODMARK, *supra* note 6, at 1.

229. *Id.* at 22; Leigh Goodmark, *Stalled at 20: VAWA, the Criminal Justice System, and the Possibilities of Restorative Justice* (U. Md. Francis King Carey Sch. Law, Research Paper No. 2015-3, 2014), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2575646](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2575646) [<http://perma.cc/39FP-EG24>].

230. Steve Mulligan, *Redefining Domestic Violence: Using the Power and Control Paradigm for Domestic Violence Legislation*, 29 CHILD. LEGAL RTS. J. 33, 39 (2009); Alafair S. Burke, *Domestic Violence as a Crime of Pattern and Intent: An Alternative Reconceptualization*, 75 GEO. WASH. L. REV. 552, 556 (2007) (arguing for criminalization when the abuser is engaged in a pattern of domestic violence with the intent to gain power or control over the victim); Tuerkheimer, *supra* note 227, at 970–71. Internationally, some jurisdictions have chosen to address economic abuse as a criminal offense. See, e.g., Pami Vyas, *Reconceptualizing Domestic Violence in India: Economic Abuse and the Need for Broad Statutory Interpretation to Promote Women's Fundamental Rights*, 13 MICH. J. GENDER & L. 177, 179 (2006); Mary Johnson Osirim, *Crisis in the State and the Family: Violence Against Women in Zimbabwe*, 7 AFR. STUD. Q. 153 (2003).

231. GOODMARK, *supra* note 6, at 199.

232. BETH E. RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION* 3, 99-124 (2012); Donna Coker, *Shifting Power for Battered Women: Law, Material Resources and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009 (2000).

233. Weissman, *supra* note 17, at 238.

state's,<sup>234</sup> robbing women of their autonomy and ignoring their needs.<sup>235</sup> Importantly, some have noted that criminalization reinforces masculinity as aggressive.<sup>236</sup> Others have suggested using tort law to sue partners for monetary damages in cases of economic abuse.<sup>237</sup> Although that may enhance women's agency and grant them economic redress, such suits would only be effective insofar as the abusive partner has assets or finances from which to collect.<sup>238</sup>

Today, civil protection orders (CPOs) are the most common and widely used relief for domestic violence.<sup>239</sup> CPOs are generally considered as empowering for abused partners who seek judicial protection, while simultaneously providing a legal mechanism to enforce their decision to act.<sup>240</sup> Scholars have critiqued the limited recognition of selected harms for which CPOs are used and have suggested the need to incorporate a broader approach that will encompass economic abuse.<sup>241</sup> While every state has enacted CPO statutes, the states offer different definitions of what constitutes domestic violence (all refer to an actual or threatened criminal offense against an intimate partner or family member),<sup>242</sup> and most do not incorporate a definition that includes

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234. SUK, *supra* note 63, at 7, 53-54; *id.* at 54 (“[There is] an opportunity for critical reflection on the increasing subordination of individual autonomy in domestic space to state control of the home in the name of the public interest.”).

235. Leigh Goodmark, *Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases*, 37 FLA. ST. U. L. REV. 1 (2009). Goodmark also observed that money funneled into the criminal justice system is not spent on housing, job training, or economic development. See GOODMARK, *supra* note 6, at 22.

236. Jamie R. Abrams, *Migrating and Mutating Masculinities in Institutional Law Reform*, in EXPLORING MASCULINITIES: FEMINIST LEGAL THEORY REFLECTIONS 145, 146-47, 153 (Martha Albertson Fineman & Michael Thomson eds., 2013) [hereinafter Abrams, *Migrating and Mutating Masculinities*].

237. Johnson, *Redefining Harm*, *supra* note 5, at 1158.

238. Littwin, *supra* note 3, at 957.

239. Stoeber, *supra* note 117, at 1021. For the historical evolution of CPOs, see *id.* at 1035-44.

240. Adeola Olagunji & Christine Reynolds, *Domestic Violence*, 13 GEO. J. GENDER & L. 203, 207 (2012). *But see* Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487, 1489 (2008) (explaining that domestic violence law does not sufficiently meet the needs of women who want the relationship to continue but the violence to stop, but by customizing each order to express the victim's preferences for how much and what kinds of contact should be allowed, these orders can put the force of law behind the individual woman's choices); Johnson, *Redefining Harm*, *supra* note 5, at 1128; Martha R. Mahoney, *Victimization or Oppression? Women's Lives, Violence, and Agency*, in THE PUBLIC NATURE OF PRIVATE VIOLENCE 59, 64 (Martha Albertson Fineman & Roxanne Mykitiuk eds., 1994) (noting that agency means not living with oppression, but that the “all-agent or all-victim conceptual dichotomy will not be easy to escape or transform”).

241. Johnson, *Redefining Harm*, *supra* note 5, at 1115 (listing the jurisdictions that can potentially address coercion or economic abuse). See also Conner, *supra* note 8.

242. Jeffrey R. Baker, *Enjoining Coercion: Squaring Civil Protection Orders with the Reality*

economic abuse.<sup>243</sup> While several states recognize certain elements of coercive control as abuse,<sup>244</sup> few have directly addressed economic

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*of Domestic Abuse*, 11 J.L. & FAM. STUD. 35 (2008); Kristy Candela, *Protecting the Invisible Victim: Incorporating Coercive Control in Domestic Violence Statutes*, 54 FAM. CT. REV. 112 (2016); Johnson, *Changing Course*, *supra* note 8, at 159; Johnson, *Redefining Harm*, *supra* note 5, at 1131–32.

243. Johnson, *Redefining Harm*, *supra* note 5, at 1130–38.

244. See N.H. REV. STAT. ANN. § 173-B:1 (Westlaw through 2017 Sess.) (includes “interference with freedom” under definition of abuse); see also DEL. CODE ANN. tit. 10, § 1045 (Westlaw through 2017 Sess.) (definition of abuse includes “engaging in a course of alarming or distressing conduct in a manner which is likely to cause fear or emotional distress”), MICH. COMP. LAWS § 600.2950(13) (Westlaw through 2017 Sess.) (Michigan defines abuse as “any other specific act or conduct that imposes on or interferes with personal liberty or that causes a reasonable apprehension of violence”); ME. REV. STAT. ANN. tit. 19-A, § 4002 (Westlaw through 2017 Sess.) (Maine defines abuse as “[c]ompelling a person by force, threat of force or intimidation to engage in conduct from which the person has a right or privilege to abstain from conduct in which the person has a right to engage”). But “not one state has encompassed the entirety of coercive control as abuse in their domestic violence statute.” Candela, *supra* note 242, at 113. See ALA. CODE § 30-5-7 (Westlaw through 2017 Sess.); ALASKA STAT. § 18.66.100 (Westlaw through 2017 Sess.); ARIZ. REV. STAT. ANN. § 13-3602 (Westlaw through 2017 Sess.); ARK. CODE ANN. § 9-15-201 (Westlaw through 2017 Sess.); CAL. FAM. CODE § 6300-6301 (Westlaw through 2017 Sess.); COLO. REV. STAT. ANN. § 13-14-101 (Westlaw through 2017 Sess.); CONN. GEN. STAT. § 46B-15 (Westlaw through 2017 Sess.); DEL. CODE ANN. tit. 10, § 1045 (Westlaw through 2017 Sess.); D.C. CODE § 16-1003 (Westlaw through 2017 Sess.); FLA. STAT. § 741.28 (Westlaw through 2017 Sess.); GA. CODE ANN. § 19-13-4 (Westlaw through 2017 Sess.); HAW. REV. STAT. § 586-3 (Westlaw through Act 3 of 2017 Sess.); IDAHO CODE ANN. § 39-6304 (Westlaw through 2017 Sess.); 750 ILL. COMP. STAT. § 60/103 (Westlaw through Public Acts eff. Nov. 22, 2017); IND. CODE § 34-26-5-2 (Westlaw through 2017 Sess.); IOWA CODE § 236.2 (Westlaw through 2017 Sess.); KAN. STAT. ANN. § 60-3102 (Westlaw through 2017 Sess.); KY. REV. STAT. ANN. § 403.725 (Westlaw through 2017 Sess.); LA. STAT. ANN. § 46:2134 (Westlaw through 2017 Sess.); ME. REV. STAT. ANN. tit. I 9-A, § 4002 (Westlaw through 2017 Sess.); MD. CODE ANN. FAM. LAW § 4-504 (Westlaw through 2017 Sess.); MASS. GEN. LAWS ch. 209A, § 1 (Westlaw through Ch. 74 of 2017 Sess.); MICH. COMP. LAWS § 600.2950 (Westlaw through 2017 Sess.); MINN. STAT. ANN. § 518B.01 (Westlaw through 2017 Sess.); MISS. CODE ANN. § 93-21-7 (Westlaw through 2017 Sess.); MO. REV. STAT. § 455.010 (Westlaw through 2017 Sess.); MONT. CODE ANN. § 40-15-102 (Westlaw through 2017 Sess.); NEB. REV. STAT. § 42-903 (Westlaw through 2017 Sess.); NEV. REV. STAT. § 33.018 (Westlaw through 2017 Sess.) (amended by 2017 Nev. Laws Ch. 496 (S.B. 361)); N.H. REV. STAT. ANN. § 173-B.1 (Westlaw through Ch. 258 of 2017 Sess.); N.J. STAT. ANN. § 2C:25-19 (Westlaw through 2017 Sess.); N.M. STAT. ANN. § 40-13-3 (Westlaw through 2017 Sess.); N.Y. FAM. LAW § 842 (Westlaw through 2017 Sess.) (McKinney 2013); N.C. GEN. STAT. § 50B-1 (Westlaw through 2017-142 with the exception of 2017-6, §§ 1-4(c)); N.D. CENT. CODE § 14-07.1-02 (Westlaw through 2017 Sess.); OHIO REV. CODE ANN. § 3113.31 (Westlaw through 2017 Sess.); OKLA. STAT. tit. 22, § 60.4 (Westlaw through 2017 Sess.); OR. REV. STAT. § 107.705 (Westlaw through 2017 Sess.) (excluding Ch. 750); 23 PA. STAT. AND CONS. STAT. § 6102 (Westlaw through 2017 Sess.); S.C. CODE ANN. § 20-4-40 (Westlaw through 2017 Sess.); S.D. CODIFIED LAWS § 25-10-3 (Westlaw through 2017 Sess.); TENN. CODE ANN. § 36-3-605 (Westlaw through 2017 Sess.); TEX. FAM. CODE ANN. § 82.004 (Westlaw through 2017 Sess.); UTAH CODE ANN. § 78B-7-102 (Westlaw through 2017 Sess.); VT. STAT. ANN. tit. 15, § 1103 (Westlaw through 2017 Sess.); VA. CODE ANN. § 16.1-279.1 (Westlaw through 2017 Sess.); WASH. REV. CODE § 26.50.010 (Westlaw through 2017 Sess.); W. VA. CODE § 48-27-501 (Westlaw through 2017 Sess.); WIS. STAT. § 813.12 (Westlaw through 2017 Act 58); WYO. STAT. ANN. § 35-21-103 (Westlaw through 2017 Sess.).

abuse.<sup>245</sup> Furthermore, different states offer different remedies: some jurisdictions may prohibit contact (stay-away orders), abuse, and harassment; other jurisdictions may require an abusive partner to vacate a shared residence; some jurisdictions may order counseling for domestic violence, substance abuse, or parenting skills, award use of jointly-owned possessions, or order child support, housing payments, and medical expenses resulting from the abuse.<sup>246</sup> While two-thirds of the states provide catch-all provision that could deliver economic orders beyond child support and could include damages,<sup>247</sup> state courts rarely order economic relief,<sup>248</sup> despite the importance of issuing significant economic remedies as part of CPOs.<sup>249</sup>

Littwin suggests a mechanism to repair credit scores as a way to redress the ramifications of credit ruined by coerced debt—the blocking of credit debt from credit reporting agencies and vesting family courts with the decision of the parties’ responsibilities to the debt.<sup>250</sup> Others have suggested creating incentives for financial institutions to be mindful of coerced debt and better monitor and report it.<sup>251</sup> Parenting education is commonly used by courts, and in some states it is even mandated.<sup>252</sup>

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245. See, e.g., COLO. REV. STAT. ANN. § 13-14-101 (Westlaw through 2017 Sess.) (Colorado’s statute describes abuse as “financial control, document control, and other types of control that make a victim more likely to return to an abuser due to fear of retaliation or inability to meet basic needs”); MICH. COMP. LAWS § 600.2950(1)(g), (4) (Westlaw through 2017 Sess. No. 150) (Michigan’s statute permits a court to issue an order if a partner is interfering with employment or education).

246. Stoeever, *supra* note 117, at 1043. Importantly, many apply to unmarried and same-sex partners. *Id.*

247. Johnson, *Changing Course*, *supra* note 8, at 159. See, e.g., D.C. CODE §16-1005(c) (Westlaw through 2017 Sess.).

248. Weissman, *supra* note 17, at 228; Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 43 (1999).

249. Erika A. Sussman, *The Civil Protection Orders as a Tool for Economic Justice*, J.W. MAG. (2006), <https://csaj.org/document-library/POasEconJustice2006.pdf> [<http://perma.cc/28BJ-N7LE>].

250. Littwin acknowledges that her proposal applies only to women who are divorcing their abusers, and that it cannot assist those who wish to stay or are unmarried. Littwin, *Escaping Battered Credit*, *supra* note 8, at 365-66, 390-408.

251. Christine Kim, *Credit Cards: Weapons for Domestic Violence*, 22 DUKE J. GENDER L. & POL’Y 281, 307 (2015).

252. See ARIZ. REV. STAT. ANN. §§ 25-351 to 25-353 (Westlaw through 2017 Sess.); ARK. CODE ANN. § 9-12-322 (Westlaw through 2017 Sess.); COLO. REV. STAT. § 14-10-123.7 (Westlaw through 2017 Sess.); CONN. GEN. STAT. ANN. § 46b-69b (Westlaw through 2017 Sess.); DEL. CODE ANN. tit. 13, § 1507(h) (Westlaw through 81 Laws 2017 Sess.); FLA. STAT. ANN. § 61.21 (Westlaw through 2017 Sess.); 750 ILL. COMP. STAT. ANN. 5/404.1 (Westlaw through Public Acts eff. Nov. 22, 2017); IOWA CODE § 598.15 (Westlaw through 2017 Sess.); KAN. STAT. ANN. § 23-3214 (Westlaw through 2017 Sess.); LA. STAT. ANN. § 9:306 (Westlaw through 2017 Sess.); MD. CODE ANN. FAM. LAW § 7-103.2 (Westlaw through 2017 Sess.); MINN. STAT. ANN. § 518.157 (Westlaw through 2017 Sess.); MO. ANN. STAT. § 452.600 (Westlaw through 2017 Sess.); MONT. CODE ANN. § 40-4-226

Similarly, financial literacy education has been offered as possible redress.<sup>253</sup> Yet such financial education should stress the importance of consensual and equitable management of resources, and should also be critical of financial institutions' goals and means, to be instrumental in preventing or mitigating cases of economic abuse.<sup>254</sup> Such financial education, if properly provided to women, could potentially assist in untangling the Gordian knot between hegemonic masculinity and money control. Yet, some of these measures are only applicable to women who would want to separate from the abusive partner, which is not always the case.<sup>255</sup>

Some have suggested amending CPO laws to include economic abuse, to allow an economically abused woman to restructure how she interacts with her partner and how to maintain property,<sup>256</sup> hoping such orders will change power dynamics that are at the core of abuse. Yet their short term duration does not correspond to persistent long term dangers,<sup>257</sup> and specifically to the long term effects of economic abuse. By themselves, CPOs are emergency measures, isolated from the broader social picture that enables economic abuse. The following is a telling example of the law's limited effect, even when CPOs are constructed to redress economic abuse. In a recent New Jersey case, an estranged spouse was purposefully interfering with his former spouses' employment.<sup>258</sup> The court recognized this behavior as economic abuse and a form of coercion

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(Westlaw through 2017 Sess.); NEB. REV. STAT. ANN. § 43-2928 (Westlaw through 2017 Sess.); N.H. REV. STAT. ANN. § 43:458-D (Westlaw through 2017 Sess.); N.J. STAT. ANN. § 2A:34-12.3, 12.5 (Westlaw through 2017 Sess.); OKLA. STAT. tit. 43, § 107.2 (Westlaw through 2017 Sess.); OR. REV. STAT. § 3.425 (Westlaw through 2017 Sess.) (excluding Ch. 750); TENN. CODE ANN. § 36-6-408 (Westlaw through 2017 Sess.); TEX. FAM. CODE ANN. § 105.009 (Westlaw through 2017 Sess.); UTAH CODE ANN. § 30-3-11.3 (Westlaw through 2017 Sess.); VA. CODE ANN. § 16.1-278.15 (Westlaw through 2017 Sess.); W. VA. CODE ANN. § 48-9-104 (Westlaw through 2017 Sess.); WIS. STAT. § 767.401 (Westlaw through 2017 Act 58); WYO. STAT. ANN. § 20-2-201(f) (Westlaw through 2017 Sess.). Programs authorizing judges to "order" divorcing parents to participate in parental education classes are already mandated by court rules in at least Alaska, California, Georgia, Indiana, Kentucky, Michigan, New Mexico, New York, Pennsylvania, Washington, and Wyoming. See Tali Schaefer, *Saving Children or Blaming Parents? Lessons from Mandated Parenting Classes*, 19 COLUM. J. GENDER & L. 491, 495 (2010); Susan L. Pollet & Melissa Lombreglia, *A Nationwide Survey of Mandatory Parent Education*, 46 FAM. CT. REV. 375 (2008).

253. Kim, *supra* note 251.

254. Because under extreme coercion or violence, consent may not be genuine, these programs should likewise stress an equitable component of money managing.

255. Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991).

256. Johnson, *Redefining Harm*, *supra* note 5, at 1129.

257. Stoeber, *supra* note 117, at 1021.

258. C.G. v. E.G., No. FV-1921-16, 2016 N.J. Super. Unpub. LEXIS 1638 (Ch. Div. June 30, 2016).

under the newly amended New Jersey domestic violence law.<sup>259</sup> The court granted a restraining order to protect the woman's rights to "be left alone."<sup>260</sup> While the restraining order was helpful in the immediate situation, that alone does not undermine the phenomenon of economic abuse or the imbalance of power within the family that breeds coercive control, more generally.

Scholars have critiqued the short term nature of domestic violence policy and have proposed to shift law, policy, and funding towards long term goals of supporting women's economic security.<sup>261</sup> These scholars suggest enhancing economic security through myriad measures, such as housing, career counseling, long term physical and mental health care, economic remedies, secure employment, and enhancing social capital, reliable public benefits, associations, and networks of support.<sup>262</sup> These changes could be helpful in certain contexts, if provided in a non-demeaning, empowering, and sufficient way. Financial resilience could recalibrate power within an intimate relationship<sup>263</sup> because studies suggest that, except for women in high income brackets, increasing women's income (and men's incomes) tends to reduce domestic violence.<sup>264</sup> Law and society bears responsibility for ameliorating economic abuse because they have enforced a long history of engendered power in the family, and have been complacent in structuring the background for the perpetration of economic abuse, through the enablement of "ideal worker" norms in the market and a "laissez-faire" attitude towards managing money in the marriage. State responsibility is

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259. In August, 2015, the New Jersey Legislature formally amended the Domestic Violence Act to include certain additional definitions of domestic violence, including coercion under N.J. STAT. ANN. § 2C:25-19(a)(15) (Westlaw through 2017 Sess.), as defined by N.J. STAT. ANN. § 2C:13-5 (Westlaw through 2017 Sess.).

260. *C.G.*, 2016 N.J. Super. Unpub. LEXIS 1638.

261. Johnson, *Changing Course*, *supra* note 8, at 153. *See also* GOODMARK, *supra* note 6, at 157.

262. Johnson, *Changing Course*, *supra* note 8, at 153. *See also* GOODMARK, *supra* note 6, at 157.

263. Conner, *supra* note 8, at 374; *see also* Coker, *supra* note 232, at 1022–23.

264. Johnson, *Changing Course*, *supra* note 8, at 180–81; Kameri Christy-McMullin, *Designing Policies that Address the Relationship Between Woman Abuse and Economic Resources*, 29 J. SOC. & SOC. WELFARE 109, 113 (2002); Amy Farmer & Jill Tiefenthaler, *An Economic Analysis of Domestic Violence*, 55 REV. SOC. ECON. 337 (1997). Margo Lindauer, "Please Stop Telling Her to Leave": *Where Is The Money: Reclaiming Economic Power to Address Domestic Violence*, 39 SEATTLE U. L. REV. 1263 (2016) ("[E]conomic dependence is a critical factor in violence prevention."). *But see* Kameri Christy-McMullin, *An Evidenced-Based Approach to a Theoretical Understanding of the Relationship Between Economic Resources, Race/Ethnicity, and Woman Abuse*, 3 J. EVIDENCE-BASED SOC. WORK 1, 23 (2006) (showing studies examining the relationship between economic resources and abuse provided mixed results).



thus justified because law and society have designed the gender constructions that enable the power dynamics that lead to economic abuse.

Furthermore, because of law and society's place in the construction of intimate power, we need to contemplate modes of relief that go beyond the immediate, individual abused woman, the abusive partner, and even beyond her economic security, and generate larger structural changes in intimate power distribution that will destabilize and transcend current notions of hegemonic masculinity. We need to think about the social and legal structures relating to the market and the family that are in place and which now provide a fertile ground for economic abuse to take place and which affect everyone: men, women, children, those currently facing economic abuse, and those who may experience it at some point. I suggest that we should contemplate remedies that carry out the following goals: (1) destabilize hegemonic masculinity and (2) promote women's "agency"<sup>265</sup>—which has been proved crucial in overcoming violence<sup>266</sup>—by increasing resilience through increasing women's economic assets and social relationships.<sup>267</sup>

The historical lens combined with insights from masculinities theory tell us how structural power dynamics continue to shape families' lives, even in the age of formal equality. When we think of the ties between economic abuse and hegemonic masculinity, socialization towards violence, the historical socialization of men as heads of households, and the impact of economic volatility, it becomes clear that a systemic, structural paradigm must enrich the individualistic mode of thought that currently inhibits domestic violence redress. Seen this way, economic abuse is performed by individuals onto individuals, but it is inflicted

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265. I extend to this context Kathryn Abrams' conceptualization of agency as self-direction rather than autonomy and as embedded in systemic inequality. Under this understanding, agency can be cultivated through material, structural, political, and cultural supports. See Abrams, *From Autonomy to Agency*, *supra* note 101, at 831-32, 834, 841, 845 (1999) (“[A]s women’s self-direction . . . has come to be understood as a multiple socially-influenced phenomenon that takes place in a context of shifting and unequal power relations, some theorists have begun to argue that legal regulation in this area may help to foster agency . . . human beings are formed in their preferences, abilities, and capacities to respond to coercion, by material circumstances, and relationships or affiliations with others.”).

266. See Kathryn Abrams, *Subordination and Agency in Sexual Harassment Law*, in DIRECTIONS IN SEXUAL HARASSMENT LAW 112-14 (Catherine A. MacKinnon & Reva B. Siegel eds., 2004); Goldfarb, *supra* note 240, at 1501-02, 1523; Johnson, *Redefining Harm*, *supra* note 5, at 1114.

267. Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1, 15 (2008) [hereinafter Fineman, *Anchoring Equality*]. While Fineman's theory objects to identity-based categories as a basis of vulnerability, and this Article has used masculinities theory to observe how power is distributed in the family, it has embedded its identity analysis in social structures and therefore, I believe, is able to rely on her conceptualization of “resilience” as meant to provide resources for countering vulnerabilities, such as violence.

against a backdrop of historical, social, and economic structures that the state through law has put in place. Therefore, it would be a mistake to think about economic abuse only in an individualized manner, but rather, we ought to think about economic abuse in a way that is related to the structures of the family and the market. Ameliorating economic abuse may require no less than undoing hegemonic masculinity. A temporary CPO may provide concrete relief for an abused woman if it applies to economic abuse; if it provides resources for economic and emotional healing; if it is provided for a long enough period of time; and if there are good jobs with decent wages in place, as well as transportation options and proper child-care (many, many “ifs”). However, it will not put an end to the cycle of violence on a societal level. Undoing hegemonic masculinity will not be achieved through a temporary stay away order nor a mandatory arrest. Although these may be helpful in the case of a concrete and immediate emergency, mandatory arrests and using the criminal system may also exacerbate the problem by reinforcing the connections between masculinity and crime, especially for people of color and the poor.<sup>268</sup> Destabilizing hegemonic masculinity therefore requires a deeper reaching approach. It requires creating positive non-violent role models and means for men to achieve status that are not only economic and not primarily economic.<sup>269</sup> At a societal level, it may require advancing new, alternative notions of manhood. It requires relinquishing economic dominance as a staple of manhood, on the one hand, and an expansion of men’s other productive roles in the family, on the other.

Concurrently, we should think of fostering women’s agency by using law to combat women’s oppression,<sup>270</sup> and substantially equalizing opportunities for women. Women’s increased market participation may decrease their economic dependence<sup>271</sup> if such participation also accounts for the caregiving responsibilities women often have, and if such participation provides reasonable resources, decent work, and benefits. Supporting hierarchy-attenuating policies such as government sponsored

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268. Abrams, *Migrating and Mutating Masculinities*, *supra* note 236.

269. This may require education and training. There are organizations worldwide that aim to challenge the norms of hegemonic masculinity and encourage men to take larger caretaking roles in their families, *see, e.g., About, PROMUNDO GLOBAL*, <http://promundoglobal.org/about/> [<http://perma.cc/3T5B-G9C3>]. For a similar approach regarding transition to peace in conflicted societies, *see Cahn & Ni Aoláin, supra* note 135, at 20.

270. Abrams, *From Autonomy to Agency*, *supra* note 101.

271. Jennifer Swanberg et al., *Working Women Making It Work: Intimate Partner Violence, Employment, and Workplace Support*, 22 J. INTERPERS. VIOLENCE 292 (2007); Ross Macmillan & Rosemary Gartner, *When She Brings Home the Bacon: Labor-Force Participation and the Risk of Spousal Violence Against Women*, 61 J. MARRIAGE & FAM. 947 (1999); Jamie Haar, *Women’s Work: Economic Security in the Domestic Violence Context*, 31 HOFSTRA. LAB. & EMP. L.J. 471 (2014).

child-care and the de-marginalization of care work (often associated with women) is needed to provide for a society in which both men and women work, care, and share power; and where families are well-supported.<sup>272</sup>

Domestic violence is characterized by a power imbalance between the parties.<sup>273</sup> Household power differentials replicate market hierarchies, and family well-being must be considered within the realm of the market and the political economy.<sup>274</sup> We may need to reconsider law's "laissez-faire" attitude towards managing money during marriage, especially given the connections between hegemonic masculinity and economic control, and since the family is our first and possibly most important school of justice.<sup>275</sup> We may need to strengthen demands to overhaul work norms that discriminate against caregivers and perpetuate their economic inequality,<sup>276</sup> and insist on norms that allow for familial caregiving alongside good work.<sup>277</sup>

Power imbalances are deeply ingrained in society. Changes in social policy regarding child-care, changes in work norms, and a reevaluation of the law's attitude towards money management during marriage may change some of the power imbalance, destabilize hegemonic masculinity, and provide more resources for women to recalibrate familial power dynamics. Addressing violent masculinity through meaningful economic opportunities,<sup>278</sup> while also opening up new avenues for performing masculinity not solely focused on breadwinning, may positively affect not

272. Carbone & Cahn, *supra* note 2, at 209. See, e.g., MAXINE EICHNER, THE SUPPORTIVE STATE: FAMILIES, GOVERNMENT, AND AMERICA'S POLITICAL IDEALS 9 (2010) (arguing for state responsibility to support caretaking); Fineman, *Anchoring Equality*, *supra* note 267; Martha Albertson Fineman, *The Vulnerable Subject and the Responsive State*, 60 EMORY L.J. 251 (2010).

273. GOODMARK, *supra* note 6, at 123.

274. EICHNER, *supra* note 272, at 55–57; MARTHA ALBERTSON FINEMAN, THE AUTONOMY MYTH: A THEORY OF DEPENDENCY 88–89 (2004) (market affects familial well-being); June Carbone, *Unpacking Inequality and Class: Family, Gender and the Reconstruction of Class Barriers*, 45 NEW ENG. L. REV. 527, 530 (2011).

275. SUSAN MOLLER OKIN, JUSTICE, GENDER AND THE FAMILY 21 (1983). Czapanskiy, *supra* note 77, at 1461 ("Fomenting change is an old and a legitimate role for law in the realm of family conduct as well as in the realm of other gendered relationships."); *id.* at 1481 ("The potential of the law to express a social norm as well as to make a difference in people's conduct is substantial."); Elizabeth S. Scott, *Social Norms and the Legal Regulation of Marriage*, 86 VA. L. REV. 1901, 1926 (2000) ("[L]egal rules can clarify and announce the specific behavioral expectations embodied in social norms."); Sarah E. Waldeck, *Using Male Circumcision to Understand Social Norms as Multipliers*, 72 U. CIN. L. REV. 455 (2003) (arguing that the law can be used to change norms for circumcision).

276. See WILLIAMS, UNBENDING GENDER, *supra* note 91, at 2.

277. See Kathryn Abrams, *Gender Discrimination and the Transformation of Workplace Norms*, 42 VAND. L. REV. 1183, 1233 (1989). See Nancy E. Dowd, *Work and Family: Restructuring the Workplace*, 32 ARIZ. L. REV. 431, 474 (1990).

278. Cahn & Ni Aoláin, *supra* note 135, at 21.

only women who suffer economic abuse, but may also benefit men, women, and families at large. To recalibrate the power dynamic at the heart of economic abuse,<sup>279</sup> economic and social insecurities must be addressed.<sup>280</sup> Hierarchy-attenuating policies can destabilize hegemonic masculinity, unraveling the Gordian knot between hegemonic masculinity, control, and money. A responsive state would need to support men, women, and families in times of such transition.

## VI. EPILOGUE

Family law's canon "reports that family law prioritizes sex equality and . . . has freed itself from its historical entanglements in subordination and injustice," but scholars have long noted that family law's roots continue to influence family relations.<sup>281</sup> Courts have often and recently cited the end of coverture as the transformation of marriage from a male-dominated institution to an institution that recognizes men and women as equals.<sup>282</sup> Yet beyond formal legal recognition of men and women as equals lies a social, economic, and gendered reality.<sup>283</sup> Recent marriage equality discourse in *Obergefell v. Hodges*<sup>284</sup> focused primarily on the freedom to marry, but did not concern freedom *within* marriage.<sup>285</sup> While *Obergefell* understandably celebrated the demise of coverture, courts will need to grapple with its "modern vestiges"<sup>286</sup> going forward. Yet, the history of transformational change invoked in *Obergefell* offers some hope for transformation in intimate relation jurisprudence.<sup>287</sup>

This Article illustrated the existence of economic abuse between spouses and has shown that the legal system has yet to deal with it in a comprehensive and significant manner. This neglect is not gender-neutral.<sup>288</sup> A feminist approach to law must shed light on those places where the law has not been adjusted to cater to the life circumstances

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279. Baker, *supra* note 242, at 57.

280. Cahn & Ni Aoláin, *supra* note 135, at 7.

281. HASDAY, *supra* note 51, at 5.

282. *Id.* at 101–02. See Transcript of Oral Argument at 70–71, *Obergefell v. Hodges*, 135 S. Ct. 2584, 2595 (2015) (No. 14-556).

283. See Renan Barzilay, *You're on Your Own*, *supra* note 110.

284. Transcript of Oral Argument, *supra* note 282.

285. See Colker, *supra* note 16, at 386–87. See also Susan Frelich Appleton, *Obergefell's Liberties: All in the Family*, 77 OHIO ST. L.J. 919 (2016) (explaining that *Obergefell* rests largely on liberty rather than equality).

286. *Id.* at 411.

287. Mayeri, *supra* note 66, at 127. Mayeri was referring to a different transformation while critiquing the Court's affirmation of marriage supremacy.

288. CAROL SMART, *THE TIES THAT BIND: LAW, MARRIAGE AND THE REPRODUCTION OF PATRIARCHAL RELATIONS* 221 (1984).

predominantly experienced by women,<sup>289</sup> and therefore the conceptualization of economic abuse into the legal discourse is a feminist process. Nonetheless, this Article has used masculinities theory in order to analyze the phenomenon; to understand hegemonic masculinity's relationship to the activation of economic abuse; and to understand how historical, social, and legal norms constitute a fertile ground for economic abuse (without derogating obviously from the personal responsibility of the men wielding it).

The law has a long history of establishing men as the breadwinners and women as the financial dependents on the males in their families.<sup>290</sup> Even today, hegemonic masculinity rests significantly on the ability to provide for a family; and the ability to provide for a family, in turn, informs economic control of the family.<sup>291</sup> Even in this postmodern era which is thriving with new forms of families, such as same-sex couples, single-parent families, or blended families, important aspects of the traditional family have remained firmly intact for heterosexual couples, especially male domination of economic aspects of the family.<sup>292</sup> Power remains unequal even in this new, more egalitarian age. It is, nonetheless, a product of history, law, and society, and it is therefore transformable.

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289. CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 96–105 (1989); MACKINNON, FEMINISM UNMODIFIED, *supra* note 142, at 54–56.

290. Renan Barzilay, *You're on Your Own*, *supra* note 110, at 575.

291. FINEMAN, *supra* note 82, at 151; ADRIENNE RICH, OF WOMAN BORN: MOTHERHOOD AS EXPERIENCE AND INSTITUTION 276–77 (1976); STACEY, *supra* note 75, at 8.

292. HASDAY, *supra* note 51, at 97–132.