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# Tributes to Family Law Scholars Who Helped Us Find Our Path

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## Introduction

***By J. Thomas Oldham***

At some point after the virus struck, I had the idea that it would be appropriate and interesting to ask a number of experienced family law teachers to write a tribute about a more senior family law scholar whose work inspired them when they were beginning their careers. I mentioned this idea to some other long-term members of the professoriate, and they agreed that this could be a good project.

So I reached out to some colleagues and asked them to participate. Many agreed to join the team. Some suggested other potential contributors, and some of these suggested faculty members also agreed to submit a tribute.

The authors have written about a diverse group of distinguished scholars in the area of family law. We have included 12 scholars who have contributed substantially to the field, and they have also influenced those

*Professor J. Thomas Oldham is the John Freeman Professor of Law at the University of Houston. He conceived of this project and brought together a group of accomplished scholars to craft the tributes. He would like to thank Paul Kurtz for his editorial contributions.

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who have written about them here. The honored scholars and the tribute authors are as follows (organized alphabetically by the honoree):

I. Homer H. Clark Jr. (1918–2015), by Ann Laquer Estin
II. Peggy Cooper Davis, by Melissa Murray
III. Mary Ann Glendon, by June Carbone
IV. Herma Hill Kay (1934–2017), by Barbara A. Atwood
V. Robert Levy, by Paul M. Kurtz
VI. Marygold (Margo) Shire Melli (1926–2018), by J. Thomas Oldham & Bruce M. Smyth
VII. Martha Minow, by Brian H. Bix
VIII. Robert Mnookin, by Elizabeth S. Scott
IX. Twila Perry, by R.A. Lenhardt
X. Dorothy E. Roberts, by Jessica Dixon Weaver
XI. Carol Sanger, by Solangel Maldonado
XII. Barbara Bennett Woodhouse, by Sacha M. Coupet

Each colleague who participated in this project chose the scholar whose work he or she would celebrate. So, the list of those honored here is subjective and, to a certain extent, serendipitous. This Article is part of a *Family Law Quarterly* issue that also honors other pioneering contributors to the family law field. We hope to make this a continuing project and to have future opportunities to recognize the many scholars who have had a profound impact on their students—and on all of us—in addition to having an important impact on the development of the law. I trust the reader will find these tributes of interest.

## I. Homer H. Clark Jr. (1918–2015)

### *By Ann Laquer Estin*[1]

For several generations of family lawyers, Homer Clark's treatise on the *Law of Domestic Relations in the United States* was the standard reference in the field. First published in 1968,[2] with a completely revised second

1. Associate Dean for Faculty, Aliber Family Chair in Law, University of Iowa College of Law.

2. HOMER H. CLARK JR., THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES (1st ed. 1968).

edition in 1987,[3] the book was comprehensive, scholarly, and useful. And although everyone knew Homer Clark's book, very few knew Homer himself.

I began my teaching career at the University of Colorado, where Homer had recently retired from full-time teaching as the Moses Lasky Professor of Law. He was an intimidating presence at first, especially because I had been asked to teach Family Law. Over time, Homer became a helpful and supportive colleague, a co-author, and a friend. Despite the distance between his life experience and my own, his generation and mine, there were very few things we disagreed about.

Homer H. Clark Jr. was born in 1918. He graduated from Amherst College in 1939 and Harvard Law School in 1942 and served in the Pacific as a supply officer in the U.S. Navy during World War II. His legal career began in 1946 with a clerkship for Judge Peter Woodbury of the U.S. Court of Appeals for the First Circuit. After two years practicing law, Homer started teaching Corporations and Antitrust at University of Montana School of Law in 1949. Four years later, he moved to the University of Colorado, where he taught for more than 40 years.[4]

Law faculty at the time taught a large number of courses each year. Junior faculty might be given other tasks as well, like drafting a will for an important donor or tending bar at alumni events. Homer was assigned to teach Domestic Relations when he arrived at Colorado, and set to work learning the subject. Very few law professors turn their class preparation for a service course into an important treatise, but domestic relations became the primary focus of Homer's scholarship. Beyond his treatise and casebook, which continued through seven editions,[5] he published dozens of articles.[6]

3. HOMER H. CLARK JR., THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES (2d ed. 1987) (Practitioner's Ed., Vols. 1 & 2); *see also* HOMER H. CLARK JR., THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES (2d ed. 1988) (Student Ed.).

4. For additional biographical information, see David H. Getches et al., *Tribute: Professor Homer H. Clark, Jr.*, 78 U. COLO. L. REV. 1 (2007).

5. HOMER H. CLARK JR. & ANN LAQUER ESTIN, CASES AND PROBLEMS ON DOMESTIC RELATIONS (7th ed. 2010).

6. Including three in the *Family Law Quarterly*: Homer H. Clark Jr., *The Wife's Action for Negligent Impairment of Consortium*, 3 FAM. L.Q. 197 (1969); Homer H. Clark Jr., *Wrongful Conception: A New Kind of Medical Malpractice?*, 12 FAM. L.Q. 259 (1979); Homer H. Clark Jr., *Review of Mary Ann Glendon,* The New Family and the New Property, 16 FAM. L.Q. 93 (1982). *See also* Homer H. Clark Jr., *The Role of Court and Legislature in the Growth of Family Law*, 22 U.C. DAVIS L. REV. 699 (1989); Homer H. Clark Jr., *Children and the Constitution*, 1992 U. ILL. L. REV. 1 (1992).

At a time when regular publication was not expected after tenure, Homer's work ethic and productivity were remarkable. For years after his official retirement, he continued coming to his office every day, reading through the family law decisions in all the paperbound advance sheets for the regional and federal case reporters. He tore out opinions he thought were interesting or useful and wrote a few words at the top of the first page (e.g., "Michael H. situation" or "PKPA vs. UCCJA").

Homer was a deeply private person. He avoided conferences and meetings, venturing to other law schools only occasionally for an invited lecture or visiting semester. He turned down most invitations to speak. At the first academic family law meetings I attended, many people asked about Homer when they noticed that I was from Colorado, curious about the person behind the citations in their footnotes.

I began to recognize Homer's personality in his work: his dry and understated sense of humor, his strong sense of right and wrong, his commitment to finding pragmatic solutions to social problems. In his early writing, he criticized ongoing judicial hostility to statutes removing married women's legal disabilities, expressed support for divorce reform, and criticized the inadequate funding and support for family courts.[7] He expressed particular disdain for convoluted and impractical legal doctrines.

For example, Homer had strong criticism for the Supreme Court rulings in *May v. Anderson*[8] and *Kulko v. Superior Court*,[9] pointing to the complex jurisdictional problems that these cases generated.[10] This included the impossibly confusing interaction of the Uniform Child Custody Jurisdiction Act[11] and the Parental Kidnapping Prevention Act,[12] which he described as a problem "technical enough to delight a medieval property lawyer."[13] Homer approved of the Court's ruling in *Levy v. Louisiana*[14] barring discrimination against nonmarital children but found no basis on which the Court's many subsequent decisions on legitimacy discrimination could be reconciled. His casebook asked students to consider "what social policy is being served by the Supreme Court's tergiversations . . . concerning the

7. *See* Ann Laquer Estin, *Fifty Years Later: Homer Clark and the Law of Domestic Relations*, *in* Getches et al., *supra* note 4, at 19.

8. 345 U.S. 528 (1953).

9. 436 U.S. 84 (1978).

10. *See* CLARK (2d ed. 1988), *supra* note 3, at 446–47, 461.

11. UNIF. CHILD CUSTODY JURIS. ACT (UNIF. L. COMM'N 1968).

12. 28 U.S.C. § 1738A.

13. CLARK (2d ed. 1988), *supra* note 3, at 494.

14. 391 U.S. 68 (1968).

illegitimate child's inheritance or Social Security rights?"[15] His treatise, poking fun at the Court's description of its new intermediate scrutiny test in cases such as *Trimble v. Gordon* as "not a toothless one,"[16] observes: "[S]ome amusement is irresistible at the image of the justices engaging in either the 'toothless scrutiny' of a statute, or one that is not 'toothless.'"[17]

After I finished my first law review article as a junior faculty member, I gave Homer a draft to read and waited anxiously for his response. Two days later, we crossed paths at the annual Law Review banquet. He was heading toward his wife with a glass of wine in each hand. "I read your piece," he said. "It's very good." And though I would have liked to have more extensive feedback, that was that. In later years, we worked more closely together when I joined as coauthor on the sixth and seventh editions of his casebook. Homer generously allowed me complete freedom to revise and update his work, offering comments or suggestions only when I asked for them. He sent me piles of recent case decisions torn from his stacks of advance sheets. After I moved away, we had long conversations in the summer over lunch or a walk in the foothills.

Beyond his scholarship and teaching, Homer was an avid outdoorsman, fly fishing in the summer and cross-country skiing in the winter. He was a father and grandfather, and a devoted husband, spending years caring for his wife at the end of her life. They were our neighbors as well, offering candy on their front porch at Halloween, waving or stopping to say hello as they walked up the hill on their way to the park after dinner.

Homer continued walking in those foothills well into his nineties. He died at home in 2015 at the age of 97, leaving a powerful intellectual legacy carried in memory by his students, friends, and colleagues, and in thousands of citations in case reports, briefs, articles, and books.

15. HOMER H. CLARK JR. & ANN LAQUER ESTIN, CASES AND PROBLEMS ON DOMESTIC RELATIONS 244 (7th ed. 2005) (citing Poulos v. McMahan, 297 S.E.2d 451, 453 (Ga. 1982)).

16. 430 U.S. 762, 767 (1977) (citing Mathews v. Lucas, 427 U.S. 495, 510 (1976)).

17. CLARK (2d ed. 1988), *supra* note 3, at 163.

## II. Peggy Cooper Davis

### *By Melissa Murray*[18]

On April 26, 2021, the University of North Carolina's Hussman School of Journalism and Media announced a glittering new addition to its faculty. Nikole Hannah-Jones, a Hussman alumna, MacArthur Genius Grant winner, and Pulitzer Prize–winning journalist for the *New York Times*, would join the faculty as the Knight Chair on Race and Investigative Reporting.[19] Almost immediately, however, this triumph turned to ash: Although the Hussman School's faculty approved Hannah-Jones's appointment with tenure, and indeed, every prior Knight chairholder had been appointed with tenure, the University's Board of Trustees declined to do so in Hannah-Jones's case.[20] Instead, Hannah-Jones was offered a five-year contractual appointment as a Professor of the Practice with the possibility of a tenure review at the conclusion of the five-year term.[21] One member of the Board of Trustees summed up the shocking turn of events in a single word: "Politics."[22]

It was perhaps unsurprising that politics would shape a hiring decision at North Carolina's flagship public university. After all, Hannah-Jones was no ordinary hire. In addition to her glittering resume, she was also the creator of *The 1619 Project*, an initiative of the *New York Times Magazine* that "aims to reframe the country's history by placing the consequences of slavery and the contributions of black Americans at the very center of our national narrative."[23] Meaningfully, *The 1619 Project*—and Hannah-Jones herself—had been singled out for criticism by a broad cadre of

18. Frederick I. and Grace Stokes Professor of Law, N.Y.U. School of Law. I am grateful to Peggy Cooper Davis for her example and mentorship for so many years. It has been my privilege to be her colleague at N.Y.U. Law. Nina Haug (N.Y.U. Law class of 2022) provided excellent research assistance.

19. *Pulitzer Prize-Winning MacArthur "Genius" Nikole Hannah-Jones of the* New York Times *to Become Knight Chair in Race and Investigative Journalism*, UNC HUSSMAN SCH. OF JOURNALISM & MEDIA: NEWS (Apr. 26, 2021), http://hussman.unc.edu/news/pulitzer-prize-winning-macarthur-%E2%80%98genius%E2%80%99-nikole-hannah-jones-new-york-times-become-knight.

20. Joe Killian & Kyle Ingram, *PW Special Report: After Conservative Criticism, UNC Backs Down from Offering Acclaimed Journalist Tenured Position*, NC POL'Y WATCH (May 19, 2021), http://www.ncpolicywatch.com/2021/05/19/pw-special-report-after-conservative-criticism-unc-backs-down-from-offering-acclaimed-journalist-a-tenured-position/.

21. *Id.*

22. *Id.*

23. Jake Silverstein, *Why We Published The 1619 Project*, N.Y. TIMES MAG. (Dec. 20, 2019), https://www.nytimes.com/interactive/2019/12/20/magazine/1619-intro.html.

conservative groups, some of whom had "direct ties to the Republican-dominated UNC Board of Governors."[24] Indeed, as an anonymous board member explained, "The university and the board of trustees and the Board of Governors and the legislature have all been getting pressure since [Hannah-Jones's appointment] was first announced last month."[25] In the end, UNC recanted and offered Hannah-Jones a tenured position, which Hannah-Jones refused, announcing that she would instead decamp to Howard University to become the inaugural Knight Chair in Race and Journalism.[26]

I find myself thinking about Hannah-Jones's situation quite often. At bottom, Nikole Hannah-Jones provoked conservative opposition because she dared to surface a long-neglected aspect of American history—the ubiquity of slavery in shaping American life. Much of history is, at some level, myth-making. Hannah-Jones's problem was that she committed the cardinal sin: In the face of a received mythology, she threw back the curtain on America's founding to show how slavery had tainted almost every facet of American society and identity.

But it was not simply the audacity and courage of Hannah-Jones's project that captured my attention. It was that it felt utterly familiar. Many years ago, as a young law student, I was introduced to a volume of constitutional theory that aimed to peel back the onion and reveal the neglected history that connected Reconstruction, the Reconstruction Amendments, and the substantive due process doctrine of family rights to the scourge of slavery in the United States. The book, Peggy Cooper Davis's *Neglected Stories: The Constitution and Family Values*,[27] sought to correct the prevailing view that rights of family autonomy, integrity, and privacy protected in cases like *Griswold v. Connecticut*[28] and *Roe v. Wade*[29] were completely disconnected from constitutional text and history and instead were conjured out of whole cloth by activist judges. According to Davis, these unenumerated rights of family integrity had deep, if unacknowledged, roots in the Constitution. As Davis explained, when the Reconstruction Amendments were being conceived and drafted, they

24. *See* Killian & Ingram, *supra* note 20.

25. *Id.*

26. Analisa Novak, *Journalist Nikole Hannah-Jones Declines UNC Job After Tenure Controversy*, CBS NEWS (July 6, 2021), https://www.cbsnews.com/news/nikole-hannah-jones-unc-tenure-professorship-howard-university/.

27. PEGGY COOPER DAVIS, NEGLECTED STORIES: THE CONSTITUTION AND FAMILY VALUES (1997) [hereinafter NEGLECTED STORIES].

28. 381 U.S. 479 (1965).

29. 410 U.S. 113 (1973).

explicitly took account of slavery's impact on enslaved families. When the Court recognized rights of family integrity in the reservoir of substantive due process, it was not inventing rights out of thin air. Rather, it was simply acknowledging this aspect of the Reconstruction Amendments' response to, and repudiation of, that "peculiar institution."[30]

To make this case, Davis articulated, in meticulous detail, the familial injuries that were endemic to slavery—from the ubiquity of rape and the lack of recognition for intimate relationships to the near-constant threat of family separation.[31] These wrongs, she argued, were not simply the reality of slavery; they were the factual foundation that informed the drafting of the Reconstruction Amendments and fueled Reconstruction's vision of Black citizenship.[32] To have control over one's intimate life—to have the assurance of family integrity—was the very essence of citizenship that the Reconstruction Amendments hoped to enshrine.[33] Beyond chains and chattel, control over one's intimate life was what separated the free from the enslaved. As Davis observed, "Reconstruction lawmakers . . . spoke clearly and directly of family rights, echoing the rhetoric of antislavery and drawing from the experience of slavery."[34] On this account, those seeking to invoke the original meaning of the Reconstruction Amendments must acknowledge the "Reconstruction lawmakers' attention to family rights [as] a direct consequence of the conditions of slavery and the terms in which it was opposed."[35]

It would be hard to understate the import of *Neglected Stories* and Davis's view that, despite being unenumerated, rights of family integrity are deeply imbricated in the meaning of the Reconstruction Amendments and their repudiation of an institution in which Black people lacked the right to marry, parent their children, and control their reproductive destinies. To this day, *Neglected Stories* serves as a stunning, if subtle, rebuke to those critics of the Warren Court's privacy revolution who maintain that unenumerated rights—particularly the right to choose an abortion—are

30. Throughout the antebellum period, the terms "peculiar institution" served as a euphemism for slavery. *See* WILLIAM W. FREEHLING, THE ROAD TO DISUNION: SECESSIONISTS AT BAY, 1776–1854 (1990).

31. NEGLECTED STORIES, *supra* note 27.

32. *Id.*

33. *Id.*

34. Peggy Cooper Davis, *Neglected Stories and Civic Space*, 7 WASH. & LEE RACE & ETHNIC ANC. L.J. 45, 50 (2001).

35. *Id.*

unmoored from the text and structure of the Constitution.[36] It is a reminder that *Griswold v. Connecticut*'s appeal to a notion of penumbral privacy may have gilded the lily.[37] As Justice John Marshall Harlan II noted in his *Griswold* concurrence—and *Neglected Stories* confirms—the logic of the Reconstruction Amendments is more than enough to sustain the Court's recognition of constitutional protections for intimate life.[38]

But *Neglected Stories* goes beyond simply surfacing the neglected stories that root the repudiation of slavery and its pathologies in the drafting and ratification of the Reconstruction Amendments; Davis relocates Black families and their struggles during enslavement and beyond to the center of the effort to understand the meaning of the Reconstruction Amendments.[39] On her telling, Reconstruction was not merely a response to the disruption of a massive sectional conflict. It was a salve for the broad injuries that enslavement imposed on Black people and the integrity of their intimate bonds. Put differently, Davis resurrects a vision of Reconstruction that is not about stitching the Union back together but, rather, is about repairing—and reinvigorating—the mantle of family morality in which the United States routinely envelopes itself. And in so doing, Davis compellingly makes the case that those modern-day standard bearers for "family values," who vehemently oppose reproductive rights and other rights of intimate association, have lost the thread. The family values on which the Reconstruction Amendments rest speak to a notion of liberty and autonomy that is consistent with the recognition of these unenumerated rights.

To be sure, *Neglected Stories* did not elicit the virulent criticism that *The 1619 Project* received.[40] But the dismal landscape for reproductive freedom and the precarious circumstances of so many Black families suggest that, as with *The 1619 Project*, there has been a conscious

36. *See, e.g.*, John Hart Ely, *The Wages of Crying Wolf: A Comment on* Roe v. Wade, 82 YALE L.J. 920 (1973) (critiquing *Roe v. Wade* as unmoored from constitutional text); Robert Bork, *Neutral Principles and Some First Amendment Problems*, 47 IND. L.J. 1, 7–12 (1971) (same).

37. Griswold v. Connecticut, 381 U.S. 479, 484 (1965).

38. *Id.* at 499–502 (Harlan, J., concurring in the judgment).

39. NEGLECTED STORIES, *supra* note 27.

40. The book was well-received, although it did engender a critical review in the *New York Times*. *See* Allen Boyer, Books in Brief: Nonfiction, *Neglected Stories: The Constitution and Family Values*, N.Y. TIMES, Aug. 31, 1997 (§ 7), at 15 (critiquing Davis's method of "legal storytelling" as "an intellectual cliché"). Davis responded to the criticism in a measured—but firm—letter to the editor. *See* Peggy Cooper Davis, Letter to the Editor, N.Y. TIMES (Sept. 21, 1997), https://archive.nytimes.com/www.nytimes.com/books/97/09/21/letters/letters.html (maintaining that Boyer "misrepresents the book's central focus and serves to marginalize my analysis").

campaign to counter Davis's effort to provide a more complete history of substantive due process rights.

Rather than acknowledging the role that slavery played in shaping the Reconstruction Amendments and the substantive rights they engendered, we have instead witnessed an effort to use the residue of racism to further foreclose reproductive rights and rights of family integrity. In a stunning concurrence in *Box v. Planned Parenthood of Kentucky and Indiana*,[41] Justice Clarence Thomas connected abortion to the eugenics movement of the 1920s.[42] As he explained, eugenicists, including Margaret Sanger, the founder of the modern birth control movement, targeted family planning measures to the Black community (presumably for the purpose of limiting and impeding Black reproduction and, by extension, Black political power).[43] Although many have noted that this history is misleading and incomplete, it has been embraced by those seeking to limit reproductive rights. Indeed, the insistence that "Black Lives Matter" has been met with equally vociferous insistence that "Black *Unborn* Lives Matter."[44]

In this climate, in which stories have the power to shape narratives and, in turn, shape jurisprudence, Peggy Cooper Davis's work has never been more urgent and vital. As she made clear so many years ago, stories matter because they are the foundation of how we understand ourselves and the world that we inhabit. But, as she also argues, the stories we tell about ourselves can be incomplete and, indeed, in their incompleteness, may mask important truths about who we are. The power of a neglected story, whether in the context of *The 1619 Project* or constitutional law, is in its excavation. In putting the stories once sidelined front and center, we make clear that those on the sidelines have always been central to the story—whether we wish to acknowledge it or not.

41. Box v. Planned Parenthood of Ind. & Ky., Inc., 139 S. Ct. 1780 (2019) (per curiam).

42. *Id.* at 1783 (Thomas, J., concurring).

43. *Id.* For a discussion of the *Box* concurrence, see Melissa Murray, *Race-ing* Roe*: Reproductive Justice, Racial Justice, and the Battle for* Roe v. Wade, 134 HARV. L. REV. 2025 (2021).

44. *Id.* at 2057–58.

## III. Mary Ann Glendon

### *By June Carbone*[45]

When I first discovered family law, Professor Mary Ann Glendon established the model to which I aspired as a law professor. In 1983, I left my job at the Justice Department at the end of July and joined the George Mason University law faculty two weeks later. I had never taught anything in my life. The biggest part of my teaching load was contracts, a subject I knew nothing about. My colleague, Peg Brinig, invited me to co-author an article providing a contract analysis of alimony.[46] I was intrigued. Contract scholarship was vast and daunting, but the spousal support literature was just emerging. Lenore Weitzman had written an influential critique.[47] Joan Krauskopf laid out the pending legal issues.[48] Herma Hill Kay had written about no-fault divorce in the period before (and again after) we started our inquiry.[49] As we got into the research, Martha Fineman published her initial work on no-fault divorce.[50] The field seemed ripe for redefinition. The question was what approach would we take to our subject? That's when I discovered Mary Ann Glendon's comparative work.[51]

Glendon was then a professor at Boston College Law School, though she would soon move to Harvard. She approached family law as a comparativist, tracing the evolution of legal doctrines across the United States and selected European countries. She did not limit her focus to the family; she compared two subjects ordinarily discussed in separate silos: family law and employment law.[52] In that era, developing employment law doctrines conferred greater job security on employees and more generous

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

46. Margaret F. Brining & June Carbone, *The Reliance Interest in Marriage and Divorce*, 62 TUL. L. REV. 855 (1988).

47. LENORE J. WEITZMAN, THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA (1985).

48. Joan M. Krauskopf & Rhonda C. Thomas, *Partnership Marriage: The Solution to an Ineffective and Inequitable Law of Support*, 35 OHIO STATE L.J. 558, 558 (1974).

49. Herma Hill Kay, *A Family Court: The California Proposal*, 56 CAL. L. REV. 1205 (1968); Herma Hill Kay, *An Appraisal of California's No-Fault Divorce Law*, 75 CAL. L. REV. 291 (1987).

50. Martha L. Fineman, *Implementing Equality: Ideology, Contradiction and Social Change*, WIS. L. REV. 789, 829, 835 (1983).

51. MARY ANN GLENDON, THE NEW FAMILY AND THE NEW PROPERTY (1981) [hereinafter THE NEW FAMILY].

52. *See* Mary Ann Glendon, *The New Family and the New Property*, 53 TUL. L. REV. 697, 697 (1979) (discussing how the two topics are ordinarily thought of as "separate and distinct").

benefits, while developing family law doctrines were making divorce easier and spousal support less tied to fault. Her analysis suggested that the two were related—that family ties could become weaker because employment bonds were strengthening.[53] She concluded that wealth and social status had come to depend more on a person's job than on their family status.[54] She situated her analysis in the context of the centuries-long changes in the sources of wealth and family security, arguing that the critical purpose of family law had long been the determination of property rights dependent on inheritance, legitimacy, and family status.[55] The industrial era changed that as new forms of wealth appeared and family law's expressive function came to include working-class families with little property to allocate.[56] She used comparative methodology, tracing the legal developments across the United States, England, France, West Germany, and Sweden, with occasional references to Canon Law and other systems, to drive home the point that the changes did not just reflect changing national customs, but a reordering of sources of wealth and status.

As a young scholar, I was inspired and empowered by Glendon's work. It went beyond narrow doctrinal analysis. It sought to unravel the puzzle of why family law was changing, not just to propose reforms to address the needs of the day. And I was excited to find someone who shared my conviction that family law developments reflected a changing economic order as much, if not more, than normative convictions about family life.

Glendon's legacy, of course, goes well beyond that early work. Her book *The Transformation of Family Law*[57] won the legal academy's highest honor, the Order of the Coif Triennial Book Award. Another book, *Abortion and Divorce in Western Law*,[58] was awarded the Scribes Book Award for best writing on a legal subject. She later served as U.S. Ambassador to the Holy See and received the National Humanities Medal in 2006.[59] And she became an impassioned pro-life advocate, representing the Vatican at international conferences and submitting an amicus brief to

53. For an insightful review, see Martha Minow, *The Properties of Family and the Families of Property*, 92 YALE L.J. 376, 377 (1982) (reviewing THE NEW FAMILY, *supra* note 51).

54. *Id.*

55. THE NEW FAMILY, *supra* note 51, at 102–08.

56. *Id.* at 117–18.

57. MARY ANN GLENDON, THE TRANSFORMATION OF FAMILY LAW: STATE, LAW AND FAMILY IN THE UNITED STATES AND WESTERN EUROPE (1989).

58. MARY ANN GLENDON, ABORTION AND DIVORCE IN WESTERN LAW (1987) [hereinafter ABORTION AND DIVORCE].

59. *See Mary Ann Glendon*, HARVARD L. SCH., https://hls.harvard.edu/faculty/directory/10311/Glendon.

the Supreme Court in *Dobbs v. Jackson Women's Health Organization* in 2021 in support of overturning the constitutional right to abortion.[60]

In reflecting on Glendon's influence, I am struck by how much legal scholarship has changed since the middle of the 20th century. When I first discovered Glendon's work, I had no idea what her politics or religious convictions were, nor did I think it particularly important to know. Her most influential legal scholarship traced developments in family law without necessarily passing judgment on them. Even her work on *Abortion and Divorce in Western Law,* while controversial, focused as much on the process of legal change as the substance of the developments. Her provocative thesis was American law was unusual in its rights-oriented judicial approach. European countries, which had modernized their abortion laws during the same time period, largely relied on legislative compromises. She contended that these more incremental approaches had avoided the polarization and violence abortion disputes produced in the United States.[61] In considering divorce, in contrast, she lamented the discretion that American judges then had in comparison with the European emphasis on guidelines, which reflected greater concern for the economic well-being of dependents. She observed, in explaining the differences, that "American law places a 'greater emphasis on individual rights,' while the civil law system gives 'more attention to social context and individual responsibility.'"[62] The book generated substantial discussion, particularly with respect to abortion, on whether consensus-based approaches grounding in legislative rather than judicial decision-making had promise in bridging the growing American cultural divide.

Looking back with the light of hindsight, I find it harder to evaluate Glendon's work. Rereading *The New Family and the New Property*, published in 1981, feels similar to reading John Kenneth Galbraith's *The New Industrial State* (1967)[63]—both describe a world that no longer exists, and at least some of the enduring value of the work lies in its role chronicling a system whose features become clearer with the passage of time. A central component of Glendon's work, much like Galbraith's, involved the consequences of increasing job security; she described,

60. Brief for Professors Mary Ann Glendon and O. Carter Snead as Amici Curiae in Support of Petitioners, Dobbs v. Jackson Women's Health Org. (2021) (No. 19-1392), https://www.supremecourt.gov/DocketPDF/19/19-1392/185180/20210729085701253_19-1392%20Amici%20Brief.pdf.

61. *See* Sara J. Vance, *Abortion and Divorce in Western Law*, 86 MICH. L. REV. 1404, 1406 (1988).

62. ABORTION AND DIVORCE, *supra* note 58 at 131.

63. JOHN KENNETH GALBRAITH, THE NEW INDUSTRIAL STATE (Houghton Mifflin 1967).

for example, the increasing tendency in the 1970s for arbitrators to order employee reinstatement after a termination. Today, in contrast, employment insecurity has increased, and the benefits she chronicled have waned. At the same time, the forces she describes as contributing to family insecurity—such as the fact that individual financial well-being is no longer embedded in a web of family relationships determining property ownership—have only gained strength over time.

The import of these changes for the evaluation of her work, however, depends not on inevitable changes over time, but on her causal and methodological claims. Glendon showed how the same trends—greater rights in the workplace and looser family ties—emerged together across industrial nations, creating an impressive body of comparative work documenting how large-scale legal trends swept through much of the developed world. She suggested that the shift in wealth from land ownership to wage labor caused much of the shift. In the years since, both employment security and family security have deteriorated in tandem. These developments would seem to undermine Glendon's claims. In fact, however, she was careful not to advance the type of causal hypothesis more sophisticated empirical methodologies are designed to tease out. Instead, she addressed the interaction between cultural and economic change and legal reforms. In the process, she captured a system on the brink of a much more radical transformation because of forces then on the horizon: the decline of the well-paying union jobs for blue-collar men together with women's growing economic independence. Her lasting contribution is the careful, measured argument that the economic changes and family norms are deeply linked; modern scholars are only just catching up with the type of analysis she pioneered decades ago.[64]

Evaluation of her work on abortion and divorce is even more difficult. In the years since Glendon wrote *Abortion and Divorce in Western Law*, the American approach to divorce has become more like Europe in adopting, first, child support guidelines and, in some states more recently, spousal support schedules.[65] On the other hand, the United States has become even more politically divided, particularly on the issue of abortion. Did, as Glendon has suggested, a judicially mandated right to abortion in certain

64. *Cf.* JAMES Q. WILSON, THE MARRIAGE PROBLEM: HOW OUR CULTURE HAS WEAKENED FAMILIES 156 (2002) (insisting that cultural change cannot be explained as the product of larger economic or technological factors), *with* ANDREW J. CHERLIN, LABOR'S LOVE LOST: THE RISE AND FALL OF THE WORKING-CLASS FAMILY IN AMERICA (2014) (attributing changing family form to economic factors).

65. J. Thomas Oldham, *An Overview of the Rules in the USA Regarding the Award of Post-Divorce Spousal Support in 2019*, 41 HOUS. J. INT'L L. 525, 526 (2019).

circumstances contribute to the partisan polarization, or was it simply a particularly effective wedge issue used by the unscrupulous to lock in polarizing political identities?[66] Glendon had argued that law is both constitutive and interpretive, that is, that law interacts with culture in ways that both interpret it and transform it through the act of interpretation.[67] Both in *Abortion and Divorce in Western Law* and in her later book on *Rights Talk*,[68] she maintained that "rights talk" impoverished American legal discourse, substituting the rhetoric of rights for "traditions of hospitality and care for the community."[69] In both books, she was particularly critical of the American failure to develop a European style family policy that made systematic provision for children and other dependents, attributing the failure to the way American legal and political discourse treats families as collections of individuals rather than as organic units.[70]

These claims, however, addressing the interaction of law and culture are ultimately unknowable. Glendon's comparative methodology is most persuasive in documenting broad changes taking place across multiple cultures in concentrated time periods. She is almost certainly right that these changes reflected new forms of economic organization connecting families to the broader society. Her later works attempt something more difficult: documenting the differences and tracing their connections to different legal cultures. There, teasing out the causal connections is necessarily more contentious.

With the passage of time, I am confident of only two conclusions. Today, most of the emerging family law scholars I see get to know those who inspire them—on Zoom, if not elsewhere. When I was a junior scholar, my early influences were more intellectual than personal. I met Glendon only once, late in my career. In contrast, the family law scholars who influence me the most today are people I know personally. The result is a family law community that is more engaged with the broader society, more personally supportive, and, in some ways, more insular. Particularly on issues such as abortion, it is almost impossible not to pick sides. The lines

66. June Carbone & Naomi Cahn, *Embryo Fundamentalism*, 18 WM. & MARY BILL RTS. J. 1015, 1027–30 (2010) (describing rise of abortion as a political identity marker).

67. Glendon wrote that "[l]aw is interpretive when it is engaged in converting social facts into legal data and systematically summarizing them in legal language" and that it is "constitutive when legal language and legal concepts begin to affect ordinary language and to influence the manner in which we perceive reality." ABORTION AND DIVORCE, *supra* note 58, at 9.

68. MARY ANN GLENDON, RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE (1991).

69. *Id.* at ix.

70. *Id.* at 123.

between academic and social advocacy have blurred. My other conviction is that Glendon's comparative law scholarship remains distinctive and unparalleled. I remain indebted to her work as much today as when I first discovered it in the mid-1980s. Her willingness to push the bounds of legal scholarship and to consider the interrelationship between legal doctrine and broader societal forces remains an inspiration.

## IV. Herma Hill Kay (1934–2017)

### *By Barbara A. Atwood*[71]

I spoke with Herma Hill Kay on only a few occasions, and she was not a mentor in any personal sense. Still, when I first began teaching family law in 1986, her presence in the legal academy as a real-world family law reformer inspired me beyond words. While Herma's intimidating biography includes stellar achievements as professor, dean, scholar, casebook author, and leader in legal education,[72] I'll focus on those aspects of her life work that shimmered for me in a unique way.

When Herma became the second woman to join the faculty at Berkeley Law in 1960, she was expected to take over the courses that the law school's first woman faculty member—Barbara Nachtrieb Armstrong—had been teaching before her retirement: California Marital Property and Family Law.[73] While Herma may not have asked for the curriculum taught

71. Mary Anne Richey Professor of Law Emerita, co-director, Family and Juvenile Law Certificate Program, James E. Rogers College of Law, The University of Arizona.

72. After earning her J.D. at the University of Chicago Law School in 1959, Herma Hill Kay clerked for California Supreme Court Justice Roger Traynor. In 1960 she joined the faculty at the U.C. Berkeley School of Law and in 1992 became Berkeley Law's first woman dean, serving for six years. During Herma's distinguished career, she was president of the American Association of Law Schools, a member of the Council of the American Law Institute, and a fellow of the American Academy of Arts and Sciences, among other prestigious positions. She was a preeminent scholar in three fields: conflict of laws, sex-based discrimination, and family law. Herma was also known for her mentorship of women faculty members and women students and was an early advocate for clinical legal education and diversity in law schools. *See* Melissa Murray, *Lunching with a Legend: A Tribute to Herma*, 104 CAL. L. REV. 587 (2016). For Herma's own reflections on her life, taped in 2015, two years before her death, *see AALS Women in Legal Education Section Oral History Project: Herma Hill Kay*, ASS'N OF AM. L. SCHS., https://www.aals.org/sections/list/women-in-legal-education/aals-section-on-women-in-legal-education-oral-history-project/. Deferring to the traditions of her generation, Herma went by three surnames during her adult life: Hill, her father's surname; Schreter, her first husband's surname; and Kay, her second husband's surname. She continued to use "Kay" after marrying Carroll Brodsky, the marriage she viewed as her most successful. *See id.*

73. Importantly, Armstrong was also the first woman law professor in the United States to teach in a tenure-track position at an ABA/AALS-accredited law school. *See* Herma Hill Kay, *Symposium: The Future of Women Law Professors*, 77 IOWA L. REV. 5, 5–6 (1991).

by her predecessor,[74] she plunged into the field of family law with passion and never looked back. She continued to teach those courses as well as Conflict of Laws and Sex Discrimination Law for over 50 years.

Herma made impressive theoretical contributions in conflicts,[75] feminist jurisprudence,[76] and family law,[77] and her deep expertise in conflicts indisputably informed her approach to family law.[78] Still, her creative energies were never limited to high theory. She cared about the real-world consequences of legal rules for ordinary people, and she wanted to have a hand in improving those rules. As Herma recalled, her commitment to law reform began when she was a law student at the University of Chicago:

> I loved everything about the ideals of justice, fairness, and dignity that I studied there. With the help of my teachers, I also saw that those ideals are not always realized in practice. I decided to teach law, rather than become a practitioner, in order to devote my life's

74. For data showing that family law and related courses are more often taught by women faculty members, see, for example, Nancy Levit, *Keeping Feminism in Its Place: Sex Segregation and the Domestication of Female Academics*, 49 U. KAN. L. REV. 775, 781 (2001) ("Female law professors are much more likely than male law professors to teach substantive courses addressing familial issues, as well as skills courses that demand intensive labor and student nurturing.").

75. Beginning as Brainerd Currie's student and later as his coauthor, Herma developed a defense and reinterpretation of his interest analysis in choice of law theory. Her most comprehensive analysis of Currie's governmental interest approach was in her Hague Lectures in 1989. Herma Hill Kay, *A Defense of Currie's Governmental Interest Analysis*, 215 RECUEIL DES COURS 9, 149 (1989-III); *see* Herma H. Kay, *Remembering Brainerd Currie*, 2015 U. ILL. L. REV. 1961, 1967. As one commentator put it, Kay extended Currie's theory "beyond one designed to animate a state interest to one that accommodates states' interests while furthering unity within a community of states." Andrew D. Bradt, *Herma Hill Kay and Conflict of Laws: A Tribute*, 104 CAL. L. REV. 579, 582 (2016).

76. In Herma's seminal piece on discrimination, she analyzed claims of race and sex discrimination and identified two competing models of equality—assimilationist and pluralist—that helped guide the thinking of subsequent theorists. *See* Herma H. Kay, *Models of Equality*, 1985 U. ILL. L. REV. 39.

77. *See, e.g.*, Herma Hill Kay, *Equality and Difference: A Perspective on No-Fault Divorce and Its Aftermath*, 56 U. CIN. L. REV. 1 (1987) (assessing the impact of no-fault divorce and identifying ways in which legislative innovations fell short of the goals of the reformers); Herma H. Kay, *Beyond No-Fault: New Directions in Divorce Reform*, *in* DIVORCE REFORM AT THE CROSSROADS 31 (Stephen Sugarman & Herma H. Kay eds., 1990) (noting the need for greater governmental support for childcare, health insurance, and other socioeconomic safety nets in order to achieve gender equality).

78. When Herma joined Currie's casebook on Conflict of Laws as coauthor, she promptly rewrote the chapter on family law. Bradt, *supra* note 75, at 582. In her first scholarly publication after joining Berkeley Law, Herma (writing under her then–married name of Schreter) turned her attention to conflict issues arising in family law. *See* Herma Hill Schreter, *"Quasi-Community Property" in the Conflict of Laws*, 50 CAL. L. REV. 206 (1962).

> work to law reform focused on helping the law realize its highest aspirations.[79]

In other words, her idealism fueled her work on the ground, and we're all the better for it.

Early in her career, she set about to explore nothing less than "the legal meaning of equality between women and men."[80] Convinced that sex discrimination law should be included in the law school curriculum, Herma recruited Ruth Bader Ginsburg to join her on the first casebook for American law schools on that subject.[81] Herma enthusiastically supported the elevation of women within the legal profession and spent her final years completing a history of the first 14 women law professors in the United States.[82] At core, she wanted women to enjoy true equality so that they could achieve their unique potential, "to define their own lives as lawyers, judges, or law professors as well as human beings."[83]

Herma thought long and hard about the ways in which family law itself—through marital property regimes and custody standards, for example—perpetuated gender roles to the disadvantage of everyone, including children.[84] She recognized that "[f]amily law in general, and the law of marriage in particular, is at bottom a codification of a society's attitudes about women."[85] Thus, she aspired to achieve equality within marriage by "restructuring the institution itself so that it may better accommodate

79. Herma Hill Kay, *First Women: Herma Hill Kay*, MS. JD BLOG (Feb. 20, 2007), https://ms-jd.org/blog/article/first-women-herma-hill-kay.

80. Kay, *Equality and Difference: A Perspective on No-Fault Divorce and Its Aftermath*, *supra* note 77, at 24.

81. *See* KENNETH M. DAVIDSON, RUTH B. GINSBURG & HERMA H. KAY, SEX-BASED DISCRIMINATION: TEXT, CASES AND MATERIALS (1974). She described her development of the course in Herma Hill Kay, *Claiming a Space in the Law School Curriculum: A Casebook on Sex-Based Discrimination*, 25 COLUM. J. GENDER & L. 54, 58 (2013), noting that "[e]diting a casebook with an advocate as co-author is a bit like weaving the cloth before making the garment: it puts you in on the ground floor." She added that her own work on the Uniform Marriage and Divorce Act also made its way into the casebook. *Id.*

82. HERMA HILL KAY, PAVING THE WAY: THE FIRST AMERICAN WOMEN LAW PROFESSORS (Patricia A. Cain ed., 2021) [hereinafter PAVING THE WAY].

83. Kay, *The Future of Women Law Professors*, *supra* note 73, at 18. *See also* Herma Hill Kay & Geraldine Sparrow, *Introduction, Symposium and Workshop on Judging: Does Gender Make a Difference?*, 16 WIS. WOMEN'S L.J. 1 (2001); Herma Hill Kay, *Women Law School Deans: A Different Breed*, 14 YALE J.L. & FEMINISM 219, 233–34 (2002).

84. For her masterful recounting of the evolution of women's rights and family law, see Herma Hill Kay, *From the Second Sex to the Joint Venture: An Overview of Women's Rights and Family Law in the United States During the Twentieth Century*, 88 CAL. L. REV. 2017 (2000).

85. Herma Hill Kay, *"Making Marriage and Divorce Safe for Women" Revisited*, 32 HOFSTRA L. REV. 71, 90 (2003).

equalitarian relationships."[86] Having been married three times herself, she proposed a "joint venture" model of marriage.[87] By contemporary standards, her concept of equality—particularly its focus on the male/female dyad within the context of marriage—might seem old-fashioned, but in her day, Herma was a singular force of radical change.

Herma's interest in and promotion of uniform state laws relating to the family caught my attention early on and drove my own interest in becoming a commissioner years later.[88] She understood that widespread state enactments of uniform laws could serve as a vehicle for nationwide law reform. As reporter for the Governor's Commission on the Family Law Act, she was a key voice in California's path-breaking enactment in 1969 of no-fault divorce,[89] sparking a tidal wave of divorce reforms across the country. During the same time period, she joined Professor Robert Levy as co-reporter for the Uniform Marriage and Divorce Act (UMDA).[90] While the UMDA was only enacted in six states,[91] its influence was felt nationwide as states moved toward no-fault divorce and standards for equitable distribution of property, including recognition of the value of homemaker contributions.[92] Herma's lucid reflections on the no-fault divorce movement, including her reminder that achieving gender equality had not been the primary goal, opened my eyes to the complexities of law reform.[93]

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86. *Id.* (quoting Herma Hill Kay, *Making Marriage and Divorce Safe for Women*, 60 CAL. L. REV. 1683, 1696 (1972)).

87. Kay, *From the Second Sex to the Joint Venture*, *supra* note 84, at 2089 ("As each stage of the project of family life is completed, the couple must decide whether the venture should be continued to the next stage.").

88. I was appointed to the Uniform Law Commission in 2006 and have participated in drafting or revising uniform acts related to family law ever since. Coming up with statutory language that not only reflects desired policy but also has a chance of getting enacted is a unique kind of intellectual challenge—one that clearly appealed to Herma.

89. Family Law Act, ch. 1608, tit. 3, 1969 Cal. Stat. 3312, 3323–30.

90. Prefatory Note, UNIF. MARRIAGE & DIVORCE ACT (UMDA) (UNIF. L. COMM'N 1973). Since 1996 the UMDA has been designated as the Model Marriage and Divorce Act. See *infra* Part V for a tribute to Robert Levy.

91. *See Marriage and Divorce Act*, UNIF. L. COMM'N, https://www.uniformlaws.org/committees/community-home?communitykey=c5a9ecec-095f-4e07-a106-2e6df459d0af&tab=groupdetails.

92. UMDA § 307. The Comment to § 307 casually acknowledges that recognition of homemaker contributions "is a new concept in Anglo-American law."

93. *See, e.g.*, Kay, *Equality and Difference: A Perspective on No-Fault Divorce and Its Aftermath*, *supra* note 77, at 4; Herma Hill Kay, *An Appraisal of California's No-Fault Divorce Law*, 75 CAL. L. REV. 291 (1987) (commenting on LENORE WEITZMAN, THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA (1985)).

Herma was also a fan of the Uniform Marital Property Act (UMPA), an act that has only achieved one enactment.[94] She was particularly drawn to the UMPA because it addressed spousal property rights during marriage and not just at dissolution, a shortcoming she saw in the traditional approach of common law states.[95] She wrote in 1991, "I continue to believe that common law states should consider adopting a marital property system that initiates a sharing principle at the inception of the marriage and that provides for equal management of the common property."[96] She saw the goal of equality at divorce to relate inextricably to equality during marriage.[97] Needless to say, her insights made their way into my classroom.

Always fascinated by jurisdictional puzzles (as am I), Herma identified questions that continue to confound courts today. She defended the jurisdictional approach of the Uniform Adoption Act,[98] for example, emphasizing the psychological cost to children and the conceptual cost to the substantive law of adoption of failing to give the Full Faith and Credit Clause its full effect in interstate recognition of adoption decrees.[99]

Over the course of her long career, Herma displayed intellectual honesty and humility, qualities she had admired in her own mentor.[100] Consider, for instance, her optimism in the late 1980s that gender-neutral laws governing marriage and divorce would drive home the norm that a mother's "unique

94. UNIF. MARITAL PROP. ACT (UMPA) (UNIF. L. COMM'N 1983); *Marital Property Act*, UNIF. L. COMM'N, https://www.uniformlaws.org/committees/community-home?CommunityKey=b9e6d3ce-9365-496e-bf98-fedd48a35a6a. *See* Herma Hill Kay, Commentary: *Toward a Theory of Fair Distribution*, 57 BROOK. L. REV. 755, 760–61 (1991). Since 1996 the UMPA has been designated as a Model Act.

95. Kay, Commentary: *Toward a Theory of Fair Distribution*, *supra* note 94, at 760.

96. *Id.*

97. *Id.* at 760–61 (urging New York to adopt a sharing principle and equal management of assets during marriage).

98. UNIF. ADOPTION ACT (UAA), 9 U.L.A. pt. 1, at 1 (Supp. 1995) (retired). The Uniform Law Commission has now "retired" the UAA because it achieved enactment in only one state and endorses norms relating to adoption that have become dated over time.

99. *See* Herma Hill Kay, *Adoption in the Conflict of Laws: The UAA, Not the UCCJA, Is the Answer*, 84 CAL. L. REV. 703 (1996) (arguing that the Uniform Adoption Act rather than the Uniform Child Custody Jurisdiction Act was the appropriate jurisdictional framework for recognition and enforcement of adoption decrees). Kay's article was written before the promulgation of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The UCCJEA expressly extends to parental rights termination proceedings but also provides that it does not govern adoption proceedings, thus giving rise to continued ambiguity. *See* UCCJEA § 102(4) ("child-custody proceeding" includes termination of parental rights), § 103 (UCCJEA does not govern adoption proceedings) (UNIF. L. COMM'N 1997); Linda Elrod, *Commentary on Adoption Jurisdiction Under the UCCJEA*, UNIF. L. COMM'N, https://www.uniformlaws.org/viewdocument/reporters-commentary?CommunityKey=1e989ea5-ad22-4777-9805-cb5f14cae658&tab=librarydocuments.

100. *See* Kay, *Remembering Brainerd Currie*, *supra* note 75, at 1964–66.

role in reproduction ends with childbirth," that "fathers [should] see themselves as essential to the child's nurturance and development," and that "[w]omen, like men, should be able to lead productive, independent lives outside the family."[101] In that regard, she drew on her theory of "episodic analysis," arguing that "biological reproductive sex differences should be relevant for legal purposes only during the discrete episodes when they are being exercised."[102] Fifteen years later, Herma conceded that the goal of gender-neutral shared parenting had not been fully realized.[103] She acknowledged that fathers' rights groups had succeeded in promoting joint custody over the objection of mothers—sometimes to be used as a "bargaining chip" at divorce in a "money-for-children tradeoff."[104] In her view, the approximation standard incorporated into the American Law Institute's *Principles of the Law of Family Dissolution*—for which she served as an advisor—offered a more promising way forward that would better serve the interests of children and parents.[105]

Finally, Herma wasn't afraid to be funny. In a published version of a speech she gave to members of the *Arizona Law Review* in 1990, she used self-deprecating humor to defend her enduring reliance on footnotes in a laugh-out-loud take-down of legal writing.[106] She skewered the practice of ranking scholars based on citation counts[107]and suggested that one could discern the gist of any article just by looking at the footnotes. She ultimately proposed eliminating the "dull, boring text" altogether and publishing simply the footnotes.[108]

In short, although I didn't have a close relationship with Herma, her impact on me was profound. Sometimes influential figures in legal education may "mentor" young academics from afar without even realizing it. Herma

101. Kay, *Equality and Difference: A Perspective on No-Fault Divorce and Its Aftermath*, *supra* note 77, at 84–85.

102. *Id.* at 3, 17 (citing Herma Hill Kay, *Equality and Difference: The Case of Pregnancy*, 1 BERKELEY WOMEN'S L.J. 1, 22–27 (1985).

103. Herma Hill Kay, *No-Fault Divorce and Child Custody: Chilling Out the Gender Wars*, 36 FAM. L.Q. 27, 35–39 (2002) (describing debates over joint custody among feminist scholars, with some promoting women's primary role as mother and others welcoming greater participation by fathers).

104. *Id.* at 42.

105. *Id.* at 40–45 (praising Reporter Katherine Bartlett's work as reporter for the chapter on custodial responsibility).

106. Herma Hill Kay, *In Defense of Footnotes*, 32 ARIZ. L. REV. 419 (1990).

107. "If you're cited," she wrote, "that means you're identified as a player in the game: a scholar of significance. . . . If you're not cited, that means you're a know-nothing upstart, or that the citing authors belong to an exclusive club that closes its footnotes against authors who are different from them. Either way, you're out in the cold. . . ." *Id.* at 426–27.

108. *Id.* at 425.

could not have known that many neophyte teachers (such as one in Tucson), approaching their first family law course with trepidation, would be buoyed by her efforts to fundamentally change the gendered vision of family embedded in American law.

## V. Robert Levy

### *By Paul M. Kurtz*[109]

I have known Bob Levy for over 40 years. Soon after beginning to teach family law in 1975,[110] I got to know his scholarship. It was later in the early 1980s that I got to know the person. Both as a scholar and as a person, Bob Levy is a giant.

After earning his undergraduate degree at Kenyon College, he served two years in the Army and then entered the University of Pennsylvania Law School, where he earned his J.D. magna cum laude, was elected to Order of the Coif, and was a senior editor on the Law Review. After two years as a trial attorney with the Department of Justice, in 1959 he joined the faculty of the University of Minnesota Law School, where he was a distinguished scholar and teacher for four decades.[111]

Since 1963 he has been a leader in the now-trendy area of multidisciplinary scholarship.[112] During his career, he devoted much energy to empirical research, as well as bringing legal insights to social

109. Paul Kurtz is associate dean and J. Alton Hosch Professor Emeritus at the University of Georgia School of Law. He taught family law at Georgia for 38 years; was a visiting professor at the University of Missouri, the University of Texas, and Vanderbilt University; and was the long-time associate editor of the *Family Law Quarterly*.

110. Actually, to demonstrate how long ago 1975 was, the course was then known as Domestic Relations at many schools, including the University of Georgia where I began teaching that year.

111. *See Robert Levy*, UNIV. MINN. L. SCH., https://law.umn.edu/profiles/robert-levy. In 1989, he became the first Dorsey & Whitney Professor of Law, after having served as the Julius E. Davis Professor of Law for 1984–85. In 1996 he became the William L. Prosser Professor. During his career, he held visitorships at the University of Iowa and the University of Texas, and was a visiting distinguished scholar at Brooklyn Law School and a visiting scholar at the American Bar Foundation. He is a member of the American Law Institute and a Fellow of the American Academy of Matrimonial Lawyers. *Id.* He was active in the Family Law Section of the ABA and long served on the Board of Editors of the *Family Law Quarterly*.

112. *See* Robert J. Levy, *The Perilous Necessity: Nonlegal Materials in a Family Law Course*, 3 J. FAM. L. 138 , 143–44 (1963).

scientists and vice versa.[113] To borrow from the title of a country music song popular in the 1980s, Bob Levy was an interdisciplinarian when being an interdisciplinarian wasn't cool.[114]

While his leadership in the field of interdisciplinary studies and empirical research is susceptible to dismissal as mere academic inside baseball, Bob and another giant of his generation of legal scholars, Herma Hill Kay,[115] were primarily responsible for the drafting of the most important family law statute in the past half-century, the Uniform Marriage and Divorce Act, promulgated in 1970 by the Uniform Law Commission (ULC).[116] While family law is largely a matter of state law, the principles of many uniform laws promulgated by the ULC are now reflected in the laws of the

113. *See, e.g.*, Robert J. Levy, *Protecting the Mentally Retarded: An Empirical Survey and Evaluation of the Establishment of State Guardianship in Minnesota*, 49 MINN. L. REV. 821 (1965); Robert J. Levy & Phoebe C. Ellsworth, *Legislative Reform of Child Custody Adjudication: An Effort to Rely on Social Science Data in Formulating Legal Policies*, 4 LAW & SOC'Y REV. 167 (1969); Robert J. Levy & Julie A. Fulton, *The Organization and Management of Law and Social Science Research*, 52 N.C. L. REV. 999 (1974); Robert J. Levy, *Custody Investigations in Divorce Cases*, 4 A.B.F. RSCH. J. 713 (1985); Robert J. Levy, *Using Scientific Evidence to Prove Child Sexual Abuse*, 23 FAM. L.Q. 385 (1989); Robert J. Levy et al., *Expert Testimony in Child Sexual Abuse Cases: Effects of Expert Evidence Type and Cross Examination*, 18 L. & HUM. BEHAV. 653 (1994); LEGAL AND MENTAL HEALTH PERSPECTIVES ON CUSTODY: A DESKBOOK FOR JUDGES (Robert J. Levy ed., 1998). Professor Barbara Bennett Woodhouse, then the David H. Levin Chair in Family Law and director of the Center on Children and the Law at the University of Florida College of Law, compared the deskbook to Dr. Benjamin Spock's classic work BABY AND CHILD CARE (1957). Just as Dr. Spock assured parents in his book's opening sentence, "You know more than you think you do," Professor Woodhouse assured trial court judges hearing custody cases that the deskbook is "a judge's version of the Dr. Spock guidebook." Barbara Bennett Woodhouse, *Talking About Children's Rights in Judicial Custody and Visitation Decision-Making*, 36 FAM. L.Q. 105, 105–06 (2002). Bob Levy also introduced much social science material to law students throughout the country in his family law casebook, which went through three editions. *See* CALEB FOOTE, ROBERT J. LEVY & FRANK SANDER, CASES AND MATERIALS ON FAMILY LAW (3d ed. 1985). *See also* Professor Ira Ellman's description, *infra* note 126, of Bob Levy's preliminary analysis of the material covered in the Uniform Marriage and Divorce Act, for which he served as co-reporter.

114. *See* Barbara Mandrell, *I Was Country When Country Wasn't Cool* (BMI 1981).

115. Dean Kay's contribution to the field of family law is detailed in a piece in this issue, written by Professor Barbara Atwood. *See supra* Part IV.

116. UMDA, *supra* note 90. The group was originally known as the National Conference of Commissioners on Uniform State Laws. In recent years, it has adopted the shorter title of Uniform Law Commission. In 1996, the title of the UMDA was changed to the Model Marriage and Divorce Act. The change in designation reflected the fact that, while not a great number of states had adopted the UMDA in its entirety, virtually all states had and continue to have adopted the principles expressed in the UMDA. By designating the Act as a Model Act, the ULC is suggesting that, e.g., a state wanting to take a no-fault approach to property division on divorce ought to seriously consider the specific language of either Alternative A or B of section 307 of the Model Act. Professor Levy and Dean Herma Hill Kay were co-reporters of the Act and, thus, were primarily responsible for the drafting of its language.

several states even when they do not specifically track the language of the uniform acts. The Marriage and Divorce Act is one of the most influential of all the acts promulgated in the almost 130-year history of the Uniform Law Commission.[117]

The drafting of the Act was a lengthy process, beginning in 1967 with the appointment of Levy by the Conference as the reporter for the Act and ending with amendments to the 1970 version of the Act in 1973.[118] In two pieces recounting the history of the drafting process, Bob described the arduous path toward final approval, noting the UMDA was "not 'a sort of monolith which enjoyed in its conception and during its gestation unanimous internal approval'"[119] but rather "[e]ach policy—indeed, each clause of each section—was the subject of intense, often cantankerous, debate . . . indeed, I cannot recall any provision which was not the product either of a compromise among competing policy choices or a vote to which there was significant dissent."[120]

While no state has adopted the Act in its entirety, eight states adopted the heart of its dissolution provisions intact.[121] But beyond the tallying of adoptions of the language of the Act, virtually all states have incorporated into their statutes the two most fundamental innovations of the Act—the abandonment of the fault-based regime of divorce and the "equitable distribution of marital property" (or the "concept that marriage should be

117. "When the National Conference of Commissioners on Uniform State Laws was formed in 1892, two of the major subjects named as appropriate for uniform laws were commercial paper and marriage and divorce." Prefatory Note, UMDA.

118. *See id.* Professor Herma Hill Kay was added as a co-reporter later in the process. *See supra* note 90 and accompanying text.

119. Robert J. Levy, *A Reminiscence About the Uniform Marriage and Divorce Act—and Some Reflections About Its Critics and Its Policies*, 1991 BYU L. REV. 43, 43 (citation omitted).

120. Robert J. Levy, *Comments on the Legislative History of the Uniform Marriage and Divorce Act*, 7 FAM. L.Q. 405, 407–08 (1973), which originally appeared at 18 S. D. L. REV. 531 (1973).

121. Levy, *A Reminiscence About the Uniform Marriage and Divorce Act—and Some Reflections About Its Critics and Its Policies*, *supra* note 119, at 44. The Act used the term "dissolution" as a substitute for the word "divorce" to indicate the "fault-based" trappings of traditional divorce law. The Prefatory Note to the UMDA, which according to ULC practice was almost certainly written by Bob and his co-reporter Herma Hill Kay, stated that "although the experts may be divided on other issues, there is virtual unanimity as to the urgent need for basic reform [of both marriage and divorce law]. The traditional conception of divorce based on fault has been singled out particularly, both as an ineffective barrier to marriage dissolution which is regularly overcome by perjury, thus promoting disrespect for the law and its processes, and as an unfortunate device which adds to the bitterness and hostility of divorce proceedings." Prefatory Note, UMDA. The Act also eliminates the concept of fault in the division of property and in provision of post-marital support to a former spouse and the couple's children. UMDA §§ 307, 308(b).

treated as a partnership whose assets must be fairly distributed between the marital partners without regard to their formal ownership").[122]

In 2002, as associate editor of the *Family Law Quarterly*, I wrote an introduction to a symposium on Custody Law and Practice that was organized to honor Bob on the occasion of his retirement from the University of Minnesota Law School faculty.[123] To make clear that my evaluation and praise of Bob's contribution in the field of family law are not idiosyncratic, hear supporting documentation from some of the giants of the family law professoriate in that issue.

Katharine Bartlett, then the A. Kenneth Pye Professor of Law at Duke University School of Law and one of the reporters for the ALI's *Principles of the Law of Family Dissolution* (2002), wrote:

> [Bob] Levy was part of the original group of advisers, and through ups and downs, stayed with the project as one of its most steadfast, active contributors. This is so even though the project adopted a number of rules with which Levy actively disagreed. In the case of each issue on which he would have taken a different position, Levy would state his case, fight for it vigorously and respectfully, and be ready to move on whatever the outcome, often inviting those with whom he disagreed out for cocktails when the debate was over. . . .[124]

Herma Hill Kay, then the Barbara Nachtrieb Armstrong Professor of Law at the University of California, Berkeley, School of Law and co-reporter for the Act, wrote:

> I feel as though I have known Bob Levy forever, but I suppose our formal collaboration did not begin until . . . I joined him as co-reporter. . . . By that time, he had . . . already laid the intellectual framework for the project. With his customary warmth and generosity,

122. *See* Levy, *A Reminiscence About the Uniform Marriage and Divorce Act—and Some Reflections About Its Critics and Its Policies*, *supra* note 119, at 44.

123. Paul M. Kurtz, *Introduction to Custody Law and Practice Symposium*, 36 FAM. L.Q. 1 (2002). That symposium was originally scheduled to be held in person at the University of Minnesota in the fall of 2001. Because of the terrorist attacks on September 11, that event never occurred. Instead, the papers were published in the *Quarterly*. Portions of this piece are taken from my Introduction.

124. Katharine T. Bartlett, *Preference, Presumption, Predisposition and Common Sense: From Traditional Custody Doctrines to the American Law Institute's Family Dissolution Project*, 36 FAM. L.Q. 11, 11 (2002).

> he welcomed me to the task and allowed me to help him make family law history.[125]

Ira Ellman, then the Willard H. Pedrick Distinguished Research Scholar and Professor of Law at Arizona State University, and Chief Reporter for the ALI's Family Dissolution Principles project, wrote:

> I have profited enormously over the past decade and longer from his counsel, sought and volunteered, in his official role as an Adviser to the American Law Institute project . . . and in his unofficial role as my friend. Bob is neither short on views, nor reluctant to express them, and so I have had lots of advice to profit from. . . . Bob always has well-thought out reasons for his opinions, and he's interested in the argument as much as the result. . . . He has the ability to respect a view he doesn't share. . . .
>
> Bob Levy is on a very short list of major figures in the creation of modern family law.[126]

John Dewitt Gregory, then the Sidney and Walter Siben Distinguished Professor of Family Law at Hofstra University, wrote:

> I first met Bob Levy some thirty years ago when I attended a three-week teaching conference sponsored by the [AALS], at which [he] was a faculty member. During the ensuing three decades or so, he has been a generous, kind, and nurturing mentor for me. If a law professor can have a guru, then Bob Levy is certainly mine. More importantly, his contributions to the field of matrimonial and family law are virtually incalculable.[127]

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125. Herma Hill Kay, *No-Fault Divorce and Child Custody: Chilling out the Gender Wars*, 36 FAM. L.Q. 27, 27 (2002).

126. Ira Mark Ellman, *Thinking About Custody and Support in Ambiguous-Father Families*, 36 FAM. L.Q. 49, 49 (2002). Later in this piece, Professor Ellman reported on inadvertently coming upon Bob Levy's *Uniform Marriage and Divorce Legislation: A Preliminary Analysis*. This 1969 document, prepared by Bob early in the work on the UMDA, was a "document of over 500 pages, excluding a few appendices containing articles by others. It is the kind of thorough, comprehensive, and thoughtful conceptualization of a field that careers are made of." *Id.* at 50. Professor Ellman went on to note that the document is "modern in method: wide-ranging in its sources, as to both discipline and nationality. (One of the supporting documents Bob included was a socio-legal study of proceedings in divorce courts in Poland. Remember, this was 1969, when most Americans probably doubted there were functioning courts of any kind in Poland.)" *Id.*

127. John Dewitt Gregory, *Family Privacy and the Custody and Visitation Rights of Adult Outsiders*, 36 FAM. L.Q. 163, 163 (2002).

While incorporating by reference all the remarks just quoted, I would like to add that I sat next to Bob through numerous meetings concerning the ALI Principles of Family Dissolution and a number of meetings of the *Family Law Quarterly* Editorial Board and found him to be the opinionated, rigorous, thoroughly prepared fellow they have all described. I would like to add a final personal note about Bob Levy. In the mid-1980s, as I was in the process of preparing a family law casebook with my senior co-author Ira Ellman, I was anxious to use the manuscript of our book as the text for my own family law course one semester. For some reason, I was unable to get the page proofs from our publisher to distribute to my students. When I shared this dilemma with my friend Bob Levy, he offered to allow me to use the page proofs for the upcoming third edition of his casebook. To offer a soon-to-be competitor in the family law casebook market his and his co-authors' work was more than magnanimous.

Putting together this tribute to my friend and colleague, Bob Levy, has provided me with ineffable joy and I am grateful for having had the opportunity to do it.[128]

## VI. Marygold (Margo) Shire Melli (1926–2018)

### *By J. Thomas Oldham & Bruce M. Smyth*[129]

Marygold Shire Melli's father was a factory worker and her mother was a teacher. Although neither had graduated from college, they were supportive of their children's aspirations to go to college; Professor Melli and her two sisters did all graduate from college.[130]

Professor Melli graduated from the University of Wisconsin Law School in 1950.[131] While she graduated at the top of her class, this was a time when job opportunities for young women lawyers were very limited. As a result, during the early 1950s, Professor Melli worked with various members of the Wisconsin law faculty on a legislative project regarding the recodification of the criminal code.[132] Later in the 1950s, she was hired by the Wisconsin "Legislative Council" (which apparently is a nonpartisan

128. I am also very much looking forward to our paths crossing sometime soon.

129. J. Thomas Oldham is the John Freeman Professor of Law at the University of Houston Law Center. Bruce M. Smyth is Professor of Family Studies at the Australian National University in Canberra, Australia.

130. *See* Transcript of Interview by Joan F. Kessler with Marygold S. Melli at 1, 4, ABA Women Trailblazers in the Law Project (Fall 2005), https://stacks.stanford.edu/file/druid:hk772xb6717/MelliM_Transcript.pdf [hereinafter ABA Trailblazers Interview].

131. *Id.* at 17.

132. *Id.* at 19.

organization similar to a law commission) to direct a project to revise what was then known as the "children's code," and this project apparently sparked a lifelong interest in children and family law issues.[133]

In 1959, Professor Melli was hired by the Wisconsin Law School as its first female tenure-track faculty member.[134] During the 1960s, she and her husband adopted four young children.[135] She was expected, in addition to fulfilling her teaching responsibilities, to care for the young children. In addition to her childcare responsibilities, her father had died in 1962 and after that her mother required some care.[136] Thus, Professor Melli had to arrange for various people to help care for the children and her mother so she could continue to work.[137]

In the 1970s, Professor Melli was invited by the chief justice of the Wisconsin Supreme Court to be a member of the Wisconsin Board of Bar Examiners (at the time, the Board of Attorneys Competence), whose charge was to develop a system of continuing legal education for Wisconsin lawyers.[138] Shortly thereafter, she was invited to become the first female member of the National Conference of Bar Examiners, where she worked to create the Multi-State Essay Exam.[139] She eventually was named chair of that body.[140]

Professor Melli served in numerous capacities with the American Academy of Matrimonial Lawyers. Among other things, she agreed to be the founding editor of the *Journal of the American Academy of Matrimonial Lawyers*.[141]

Perhaps the most important projects of her career pertained to her work regarding issues relating to child support. Until the early 1980s, judges in the United States had a great deal of discretion in terms of how much child support should be awarded in a given situation. In her work with Professor Irv Garfinkel and others at the Institute for Research on Poverty at Wisconsin, she discovered that the best predictors of the amount of child support were the number of children and the noncustodial parent's income. This insight led to the idea that a presumptive child support

133. *Id.* at 22; Marygold Melli, *The Children's Code*, 1956 WISC. L. REV. 431.

134. *See* Obituary for Marygold "Margo" Shire Melli, RYAN FUNERAL HOMES (Jan. 2018), https://www.ryanfuneralservice.com/obituary/MarygoldMargo-Melli.

135. ABA Trailblazers Interview, *supra* note 130, at 36.

136. *Paving the Way*, *supra* note 82, at 217 (2021).

137. *Id.*

138. ABA Trailblazers Interview, *supra* note 130, at 52.

139. *Id.* at 53–54.

140. *Id.* at 52–53.

141. *See* Marygold Melli, *About this Issue*, 1 J. AM. ACAD. MATRIM. LAWS. [vii] (1985).

order could be calculated based on a formula.[142] They proposed to the Wisconsin legislature that the presumptive amount of child support in any given situation should be calculated based on a simple guideline formula.[143] The lesser-time parent's gross income would be multiplied by a certain specified percentage, which would vary based on the number of children.[144] The Wisconsin Child Support Guidelines were adopted in 1987 and became a model for other states.[145]

While a new member of the ALI, she proposed to the executive director that the ALI undertake a reexamination of the principles governing "family dissolution."[146] She drafted a "Memorandum for a Project on Family Dissolution," and this memorandum was approved by the ALI Council.[147] She was named the original reporter for the project, which eventually become the *Principles of the Law of Family Dissolution*.[148]

Although Professor Melli retired in 1993, she continued to be an active scholar. Most child support guidelines assumed that the parent paying child support would not spend a substantial amount of time with the child. Professor Melli was one of the first scholars to consider how child support should be calculated when both parents spend a significant amount of time with their children.[149]

In 2013, Professor Melli was awarded the Margaret Brent Women Lawyers of Achievement award for her work paving the way for other

142. *See Paving the Way*, *supra* note 82, at 223; Marygold Melli, *The Changing View of Child Support*, 5 FAM. ADVOC. 16 (1982); Marygold S. Melli & Sherwood K. Zink, *Alternatives to Judicial Child Support Enforcement; A Proposal for a Child Support Tax*, *in* THE RESOLUTION OF FAMILY CONFLICT: COMPARATIVE LEGAL PERSPECTIVES, ch. 32 (John M. Eekelaar & Sanford N. Katz eds., 1984); Irwin Garfinkel & Marygold S. Melli, *The Use of Normative Standards in Family Law Decisions: Developing Mathematical Standards for Child Support*, 24 FAM. L.Q. 157 (1990).

143. *Paving the Way*, *supra* note 82, at 223.

144. Garfinkel & Melli, *supra* note 142, at 164.

145. *See Paving the Way*, *supra* note 82, at 223–24.

146. ABA Trailblazer Interview, *supra* note 130, at 57–58.

147. *Id.* at 58.

148. *Id.*

149. *See* Marygold S. Melli & Patricia R. Brown, *The Economics of Shared Custody: Developing an Equitable Formula for Dual Residence*, 31 HOUS. L. REV. 543 (1994); Marygold S. Melli, *Guideline Review: Child Support and Timesharing by Parents*, 33 FAM. L.Q. 219 (1999–2000); MARGARET L. KRECKER, PATRICIA BROWN, MARYGOLD S. MELLI & LYNN WIMER, CHILDREN'S LIVING ARRANGEMENTS IN DIVORCED WISCONSIN FAMILIES WITH SHARED PLACEMENT (Inst. for Rsch. on Poverty 2003) (report to the Wis. Dep't of Workforce Dev., Bureau of Child Support); PATRICIA BROWN, MARYGOLD MELLI & MARIA CANCIAN, PHYSICAL CUSTODY IN WISCONSIN DIVORCE CASES, 1980–1992 (Inst. for Rsch. on Poverty 1997).

women lawyers.[150] In addition, the Legal Association for Women created the "Margo Melli Achievement Award," which is intended to honor "an outstanding individual in Wisconsin who . . . has contributed significantly to the eradication of gender bias in the legal system."[151]

At Professor Melli's retirement event at the University of Wisconsin–Madison, her long-time collaborator and friend Patricia Brown titled her tribute speech to Margo: "She Did Her Own Photocopying." This title captures Professor Melli's way in the world in so many ways: diligence, fierce independence, respect for others, and deep humanity.

So much is written in the academy by so many. Yet much of this work is hardly read and rarely leads to positive real-world change. Professor Melli's work is an exception. She has left a large and rich body of deep thinking across a wide range of issues, including shared-time parenting after parental separation (i.e., joint physical custody)[152]; child support guidelines and enforcement[153]; dispute resolution in the context of no-fault divorce[154]; the economic consequences of divorce for women and children[155]; improving the availability and quality of legal representation of children[156]; adoption[157]; . . . the list goes on. The central thread running through this expansive body of scholarship is a deep humanistic concern to improve the lives of children and families.

150. *Previous Margaret Brent Women Lawyers of Achievement Award Recipients*, AM. BAR ASS'N., https://www.americanbar.org/groups/diversity/women/margaret-brent-awards/pasthonorees/.

151. *Paving the Way*, *supra* note 82, at 225. The award was the idea of a former student who was also a research assistant for Professor Melli. *Id.*

152. *See, e.g.*, Marygold S. Melli & Patricia R. Brown, *Exploring a New Family Form—The Shared Time Family*, 22 INT'L J. L. POL'Y & FAM. 231 (2008); Lawrence M. Berger et al., *The Stability of Child Physical Placements Following Divorce: Descriptive Evidence from Wisconsin*, 70 J. MARRIAGE & FAM. 273 (2008); Marygold S. Melli, Patricia R. Brown & Maria Cancian, *Child Custody in a Changing World: A Study of Postdivorce Arrangements in Wisconsin*, 1997 U. ILL. L. REV. 773.

153. *See supra* note 142; *see, e.g.*, Irwin Garfinkel, Marygold S. Melli & John G. Robertson, *Child Support Orders: A Perspective on Reform*, FUTURE OF CHILDREN, Spring 1994, at 84; Melli, *The Changing View of Child Support*, *supra* note 142; Marygold S. Melli, *The United States: Child Support Enforcement for the 21st Century*, 32 U. LOUISVILLE J. FAM. L. 475 (1993).

154. *See, e.g.*, Marygold S. Melli et al., *The Process of Negotiation: An Exploratory Investigation in the Context of No-Fault Divorce*, 40 RUTGERS L. REV. 1133 (1987).

155. *See, e.g.*, Marygold S. Melli, *Constructing a Social Problem: The Post-Divorce Plight of Women and Children*, 1986 AM. BAR FOUND. RSCH. J. 759 (1986); Marygold S. Melli, *The United States: Continuing Concern with the Economic Consequences of Divorce*, 31 U. LOUISVILLE J. FAM. L. 491 (1992).

156. *See, e.g.*, Marygold S. Melli, *Improving Legal Representation for Children*, 1995 INT'L SURV. FAM. L. 503 (1995).

157. *See, e.g.*, Marygold S. Melli, *Focus on Adoption*, 1994 INT'L SURV. FAM. L. 483 (1994).

Much of Professor Melli's and her colleagues' writing was—and in some cases remains—at the vanguard of family law scholarship on these issues. For instance, Professor Melli observed that

> [a]lthough there is almost no empirical data on the costs of shared time and the distribution of those costs between parents, it is likely that expenditures by the residential parent do not decrease until well after the nonresidential parent has considerable expense.[158]

and that

> [u]nequal shared time cases [e.g., 35/65 or 30/70 time splits] appeared to be the result of more conflict than equal [50/50] time share cases.[159]

Her observation that we do not know at what point and to what extent the financial costs of caring for a child after separation shift from one household to the other still holds two decades later. The same is true regarding the extent to which the demography and dynamics of unequal shared time differ in important ways to equal-time arrangements. More recently, Professor Melli's groundbreaking work concerning shared-time parenting—as she noted, an important emerging family form in its own right—has spurred empirical work around the world and continues to be drawn on by many of the leading international scholars in the field.[160]

For those who were lucky enough to be around Margo, her quick wit, cognitive horsepower and smarts, incisive writing, playful curiosity, and love of life, family, and ideas were always clearly apparent. While Professor Melli did indeed always do her own photocopying, a keen interest in the research of others as well as more prosaic pursuits—travel, bushwalking with her husband Joe, a glass of white wine, and fun—were never far away.

158. Marygold S. Melli, *Guideline Review: Child Support and Time Sharing by Parents*, 33 FAM. L.Q. 219, 229 (1999).

159. *Id.* at 230.

160. These include Professors Malin Bergström, Maria Cancian, Robert Emery, Emma Fransson, Michael Lamb, Daniel Mayer, Jennifer McIntosh, Anja Steinbach, and others.

## VII. Martha Minow

### *By Brian H. Bix*[161]

I am writing about Martha Minow as the senior scholar who has had the greatest influence over my work in family law. When I first met her—as a first-year law student in her civil procedure course—she was not especially "senior"; she had started her position at the Harvard Law School only two years previously (though, to be sure, everyone seems "senior" when one is just starting out in law school). I went on to take her family law class (if she could make civil procedure interesting . . .), and I have been devoted to family law ever since.

One thing distinctive about Martha, in the context of the present discussion, is that she was not only or primarily *my* mentor. She has been a mentor to *dozens* of former students and younger scholars she has met through various venues and ventures over the years. She has been endlessly willing to give of her time—and her careful and helpful attention. This vast network of MM devotees speaks most clearly to her influence and importance.

In her teaching and scholarship, she has led by example. We have all known law school professors who seemed to thrive on denigrating and humiliating their students (thankfully, a far rarer phenomenon now than in the past). But one always left Martha's class somehow feeling smarter and more able than when the class began. It is not that we never made bad arguments or stupid comments in her class, but she would charitably reconstruct our statements and make them seem far worthier.[162] We were learning important lessons, both about how to treat one another and about a constructive and collaborative, rather than competitive, approach to intellectual exchange—not to mention, for those of us who wound up in the academy, how to be an effective teacher.

One can get a good sense of Martha's approach to family law by looking at her edited collection of readings: *Family Matters*.[163] In that work,

161. Frederick W. Thomas Professor of Law and Philosophy, University of Minnesota.

162. Martha often began classes with a joke, and one of them seemed to be making fun of herself. It is a well-known joke (told in many variations): Two people bring their dispute to their rabbi. After hearing one side's argument, the rabbi says, "you are right." But after the second person offers their argument, the rabbi says: "*you* are right." When the rabbi's wife interjects, "they cannot *both* be right," the rabbi turns to her and says: "you are right, too." In sharp contrast to Ronald Dworkin's approach to law, RONALD DWORKIN, A MATTER OF PRINCIPLE 119–45 (1985) (summarizing his "right answer theory," in which every legal dispute has one unique right answer), in Martha's class there were seemingly no *wrong* answers.

163. FAMILY MATTERS: READINGS ON FAMILY LIVES AND THE LAW (Martha Minow ed., 1993).

there is a place for short stories and poems, and also history and social science, to go along with more conventional samplings of doctrinal/policy arguments and counterarguments. Her book, like her course, is meant to impress upon us that what makes family law crucial is that it touches on what is important in all of our lives: connections with and dependency upon those most important to us. As Martha's teaching and scholarship constantly remind us, while much of the law seems to depend on turning off our human/emotional side, thinking about or practicing family law requires us to remain carefully attuned to it.

Martha's scholarship also teaches by example: a willingness to discuss the hardest and most painful topics without looking away, an almost aggressive charity in the reading of contrary or opposing views, and great clarity in exposition. Among the themes common to Martha's family law work are "difference" and "relational." Family law outcomes must be understood not (only) on individualistic (contractual/libertarian) grounds, but also taking into account the rights and duties that arise out of our (chosen and unchosen) relationships.[164] And our differences, and their significance, are themselves relational. This is true, most obviously, because difference is difference *relative to (an assumed) baseline*—often the majority group or the conventional practice—but also because of the way our institutions and practices affect what is *perceived to be* a difference or disability. For example, use of a wheelchair in a world with accessible buildings and single parenthood in a world with available and affordable childcare are different than those same circumstances without those resources.[165]

The experience of reading one of Martha's articles is, in some ways, very much like attending one of her classes (or watching one of her recorded talks on YouTube). It is not the usual academic feeling of abstracted observation or authoritarian *diktat*. Instead, it is a recognizable individual voice inviting reasoned and empathetic discussion, a colleague and friend suggesting collaboration toward resolving the problems we face. It is not surprising that Martha's books speak of inclusion,[166] engaging

164. *See, e.g.*, Martha Minow & Mary Lyndon Shanley, *Relational Rights and Responsibilities: Revisioning the Family in Liberal Political Theory and Law*, 11 HYPATIA 4 (1996).

165. *See, e.g.*, MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW (1990); Martha Minow, *Differences Among Difference*, 1 UCLA WOMEN'S L.J. 165 (1991).

166. MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW, *supra* note 165.

difference,[167] restoring humanity,[168] forgiveness,[169] and repair.[170] Hers is a positive and constructive vision of human beings and law, and—perhaps rarest of all—the way the legal system might be made to work, by and for human beings.

## VIII. Robert Mnookin

### *By Elizabeth S. Scott* [171]

In recent years, Bob Mnookin has been known primarily for his work on negotiation and conflict resolution; he long led the Program on Negotiation at the Harvard Law School and has written several books on that subject.[172] But earlier in his career, Professor Mnookin was a scholar of family law, and the seeds of his work on negotiation can be found in his groundbreaking family law scholarship in the 1970s. When I began to pursue a career as a legal scholar in the 1980s, I was inspired by Mnookin's work. It was creative and addressed big issues in ways that no one had previously done. Mnookin was at the vanguard of scholars drawing on social science research and theory in legal scholarship, and among the first to employ the tools of law and economics. His 1979 *Yale Law Journal* article on divorce bargaining, written with Lewis Kornhauser, is a classic in law and economics literature and one of the most cited law review articles ever published.[173]

Three articles written by Mnookin in the 1970s have greatly influenced my scholarship and continue to be on my short list of outstanding law review articles in family law. The articles deal with varied topics—foster care, the best interest of the child standard, and the relationship between the private ordering by divorcing couples and background legal doctrine. All three articles focus on decision-making—by courts, agencies, and

167. ENGAGING CULTURAL DIFFERENCES: THE MULTICULTURAL CHALLENGE IN LIBERAL DEMOCRACIES (Richard A. Schweder, Martha Minow & Hazel Rose Markus eds., 2002).

168. IMAGINE COEXISTENCE: RESTORING HUMANITY AFTER VIOLENT ETHNIC CONFLICT (Antonia Chayes & Martha Minow eds., 2003).

169. MARTHA MINOW, BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE (Beacon Press, 1998); *see also* MARTHA MINOW, WHEN SHOULD LAW FORGIVE? (2019).

170. MARTHA MINOW, BREAKING THE CYCLES OF HATRED: MEMORY, LAW, AND REPAIR (2002).

171. Harold R. Medina Professor of Law, Columbia Law School.

172. *See Robert Harris Mnookin*, HARV. L. SCH., https://hls.harvard.edu/faculty/directory/10592/Mnookin; *Program on Negotiation*, HARV. L. SCH., https://www.pon.harvard.edu/.

173. Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950 (1979).

parties—and on the importance of the substance and form of legal rules in shaping the choices that legal actors make. These articles are full of insights, ideas, and arguments that were almost revolutionary when offered by Mnookin in the 1970s, but that were so powerful that many generated important reforms. Just as impressive, the novel perspectives and insights offered by Mnookin have become conventional wisdom.

The first article, *Foster Care—In Whose Best Interest?*, focused on state intervention in poor families and the removal of children from parental custody and placement in foster care.[174] Although Mnookin was probably not the first scholar to criticize the foster care system, he was the first to analyze comprehensively its problems and to identify the sources of the pathology. In this article, Mnookin explained how the indeterminate best interest of the child standard, which at the time was applied with little constraint to decisions about the removal of children, gave judges virtually unbridled discretion to make these decisions based on their own middle class values and biases about adequate parenting. The article drew on a broad range of social and behavioral science research that supported a damning indictment of the process by which removal decisions were made and the system into which children were placed. Mnookin pointed to research showing that clinicians overpredicted harmful outcomes on the basis of troubling family situations and then he explained the logical errors that led to overprediction—and to the removal of children from their families, to which many never returned. Based on comprehensive research on the foster care system itself, he showed how the system harmed the children it was supposed to protect, by creating instability and impermanence in their lives with little or no evidence that most were better off than they would have been if left in parental custody. Mnookin argued for a stricter legal standard that would limit removal and for time limits on foster care.

The article was a catalyst for a wave of criticism of the child welfare system and the role of law in separating children from their parents; ultimately, although the system continues to serve children's interest relatively poorly, regulators have responded with stricter legal standards and time limits on foster care.[175] The idea that the best interest standard invites decisions based on social workers' and judges' (sometimes unconscious) racist, classist

174. Robert Mnookin, *Foster Care—In Whose Best Interest?*, 43 HARV. EDUC. REV. 599 (1973).

175. As Clare Huntington has explained, the principal problem today is not the legal framework but the lack of resources to support poor families. *See* Clare Huntington, *The Child-Welfare System and the Limits of Determinacy*, 77 LAW & CONTEMP. PROBS. 221 (2014).

values became conventional wisdom, as did the view that state intervention and removal likely threaten more harm to children than even suboptimal family care. But these ideas were just beginning to percolate in the early 1970s when Mnookin wrote his article. The article did not emphasize the constitutional rights of parents as a more traditional law review article might have done. But it was a catalyst for a complete rethinking of the relationship of the state to poor families that led others to advocate vigorously for the protection of parental rights.

Mnookin continued to develop some of these themes in his 1975 article, *Child Custody Adjudication: Judicial Functions in the Face of Indeterminacy*.[176] This article dissected the best interest of the child custody standard, which by the mid-1970s had become the dominant rule for deciding both private custody disputes between parents and decisions about removal of children in families. Mnookin explained how this seemingly innocuous legal standard differs dramatically from other legal rules and applied rational choice theory to expose its deep flaws as a decision rule. Rather than adjudicating past facts, the best interest standard requires courts to evaluate parents as persons and to make predictions about the future well-being of the child, predictions that were impossible to make accurately based on current knowledge. Moreover, ultimately the standard required the decision-maker to choose and apply a set of values in determining the child's best interest. The article emphasizes the difference between custody decisions involving the state in its child protection role and those resolving private disputes between spouses. After laying bare the deficiencies of the best interest standard, Mnookin concluded that no alternative rule was superior for resolving custody disputes between parents but that the deficiencies of the best interest standard make it unacceptable when the state seeks custody. As with other insights, the important distinction between the child protection and private dispute resolution function of courts deciding custody came to be well understood and accepted, but only after it was highlighted by Mnookin. Perhaps the most important contribution of the article is its brilliant analysis and critique of the best interest standard itself. Mnookin probed the extent of the standard's indeterminacy, and the consequences of that indeterminacy for judicial decision-making. Ultimately, the inadequacy of the legal standard led Mnookin to advocate for nonjudicial resolution of most private custody disputes through negotiation or mediation, a process that was in its infancy in the 1970s.

176. Robert Mnookin, *Child Custody Adjudication: Judicial Functions in the Face of Indeterminacy*, 39 LAW & CONTEMP. PROBS. 226 (1975).

*Child Custody Adjudication* is likely the most famous article ever written about child custody law and one of the most important articles on family law altogether. It was enormously influential in legal scholarship and on law reform initiatives. Many scholars, including me, took up the article's challenge by proposing more determinate custody rules.[177] And Mnookin's dissection of the deficiencies of the best interest standard, including its tendency to harm risk-averse parents (usually mothers) and to generate hostility between parents, clarified the high costs of custody adjudication and influenced the movement toward mediation and other alternative approaches.[178]

Mnookin's critique of the best interest standard no doubt influenced his thinking in his most famous article from the 1970s, *Bargaining in the Shadow of the Law: The Case of Divorce*; in this piece, Mnookin and co-author Lewis Kornhauser argued in favor of the superiority of private ordering over adjudication in resolving divorce disputes between spouses.[179] The authors then created a bargaining model that clarifies the important influences on divorce bargaining and the outcomes spouses reach; most importantly, the model demonstrates how the background legal rules determine parties' entitlements and influence bargaining. Using the tools of law and economics, a methodology that was emerging in the 1970s, Mnookin and Kornhauser offered courts and scholars a new perspective from which to evaluate and understand legal doctrine. They explained that divorcing parents bargain over custody rights and money; that they may have different preferences, particularly for custody; and that these entitlements are exchangeable. They also showed how changes in legal doctrine could shift parties' endowments and their relative bargaining position, and how the uncertainty of indeterminate background rules could affect parties differently depending on their risk preferences.

This article has had an enormous impact on family law and on other legal disciplines. The bargaining model offered by Mnookin and Kornhauser generated a flood of legal scholarship; it fundamentally disrupted the traditional scholarly approach to legal doctrine that focused almost exclusively on the law's role in guiding adjudication. The insights of *Bargaining in the Shadow of the Law*, like those of Mnookin's

177. Elizabeth S. Scott, *Pluralism, Parental Preference, and Child Custody*, 80 CAL. L. REV. 615 (1992) [hereinafter *Parental Preference*].

178. In 2014, Kate Bartlett and I edited a symposium issue of *Law and Contemporary Problems* in which legal scholars explored the impact of the article published in the journal nearly 40 years earlier. *See* Katharine T. Bartlett & Elizabeth S. Scott, *Foreword: Child-Custody Decisionmaking*, 77 LAW & CONTEMP. PROBS. i (2014).

179. Mnookin & Kornhauser, *supra* note 173.

earlier articles, became so familiar to legal scholars that they became common knowledge. But in 1979, the perspective offered by Mnookin and Kornhauser was eye-opening for most readers, and its value to both normative and descriptive analysis of law was immediately apparent.

My family law scholarship has been inspired and influenced by this early work of Bob Mnookin. I learned from Mnookin the value of applying solid behavioral and social science research to inform and support legal analysis and sometimes of deploying the tools of economics and social science. I also have usually adopted a consequentialist perspective, evaluating legal doctrine and proposed reforms on the basis of their impact on parties' behavior and on judicial decision-making.[180] My work on child custody, particularly, was inspired and informed by substantive insights gleaned from Mnookin's work. In one article, I took up the challenge of proposing a custody decision rule more determinate (and I argue better) than the best interest standard, and then worked through the beneficial impact of this rule, relative to alternatives, on parents' bargaining.[181]

As I prepared to write this tribute, I reread the three Mnookin articles I have discussed here. These articles were all written more than 40 years ago, and, as I have suggested, many of his creative insights have become common knowledge. Some points in the articles are a little dated. But in undertaking this excavation of Mnookin's earlier work, I felt some regret that this extraordinary scholar has not continued to focus his scholarly energies primarily on family law issues. That is a loss to those of us who continue to work in the field.

## IX. Professor Twila Perry

### *By R.A. Lenhardt*[182]

It is oddly apt that this tribute to Professor Twila Perry—celebrated legal scholar, teacher, and mentor—comes amidst yet another assault on Critical Race Theory (CRT). Professor Perry—who would eventually become the first woman of color to be tenured at Rutgers Law School—

180. One article, written with Robert Scott (a law and economics contracts scholar), used a hypothetical bargain framework to explore optimal default rules regulating divorce. Elizabeth S. Scott & Robert E. Scott, *Marriage as Relational Contract*, 84 VA. L. REV. 1225 (1998).

181. *Parental Preference*, *supra* note 177. The approximation rule I propose directs that custody be allocated on the basis of past parental roles, which I argue are most likely to represent their true (nonstrategic) preferences. The ALI adopted the approximation rule in its *Principles of the Law of Family Dissolution.*

182. Professor of Law, Georgetown University Law Center.

entered legal academia in 1984.[183] At that time, the assaults on CRT largely came from within academia, as scholars of color asserted the importance of interrogating "the bottom," the places and experiences that have long informed and constrained the lives of people of color in the United States.[184] Today, conservative lawmakers from across the country have taken up the anti-CRT mantle,[185] professing concern about exposing children to "race talk" and the structural racial changes taking root across the country in the wake of the death of George Floyd and far too many others. But the core challenge and need for change in this space have remained largely the same.

What has moved the needle on opportunities for substantive change are the insights and solutions generated by those who have committed their efforts and careers to addressing the adverse effects of what the great W.E.B. DuBois famously dubbed "the color line."[186] Perry's work stands out among an amazing community of talented scholars of color determined to expose the corrosive effects of race and inequality in the United States and abroad. While many CRT scholars focused attention on structures and systems such as education or criminal law, which have long been at the center of debates about race and equality, Perry focused on an institution still too often overlooked as such: the family.[187]

With scholarship that sits at the intersection of CRT and feminist theory, Professor Perry has been at the vanguard of efforts to surface and ultimately redress hidden racial inequalities that have denied access and belonging to African Americans and others since this nation's founding. For example, as family law scholars sought to develop a theory of alimony in the era of no-fault divorce, Perry wrote *Alimony: Race, Privilege, and Dependency in the Search for Theory*, an influential law review article that challenged the core assumption that animated much of that work.[188] Professor Perry challenged the notion that Black and White women are similarly situated when it comes to marriage and, more importantly,

183. *See Twila Perry*, RUTGERS L. SCH., https://law.rutgers.edu/directory/view/twperry.

184. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987); *see also* Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987).

185. *See* Trip Gabriel & Dana Goldstein, *Disputing Racism's Reach, Republicans Rattle American Schools*, N.Y. TIMES (June 1, 2021; updated Nov. 8, 2021), https://www.nytimes.com/2021/06/01/us/politics/critical-race-theory.html.

186. *See* W.E.B. DU BOIS, THE SOULS OF BLACK FOLK 3 (Vintage Books 1990) (1903).

187. *See, e.g.*, Twila L. Perry, *Race Matters: Change, Choice, and Family Law at the Millennium*, 33 FAM. L.Q. 461 (1999).

188. Twila L. Perry, *Alimony: Race, Privilege, and Dependency in the Search for Theory*, 82 GEO. L.J. 2481 (1994).

alimony.[189] Thus, relying on CRT insights, Perry urged feminist scholars working in this space to change course. She advocated for an approach that accounted for the real differences and disparate outcomes ignored by analyses that did not account fully for the operation of race and inequality in American society.[190]

Fortunately, the depth and discernment evident in the article just described is also evident in the many other articles and essays that Professor Perry has penned over the course of her career. In articles such as *Race, Color, and the Adoption of Biracial Children*, for example, Perry dives into a robust scholarly debate about transracial adoption that has yet to abate.[191] Although she reaches some conclusions about how race should be addressed in this context, Perry uses the vast majority of the article to add critical context and insight into how race has operated in the area of family in the United States. That move gave readers an important window into issues of inter-raciality during slavery and the complexity of biracial identities it spawned. More importantly, however, Perry's work as a whole gives us all an invaluable window into the ways in which the family, as a system, has worked to define race, identity, gender, equality, and belonging more broadly.[192]

Ultimately, Professor Perry's work has set the table for the conversation we are currently having as a nation about the impact of COVID-19 on families of color or the wealth gap that disadvantages African American families.[193] Our current appreciation of race, structural racial inequality, and families of color has everything to do with the insights and understanding of race and family that Professor Perry has developed over the course of her career. In fact, I can say from personal experience that the important work that Critical Race scholars, feminist theorists, and family law scholars have done in recent years simply would not have been possible without the intervention of Professor Perry and others of her generation.

Years ago, when I first entered the academy, I was fortunate to have Professor Perry as a respondent on an early draft of a paper I was working on about race, marriage, and family. Professor Perry provided me with copious comments and suggestions for further developing the paper and,

189. *Id.* at 2486–95.

190. *Id.* at 2495–520.

191. Twila L. Perry, *Race, Color, and the Adoption of Biracial Children*, 17 J. GENDER, RACE & JUST. 73 (2014).

192. For an article exploring this dimension of the Black family, see R.A. Lenhardt, *Marriage as Black Citizenship?*, 66 HASTINGS L.J. 1317 (2015).

193. *See* R.A. Lenhardt & Kimani Paul-Emile, *Skimmed Milk: Reflections on Race, Health, and What Families Tell Us About Structural Racism*, 57 CAL. W. L. REV. 231, 232–33 (2021) (discussing families and insights into inequality they can provide).

ultimately, my own body of work, which conceives of the family as a critical system and institution in current debates about race and family. Without the support Professor Perry provided and the legal scholarship she produced, I know that my own interventions concerning family, equality, and Critical Race Theory and those of so many others simply would not have been possible. For her scholarly contributions, deep insights into race and family, and generosity, we will always remain grateful.

## X. Dorothy E. Roberts

### *By Jessica Dixon Weaver*[194]

I first came to know Dorothy E. Roberts after I entered the legal academy as a clinician. In 2002, the same year her second book, *Shattered Bonds: The Color of Child Welfare*,[195] was published, I began my job as the director of the W.W. Caruth, Jr. Child Advocacy Clinic at SMU Dedman School of Law. While researching race and the child welfare system in 2005, I could not help but become aware of her book. After consuming it quickly, I immediately sought to make the overrepresentation of Black children in the child welfare system the focus of the Clinic's first symposium in 2006. I invited Professor Roberts to be the keynote speaker for the conference, and she graciously accepted. The energy and expertise that she brought to the conference sparked many conversations and exchanges between lawyers, judges, state administrators, social workers, clinical psychologists, and students. The idea for my first law review article[196] came from this symposium, and it also piqued my interest in conducting research and becoming a tenure-track professor of law. Professor Roberts has been a guiding light for me in the academy, and I have followed her career and sought wisdom from her anytime we are in the same space.

Professor Roberts's work in the field of family, race, and gender law is nothing short of prolific. She is a powerhouse whose research and advocacy reach across law into the fields of sociology, anthropology, medicine, psychology, political science, business, economics, and human rights. In 1988, she began her academic career at Rutgers University

194. Professor of Law, Robert G. Storey Distinguished Research Faculty Fellow and Gerald R. Ford Research Fellow, SMU Dedman School of Law.

195. DOROTHY E. ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE (2002) [hereinafter SHATTERED BONDS].

196. Jessica Dixon, *The African-American Child Welfare Act: A Legal Redress for African-American Disproportionality in Child Protection Cases*, 10 BERKELEY J. AFR.-AM. L. & POL'Y 109-145 (2008).

School of Law, eventually moving to Northwestern University a decade later. She was a Fulbright Fellow at the University of the West Indies in Trinidad and Tobago, as well as recipient of a host of grants where she was a principal investigator in her areas of research, which included child welfare, fertility preservation, and race consciousness in biotechnology research. Professor Roberts transitioned to the University of Pennsylvania Carey Law School in 2012. She is currently the 14th Penn Integrates Knowledge Professor, the George A. Weiss University Professor of Law and Sociology, the inaugural Raymond Pace and Sadie Tanner Mossell Alexander Professor of Civil Rights, and the founding director of the Penn Program on Race, Science and Society with the Center for Africana Studies.[197] Her accomplishments are no small feat for any one person, and it is especially compelling that Professor Roberts blazed a path that no African American female law professors have traveled before her. She is the first Black female law professor to hold an endowed chair and an endowed professorship named for two Black Penn Law alums dedicated to civil rights at an Ivy League law school.

Her three award-winning books—*Fatal Invention: How Science, Politics, and Big Business Re-create Race in the Twenty-first Century*[198]; *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty*[199]; and *Shattered Bonds: The Color of Child Welfare*[200]—are searing socio-legal page-turners. While all law professors write and publish for a living, few can write about complex interdisciplinary concepts in a manner that is accessible to the average reader. Professor Roberts is a compelling writer and advocate, and one cannot help but be spurred into rethinking reproductive justice, the child welfare system (now referred to as the family regulation or policing system), the field of medicine, and medical research as a whole after reading her works. At the heart of Professor Roberts's first two books is a critical analysis of the roles that race, gender, and class play in the laws and policies that have resulted in the reduction or destruction of basic human rights of African American women and their families.[201]

197. *See Dorothy E. Roberts, Curriculum Vitae*, UNIV. OF PA. CAREY L. SCH., https://www.law.upenn.edu/faculty/roberts1/; *Penn Program on Race, Science* & Society, PENN ARTS & SCIS., https://prss.sas.upenn.edu/.

198. DOROTHY E. ROBERTS, FATAL INVENTION: HOW SCIENCE, POLITICS, AND BIG BUSINESS RE-CREATE RACE IN THE TWENTY-FIRST CENTURY (2011) [hereinafter FATAL INVENTION].

199. DOROTHY E. ROBERTS, KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY (1997) [hereinafter KILLING THE BLACK BODY].

200. SHATTERED BONDS, *supra* note 195.

201. KILLING THE BLACK BODY, *supra* note 199; SHATTERED BONDS, *supra* note 195.

Her third book reaches deeper into the complexities of race as a political and economic construct via the fields of science and medicine.[202] All of her books propose solutions and vital steps toward addressing the big problems that she so deftly unpacks. At the core of many of her solutions are the ideals of freedom and equality. She has worked her entire life to dismantle systems that have been designed to prevent African American women from exercising their rights to liberty and equal protection under the U.S. Constitution.

Beyond her monographs, she has authored over 80 articles and essays and over 40 book chapters, and has been a co-editor of nine books.[203] Her articles have been published in the law reviews of Harvard, Yale, Stanford, Michigan, Howard, University of Pennsylvania, Northwestern, UCLA, and Fordham, to name a few. She is one of the first female professors to unpack how the law interfaces with Black women in various roles—as mother, wife, partner, daughter, caretaker, worker, and individual. Blatantly calling out the racist regimes behind a multitude of systems policing and regulating poor families in America, Professor Roberts boldly challenges the dominant voices in legal academia, particularly in critical feminist areas. Her research and support for her arguments have always been thorough and difficult to rebut. She is the 135th most cited professor of all time.[204] For the period 2013–17, she tied for the 22nd most-cited woman in American legal scholarship[205] and was the fifth most cited critical theories of law scholar in the United States.[206]

Twenty years after publication, *Killing the Black Body* and *Shattered Bonds* are both celebrated and relevant works. Her books speak truth to power from start to finish. Her reputation as a scholar and expert in race, gender and the family is exemplified by her chapter in *The 1619 Project: A New Origin Story*, created by Nikole Hannah-Jones. This groundbreaking book is an expansion of the Pulitzer Prize-winning

202. FATAL INVENTION, *supra* note 198.

203. *See Dorothy E. Roberts, Curriculum Vitae*, *supra* note 197.

204. *ScholarRank*, HEINONLINE, https://home.heinonline.org/tools/author-profile-pages/scholarrank/ (last visited Feb. 11, 2022).

205. Jack Balkin, *The Most Cited Women in American Legal Scholarship*, BALKINIZATION (Aug. 25, 2018), https://balkin.blogspot.com/search?q=dorothy+e+roberts.

206. Brian Leiter, *20 Most-Cited Critical Theories of Law (Feminist and Critical Race) Scholars in the U.S. for the Period 2013–2017 (1st Draft)*, BRIAN LEITER'S L. SCH. REPS. (Oct. 12, 2018), https://leiterlawschool.typepad.com/leiter/2018/10/20-most-cited-critical-theories-of-law-feminist-and-critical-race-scholars-in-the-us-for-the-period-.html.

*New York Times Magazine*'s long-form journalism project.[207] Professor Roberts is the author of the second chapter in the book, entitled *Race*. She unpacks the scaffolding of the racial classification system in the new colonies of America by illustrating how slavery laws controlled Black female reproduction, criminalized interracial sex and marriage, and gave free license to male rape of Black girls and women.[208] Her chapter also draws the post-emancipation roadmap of how false, immoral stereotypes of Black females over centuries were used by state governments and political parties to criminalize Black female reproduction and enact laws and policies that served to destruct and impoverish Black families.[209] The culmination of Professor Roberts's work within this book cannot be overstated. The Pulitzer Center has made a curriculum centered on *The 1619 Project* available to over 4500 schools across the United States.[210] Children all over the country are now learning for the first time in K-12 schools about the impact of slavery and how it continues to influence our society today.[211]

Columbia University School of Law and the *Columbia Journal of Race and Law* recently hosted a symposium to honor Professor Roberts, highlighting how *Shattered Bonds* has influenced the current movement to abolish the family regulation system.[212] The symposium was entitled *Strengthened Bonds: Abolishing the Child Welfare System and Re-envisioning Child Well-Being*. Over 100 proposals were received from "scholars in law, sociology, anthropology, political science, history, gender studies, public health, medicine, social work, and education."[213] There were also proposals received from "practicing lawyers, social workers, parent advocates, and clinicians; policy advocates, activists, and journalists; and from parents" whose families had been regulated by the state and "young

207. *See generally* NIKOLE HANNAH-JONES, THE 1619 PROJECT: A NEW ORIGIN STORY (2021); Jeff Barus, *Nikole Hannah-Jones Wins Pulitzer Prize for 1619 Project*, PULITZER CTR. (May 4, 2020), https://pulitzercenter.org/blog/nikole-hannah-jones-wins-pulitzer-prize-1619-project.

208. HANNAH-JONES, *supra* note 207, at 46–54.

209. *Id.* at 54–61.

210. Hannah Farrow, *The 1619 Project Curriculum Taught in Over 4500 Schools—Frederick County Public Schools Has the Option*, MEDILL NEWS SERVICE (July 21, 2020), https://dc.medill.northwestern.edu/blog/2020/07/21/the-1619-project-curriculum-taught-in-over-4500-schools-frederick-county-public-schools-has-the-option/#sthash.RiD9Nc08.dpbs.

211. *Id.*

212. *The* Columbia Journal of Race and Law *Announces Its Volume 11 Symposium*, COLUM. J. RACE & L., https://journals.library.columbia.edu/index.php/cjrl/announcement/view/376 (Feb. 4, 2021).

213. Nancy D. Polikoff & Jane M. Spinak, *Foreword: Strengthened Bonds: Abolishing the Child Welfare System and Re-envisioning Child Well-Being*, 11 COLUM. J. RACE & L. 427, 437 (2021).

adults who had been foster youth."[214] Over 2,000 registrants participated in a virtual day-long conference, with a few hundred attendees for each panel. The overwhelming response to this symposium demonstrates how Professor Roberts has galvanized and deeply touched the development of law, other disciplines, and society as a whole.

It is important to note that the initial dates for the symposium occurred during a time when Columbia graduate students were on strike for increased pay and benefits. Professor Roberts and the panelists that support her work were unified in their support of these students, stating that some of the very benefits these students sought for their families, such as daycare and a living wage, were central to the disruption of economic systems that promoted inequity within state welfare systems that in turn were feeder systems for the family regulation system. As a result, the symposium was rescheduled for a time after the strike had concluded.[215] This is a perfect illustration of how Professor Roberts's advocacy is core to who she is. Even though she is a well-known public intellectual, her service to hundreds of women, families, and individuals within the universities and communities where she has worked and lived is perhaps even more admirable than her scholarship. The many awards she has received show the breadth and depth of her commitment of her time and her heart, including awards from the Chicago Abortion Fund, Chicago Legal Advocacy for Incarcerated Mothers, the YWCA Evanston/North Shore, the Family Defense Center, the Chicago Commission on Human Relations Advisory Council on Women, the American Psychiatric Association, and the Society of Family Planning.[216] She is one of very few law professors in the United States who could attract such a large number of professionals and community advocates during the summer and in the middle of a pandemic. The symposium was incredible, generating a platform for exchange of information and new ideas for rethinking how communities and state governments can dismantle government systems and help keep families together.

214. *Id.*

215. *CJRL Symposium Postponed in Support of Union Strike*, COLUM. J. RACE & L. (Mar. 25, 2021), https://journals.library.columbia.edu/index.php/cjrl/announcement/view/389; Columbia Journal of Race and Law, *Strengthening Bonds Symposium Introduction, Keynote, and Responses*, YOUTUBE (July 13, 2021), https://www.youtube.com/watch?v=NMZffrsE-b8&list=PLqqQx5I6USK6B9RjE_QHkjZDW9sdz6ypb.

216. *See Dorothy E. Roberts, Curriculum Vitae*, *supra* note 197; Columbia Journal of Race and Law, *Strengthening Bonds Symposium Introduction, Keynote, and Responses*, *supra* note 215.

Professor Roberts's forthcoming fourth book[217] is focused on the abolition of foster care and the transformation of the family regulation system. It is sure to be another great addition to the academy and society. As she enters her 34th year in the academy, she stands as a legacy builder and an inspiration for women, African American scholars, youth, and ordinary folks who want to make a difference in the lives of others. I am so grateful that she took the time to support me at the start of my academic career, as well as eight years later in my quest for tenure. The world is incredibly fortunate that she continues to inspire and promote change in both significant and small ways. Professor Roberts's contributions to the field of family law and beyond are immeasurable, and her impact will live on in all of the thousands of scholars and others who have been touched by her work.

## XI. Carol Sanger

### *By Solangel Maldonado*[218]

Professor Carol Sanger, Barbara Aronstein Black Professor of Law at Columbia Law School,[219] went to law school after teaching high school students. Her experience and success connecting with others as a teacher is apparent when she teaches law students. I was one of the law students who benefitted from her talents in the classroom and her mentorship. Although women comprised almost half the student body in the mid-1990s[220] when I attended law school, the majority of my 1L professors were male. Like many law students, and especially female law students, I found the traditional Socratic method,[221] the competitiveness of many of my peers, and the inaccessibility (whether actual or perceived) of my professors

217. DOROTHY ROBERTS, TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD (2022).

218. Eleanor Bontecou Professor of Law, Seton Hall University School of Law. I am grateful to Rachel Forman, Seton Hall University School of Law, Class of 2023, for excellent research assistance.

219. *Carol Sanger*, COLUMBIA L. SCH., https://www.law.columbia.edu/faculty/carol-sanger.

220. *See* Richard K. Neumann Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313, 315 (2000) (reporting that 44% of all J.D. students in U.S. law schools in 1995 were women).

221. *See* Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113, 114 n.3 (1999) (explaining the traditional Socratic method as a teaching style where the professor singles out a student without warning, questions the student on the facts of a certain case, then asks the student to apply their understanding of the case to a series of hypotheticals in order to "expose the weaknesses in the student's responses").

alienating.[222] Professor Sanger came to Columbia Law School (CLS) as a visitor at the start of my 2L year and brought a sense of humanity that was priceless to those of us who felt alienated and marginalized by the law school environment. I do not recall why I decided to take Professor Sanger's Family Law course or how I performed in the course, but I do remember how she made me feel. For the first time since starting law school, I, a first-generation Latina college and law student, felt that my perspectives mattered and were legally relevant. Professor Sanger was a rigorous teacher, but she was also accessible, empathetic, and supportive. Students could relate to her, and it was clear that she cared about her students and was invested in our success and well-being.

Professor Sanger brought a much-needed interdisciplinary approach to the classroom. The facts of family law cases are inherently interesting (for better or worse), but Professor Sanger did not rely on salacious facts to keep us engaged. She drew from her vast knowledge of history, literature, religion, feminist theory, and popular culture to help students understand the complex forces that led to the dispute and its resolution. She also used these sources to help students broaden their perspectives and see the parties in the cases as individuals with backgrounds, cultures, opportunities, experiences, and priorities that may be different from their own so the students could become better-informed lawyers and decisionmakers.[223] Her pedagogical approach pushed us to confront our "implicit biases" before the term was widely used and validated the perspectives of students whose experiences were invisible to their peers. Professor Sanger was a bold teacher, addressing the role of race in a doctrinal course at a time when few teachers discussed race. When I prepare to teach my Family Law course or update my Gender & the Law syllabus,[224] I ask myself what materials and methods Professor Sanger would use to invite a breadth of perspectives as I strive for the balance of rigor and empathy that facilitated an optimal learning environment in her classroom.

Professor Sanger devotes countless hours to mentoring students, aspiring law professors, and junior faculty. She is the reason I am a law

222. *See, e.g.*, Lani Guinier, Michelle Fine & Jane Balin, *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994); Sari Bashi & Maryana Iskander, *Why Legal Education Is Failing Women*, 18 YALE J.L. & FEMINISM 389 (2006).

223. Professor Sanger has explained her reasons for bringing the humanities into her courses. *See* Carol Sanger, *Integrating Humanities into Family Law and the Problem with Truths Universally Acknowledged*, 3 CAL. L. REV. CIR. 34, 36 (2012) (stating that "[t]he humanities expand the imagination so that students can understand lives that are not like their own").

224. After taking Family Law with Professor Sanger, I enrolled in two of her other courses: Gender, Law, and Equality and a writing seminar on reproductive justice.

professor and teach and write about family law. Although CLS currently has a formal Careers in Law Teaching Program that guides students and alumni seeking to become law professors,[225] this program did not exist when I was a student. While I knew that I wanted to be a law professor, I had no idea what steps were required and had no plan for how I was going to pursue my dream. I was also too afraid to approach my professors and ask about their trajectory. This all changed because Professor Sanger took an interest in the professional development of her students.

As I was leaving Professor Sanger's class one afternoon, she mentioned that she was organizing a brown bag lunch for students who should consider law teaching and encouraged me to attend. She does not remember this conversation, but, for me, it was life-altering. First, it signaled that a professor I admired believed I had the ability to become a legal scholar and teacher. Second, the information Professor Sanger shared at the brown bag provided a roadmap for how to be a competitive candidate for legal academia, including how to write legal scholarship. Even now, when I consider whether a topic is worth writing about, I recall her advice to "write about something that makes you mad." I have shared that advice with many of my own students and aspiring law professors.

Professor Sanger continued to mentor me after I entered legal academia. She offered me the opportunity to write the story of *Mississippi Band of Choctaw Indians v. Holyfield*[226] in a book she was editing—*Family Law Stories*, a compilation of essays on the back stories behind important family law cases[227]—even though the other authors were well-established scholars and I was a junior scholar. She also guided me when I pursued other teaching and research opportunities. Professor Sanger's mentorship comes with the expectation that we will pay it forward, and I have received

225. *Careers in Law Teaching*, COLUMBIA L. SCH., https://www.law.columbia.edu/careers/academic-careers/careers-law-teaching (last visited Feb. 11, 2022). Professor Sanger created this program in 2000 and continued, even during the pandemic, to use her contacts and resources to provide students with opportunities to present their work and navigate the highly competitive teaching market.

226. Miss. Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989).

227. Solangel Maldonado, *The Story of the Holyfield Twins:* Mississippi Band of Choctaw Indians v. Holyfield, *in* FAMILY LAW STORIES 113 (Carol Sanger ed., 2008).

many calls and emails from her asking me to speak to students or help aspiring law professors prepare for the academic job market.[228]

Some faculty believe that the best teachers are rarely outstanding scholars because time with students is time away from scholarship. Professor Sanger's scholarly achievements debunk this myth. She is the author of more than 30 law review articles and book chapters, and is also co-editor of a leading contracts casebook and co-editor of a collection of essays by international scholars on gender inequality.[229] Professor Sanger's scholarship is exceptionally broad. Her work spans all aspects of reproduction and motherhood, including abortion, stillbirths, adoption, surrogacy, and infant safe haven laws. She also writes about marriage, contracts and family formation, the rights of adolescents, immigration, sexual harassment, feminist theory, and even cars and culture. Several of her articles explore and explain her pedagogical approach and goals,[230] and her quest to get to know the individuals in each case, their circumstances, and motivations is evident from her work as the editor of *Family Law Stories*.

Professor Sanger's scholarship has real-life consequences because it is grounded in the personal experiences of the people she writes about. There are dozens of books "about abortion," the title of Professor Sanger's own book on the subject—*About Abortion: Terminating Pregnancy in Twenty-First Century America.*[231] I am not aware of any other book, however, that "is neither for abortion nor against it"[232] but instead seeks to end the secrecy surrounding women's experience with abortion to facilitate public discussion of the harms women endure as a result of abortion regulation. This is not an easy task, but it has never been as important as it is today. In the four years since publication of *About Abortion*, a majority of states have enacted laws further restricting a woman's constitutional right to

228. The legal community has recognized Professor Sanger's extraordinary mentorship. In 2010, the CLS faculty, students, and alumni "unanimously identified" her as the faculty member "who more than anyone else, has made an outstanding effort to mentor female Columbia Law students." *Professor Carol Sanger Honored for Dedication to Mentoring Female Students*, COLUMBIA L. SCH. (Apr. 23, 2010), https://www.law.columbia.edu/news/archive/professor-carol-sanger-honored-dedication-mentoring-female-students.

229. E. ALLAN FARNSWORTH ET AL., CONTRACTS: CASES AND MATERIALS (9th ed. 2019); GENDER AND RIGHTS (Deborah L. Rhode & Carol Sanger eds., 2005).

230. Carol Sanger, *(Baby) M Is for the Many Things: Why I Start with Baby M*, 44 ST. LOUIS UNIV. L.J. 1443 (2000); Sanger, *Integrating Humanities into Family Law and the Problem with Truths Universally Acknowledged*, *supra* note 223.

231. CAROL SANGER, ABOUT ABORTION: TERMINATING PREGNANCY IN TWENTY-FIRST CENTURY AMERICA (2017) [hereinafter ABOUT ABORTION].

232. *Id.* at xiv.

reproductive freedom.[233] Texas has virtually eliminated a woman's right to have an abortion by banning abortions after detection of fetal "cardiac activity," which generally occurs around the sixth week of pregnancy—only *two weeks* after a woman with a regular menstrual cycle would have missed her period, and before many women even realize that they are pregnant.[234] The law makes no exceptions for pregnancies resulting from rape or incest and deputizes private individuals to enforce the ban by providing financial incentives to do so. The U.S. Supreme Court refused to act to halt enforcement of the Texas ban pending a resolution of litigation on the constitutionality of the law.[235]

Although one in four women will have an abortion in their lifetime,[236] as a result of the secrecy surrounding abortion, many people are not aware that they know (or are related to) someone who has had an abortion or considered having one.[237] Would legislators continue to severely restrict a woman's right to choose if they knew that their mothers, sisters, and daughters have had an abortion or considered having one and learned from their experiences how abortion regulation made their lives more difficult than necessary? As Sanger argues:

> [L]egislative lawmaking depends in part on what legislators know, and that depends on how and when and with whom the issue of abortion has been discussed, and not only from a policy perspective.

233. Eoin B. Gaj et al., *State Legislation Related to Abortion Services, January 2017 to November 2020*, 181 JAMA INTERNAL MED. 711 (2021); Kaia Hubbard, *A Guide to Abortion Laws by State*, U.S. NEWS & WORLD REP. (Sept. 1, 2021), https://www.usnews.com/news/best-states/articles/a-guide-to-abortion-laws-by-state.

234. 2021 Tex. Sess. Law Serv. ch. 62 (S.B. 8) (West); *see Texas Senate Bill 8*, LEGISCAN, https://legiscan.com/TX/bill/SB8/2021. The law uses the term "fetal heartbeat" but defines this term to include "cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac." TEX. HEALTH & SAFETY CODE ANN. § 171.201(1) (West 2021). "This definition includes electrical activity in developing cells that starts at around six weeks' gestation, though there is no heart at that stage of development." Maggie Astor, *Here's What the Texas Abortion Law Says*, N.Y. TIMES (Sept. 9, 2021), https://www.nytimes.com/article/abortion-law-texas.html.

235. Whole Woman's Health v. Jackson, 141 S. Ct. 2494 (2021). As Justice Sotomayor remarked, "[p]resented with an application to enjoin a flagrantly unconstitutional law engineered to prohibit women from exercising their constitutional rights and evade judicial scrutiny, a majority of Justices have opted to bury their heads in the sand." *Id.* at 2498 (Sotomayor, J., dissenting).

236. Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014*, 107 AM. J. PUB. HEALTH 1904 (2017), doi:10.2105/AJPH.2017.304042.

237. SANGER, ABOUT ABORTION, *supra* note 231, at xii.

> Private talk by women and their families improves the quality of public discussion, which in turn influences political action.[238]

Anticipating scepticism, Sanger reminds us that we have seen "[t]his discursive progression . . . in the movements for same-sex marriage, cancer research, and disability rights."[239] It is quite possible that abortion is different from marriage equality and other movements. After all, civil conversations are challenging when one side believes the other is advocating murder and the other believes those accusing them of murder are idiots for believing an embryo is a human life. But this is why Sanger's book is so important. She considers the concerns of both sides—those who support a legal right to have an abortion and those who oppose it—critically but respectfully. Abortion talk alone may not prevent lawmakers from making it almost impossible for women to exercise their constitutional right to have an abortion, but without dialogue about women's personal experiences with abortion, there is little hope that lawmakers will respect that decision.

Professor Sanger's impact on legal scholarship, her students, and the dozens of lawyers and academics she has mentored over the last 40+ years is immeasurable. She is a brilliant teacher and scholar, but, most importantly, she is kind and down to earth, qualities that our society and profession need more of.

## XII. Barbara Bennett Woodhouse

### *By Sacha M. Coupet*[240]

I have long believed that the people we hold dear, especially those who have inspired us personally and professionally, deserve to be celebrated while they are alive to bask in a moment of well-deserved praise and to hear for themselves how profoundly they have impacted those around them. It is therefore with great pleasure and profound gratitude that I set my proverbial pen to paper to pay this brief tribute to Professor Barbara Bennett Woodhouse, the L. Q. C. Lamar Chair in Law at Emory University

238. *Id.* at 216.

239. *Id.*

240. Morris I. Leibman Professor of Law & Associate Dean of Mission Innovation, Loyola University Chicago School of Law.

School of Law[241] and David H. Levin Chair in Family Law Emerita at the University of Florida's Levin College of Law.[242]

It should come as no surprise that Barbara, who both taught nursery school and became a mother to two before entering law school, would lean wholeheartedly into the cause of creating a "world fit for children"[243] through the medium of storytelling—engaging the legal imagination through the use of literature or the recounting of relatable stories from the lives of both the famous and the ordinary. She has an innate appreciation for what child development researchers have long known, which is that stories directly shape the worldviews of children and, perhaps more than any other medium, hold the power to vastly expand children's imaginations. What Barbara and other impactful storytellers also recognize is that stories are *rhetorical weapons* with the power to radically reframe longstanding assumptions about what matters most—a message communicated through the stories we choose to tell and the manner in which storytellers narrate them. Her storytelling, which she described as "not purely 'propositional, but experiential and performative; . . . not purely intellectual, but affective and constitutive,'"[244] has left such a profound mark on the legal imagination concerning families—shifting the center of analysis from an assumption of children as objects of parental or state dominion to one that regards children as paramount within a network of intersecting ecosystems—that no collection of tributes to luminary family law scholars would be complete without mention of her lasting contributions.

It is said that the key characteristics of a great storyteller are abundant enthusiasm for their story and the characters in it, the use of psychology as a tool to engage and excite their audience, and the ability to break down and explain complex ideas through relatable and familiar examples. From the very beginning of her legal academic career, Barbara has demonstrated

241. *See Barbara Bennett Woodhouse*, EMORY L., https://law.emory.edu/faculty/faculty-profiles/woodhouse-profile.html.

242. *See Barbara Bennett Woodhouse*, UNIV. FLA., HTTPS://WWW.LAW.UFL.EDU/FACULTY/BARBARA-BENNETT-WOODHOUSE.

243. Barbara Bennett Woodhouse, *A World Fit for Children Is a World Fit for Everyone: Ecogenerism, Feminism, and Vulnerability*, 46 HOUS. L. REV. 817 (2009).

244. Barbara Bennett Woodhouse, *Hatching the Egg: A Child-Centered Perspective on Parent's Rights*, 14 CARDOZO L. REV. 1747, 1749 (1993) (citation omitted).

her prowess in all of these areas. Indeed, the "stickiness"[245] of her child-centered, ecologically grounded jurisprudence, known as ecogenerism[246]—especially its utility in framing current debates about how best to provide for children—is a testimony to the potency of her storytelling. First, Barbara's enthusiasm for children is clear in both her dogged dedication to centering them in the expansive map of humanity but also in her keen attention to the unique ways in which children live in and experience the world. Perhaps because she sees them in their full humanity, she is able to capture their lives with the sensitivity of a cultural anthropologist, adopting a kaleidoscopic view of the lived reality of children as well as the people, places, and things that matter to them. In so doing, she holds them up as heroes and heroines *in their own right*. It is clear in all that Barbara writes that she genuinely admires, respects, and loves children, and that this deep commitment to them compels her to embark on an unwavering quest to get us all to see how much our own survival depends on investing in ecosystems that permit all children to flourish. In true interdisciplinary form, her rich storytelling engages and excites us because she draws so effectively from psychology, sociology, environmental science, history, economics, political science, and literature—among other disciplines—to champion "social solidarity and a sense of commitment to the next generation."[247] A growing body of child and family law scholars can credit Barbara's scholarship for introducing them to the work of Urie Bronfenbrenner, Erik Erikson, James Garbarino, and other social scientists whose works have been so central to developing a richer understanding of the ecology of childhood. Finally, her ability to break down complex ideas is evident in the "stickiness" of her conceptual framework of the ecology of childhood. Although there are many who continue to teach courses officially titled "Child, Parent and State" (or something similar), no one who has encountered Barbara's work could limit their exploration of the family to the traditional triangular model. Because we now know more

245. "Stickiness" is a business term meant to capture how well a phenomenon, brand, or concept resonates with the market. "The stickiness factor is a unique quality that causes [an idea] to 'stick' in the minds of the public and influence" them. Ashley Crossman, *Malcolm Gladwell's "The Tipping Point"*, THOUGHTCO. (May 24, 2019), https://www.thoughtco.com/malcolm-gladwell-tipping-point-theory-3026765. The stickier a concept, the more memorable it will be, the wider its reach, and the stronger its ultimate impact. *See* Scott Steinberg, *Stickiness: A Way to Measure the Success of Marketing and Content*, AM. EXPRESS (Mar. 23, 2021), https://www.americanexpress.com/en-us/business/trends-and-insights/articles/stickiness-a-way-to-measure-the-success-of-marketing-and-content/.

246. *See* Woodhouse, *A World Fit for Children Is a World Fit for Everyone: Ecogenerism, Feminism, and Vulnerability*, *supra* note 243.

247. BARBARA BENNETT WOODHOUSE, THE ECOLOGY OF CHILDHOOD: HOW OUR CHANGING WORLD THREATENS CHILDREN'S RIGHTS 261 (2020).

and we now know better, we too can tell a richer and more engaging story about the ways in which the ecosystems in which children are embedded are either compromised or strengthened by the political, economic, cultural, and environmental consequences of the choices that adults make.

Were one to have stumbled upon Barbara's scholarship only recently—in what some colloquially refer to as "post-COVID" times—one would have reason to wonder whether the clarion call she has been sounding for over a decade was meant *precisely* for *this* global pandemic, or one just like it. The COVID-19 pandemic and the global cascade of catastrophic consequences caused by it have laid bare the inherent vulnerability of the human condition and left us to fear the looming climate crisis—the pandemic *next time*—with its even more pernicious downward spiral and a permanent restructuring of every facet of the ecosystem. The global pandemic has resurfaced challenging questions about the responsibilities that should be borne by the state to guard against threats to humankind as well as our individual and collective obligations to children. Much like the cherished stories passed down through generations, Barbara's work emerges as especially instructive for those who seek to craft a vision for how humanity can justly and sustainably respond with a spirit of solidarity and generativity.

I could not end a tribute to Barbara without remarking upon her boundless generosity, her incomparable culinary skills, and her exceptional ability to make absolutely anyone and everyone feel at home. I remain profoundly grateful to Barbara for opening her home and her heart to a newly admitted law student who expressed an early interest in law teaching and for continuing to gently guide my steps along the way—from my very first job talk in her Philadelphia living room (with her kind husband, Charles, and her remarkably attentive Bernese mountain dog, Emma, in attendance), to the invaluable support she offered through my application for tenure and promotion. In my 17th year of law teaching, I am *still* aspiring daily to be a bit more like Barbara.

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