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## Abortion Talk

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# ABORTION TALK

Clare Huntington\*

ABOUT ABORTION: TERMINATING PREGNANCY IN TWENTY-FIRST-CENTURY AMERICA. By *Carol Sanger*. Cambridge and London: Harvard University Press. 2017. Pp. xv, 238. \$29.95.

## INTRODUCTION

Public service announcements routinely note that one in eight women will be diagnosed with breast cancer.<sup>1</sup> Advocates frequently invoke the twenty percent wage gap between men and women.<sup>2</sup> And educational groups often cite the (more contested) statistic that one in five women will be sexually assaulted during college.<sup>3</sup> But there is another data point not regularly part of public conversation: nearly one in four women will have an abortion by the age of forty-five.<sup>4</sup> The widespread—but largely secret—practice of terminating pregnancies is what Carol Sanger<sup>5</sup> wants us to talk about. As much as possible.

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1. See, e.g., *Breast Cancer Risk in American Women*, NAT'L CANCER INST. (Sept. 24, 2012), <https://www.cancer.gov/types/breast/risk-fact-sheet> [<https://perma.cc/G2ZJ-2WQK>]. While acknowledging the limitations of the analogy, Sanger uses breast cancer as an example of how a once-secret topic can become mainstream. Pp. 214–15.

2. See, e.g., CATHERINE HILL ET AL., AM. ASS'N U. WOMEN, *THE SIMPLE TRUTH ABOUT THE GENDER PAY GAP* (2018), [https://www.aauw.org/aauw\\_check/pdf\\_download/show\\_pdf.php?file=The-Simple-Truth](https://www.aauw.org/aauw_check/pdf_download/show_pdf.php?file=The-Simple-Truth) [<https://perma.cc/V3EE-DW48>].

3. See DAVID CANTOR ET AL., *REPORT ON THE AAU CAMPUS CLIMATE SURVEY ON SEXUAL ASSAULT AND SEXUAL MISCONDUCT* xiv (2017), <https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/AAU-Campus-Climate-Survey-FINAL-10-20-17.pdf> [<https://perma.cc/4EHW-EQCR>] (citing this statistic and the underlying studies, which show a range of sexual assault rates on campus, from 15–34% of female students).

4. A study published since *About Abortion* reflects the declining abortion rate, estimating the first-time abortion rate to be 24%. See Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014*, 107 AM. J. PUB. HEALTH 1904, 1904–06 (2017); *id.* at 1907 tbl.2 (noting that this statistic reflects first abortions and thus is not distorted by women who may have more than one abortion). Relying on the evidence available at the time *About Abortion* was published, Sanger cites the abortion rate as one in three women (p. xiii). The source for this statistic is generally Rachel K. Jones & Megan L. Kavanaugh, *Changes in Abortion Rates Between 2000 and 2008 and Lifetime Incidence of Abortion*, 117 OBSTETRICS & GYNECOLOGY 1358, 1358–61, 1366 (2011).

5. Barbara Aronstein Black Professor of Law, Columbia Law School.

Sanger's call for "abortion talk" (p. x) arrives just as the confirmations to the U.S. Supreme Court of Neil Gorsuch and Brett Kavanaugh bring the future of abortion rights to an urgent new salience. Indeed, these personnel changes at the Court have led many commentators and advocates to anticipate significant new restrictions on women's access to lawful abortions, if not a complete repudiation of *Roe v. Wade*.<sup>6</sup> With this renewed uncertainty, *About Abortion* is a welcome and timely intervention in one of our most highly polarized debates.

In her exceptionally thoughtful and evenhanded book, Sanger's goal is to encourage true conversation about abortion. As she contends, advocates on both sides of the debate yell about abortion, march about abortion, and litigate about abortion. But they—and we, the broader public—rarely *talk* about women's experiences of abortion. Sanger argues that this absence of real conversation, held at a lower decibel, impoverishes our views about abortion and, in turn, impoverishes our democracy. According to Sanger, policymakers and ordinary citizens need a much deeper and more nuanced understanding of women's experiences with abortion to determine the proper regulation of the practice (pp. xiii–xiv). Sanger assumes the legality of abortion (p. xiii), but she clarifies that the "book is neither for abortion nor against it. It is *about* abortion" (p. xiv). Thus, although Sanger supports the ongoing availability of abortion, in most of the book she is not normative about the particulars of the law. Instead of "a full-on revolution," Sanger wants "just a bit more openness and generosity" (p. 238).

While exploring women's experiences with abortion, Sanger toggles between two perspectives. She uses a metaphorical wide-angle lens, capturing the broad social and cultural context of abortion. She also uses a telephoto lens, focusing attention on the fine-grained experiences of women, treating them as subjects, not objects, of the law. In all of this, Sanger decenters familiar flashpoints, such as the moment life begins or the consequences of over-

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6. See, e.g., Reva Siegel, Opinion, *The End of Abortion*, N.Y. TIMES (June 28, 2018, 7:07 AM), <https://www.nytimes.com/2018/06/28/opinion/abortion-kennedy-supreme-court-trump.html> (on file with the *Michigan Law Review*) (describing the significance of Justice Kennedy's retirement for abortion jurisprudence and arguing that the newly constituted Supreme Court may either explicitly overturn *Roe v. Wade* or, more likely, do so sub silentio by upholding severe legislative restrictions on abortion, making it virtually impossible for many women to access abortion); NARAL Releases Commitment to Protect Abortion in All 50 States, NARAL PRO-CHOICE AM. (July 19, 2018), <https://www.prochoiceamerica.org/2018/07/19/naral-releases-commitment-to-protect-abortion/> [<https://perma.cc/JLE5-QYA>] (press release asking House members and candidates to commit to support legislation making abortion legal and accessible "[i]n a bold move to protect *Roe v. Wade*"); Catherine Glenn Foster on Justice Kennedy Retirement, AMERICANS UNITED FOR LIFE, <http://www.aul.org/media-alerts/catherine-glenn-foster-on-justice-kennedy-retirement/> [<https://perma.cc/R4FC-ZWD4>] (issuing statement by president of Americans United for Life calling for "reargument of poorly reasoned precedent"—meaning *Roe v. Wade*—in light of Justice Kennedy's retirement).

turning *Roe v. Wade*.<sup>7</sup> Instead, Sanger takes the reader in unexpected directions, describing the nineteenth-century practice of photographing deceased children, Halloween costumes that transform a pregnant belly into a fetal trick-or-treater, and high school confidences about how to get an abortion without telling parents.

This eclectic method has considerable normative consequences for both abortion talk and family law more generally. The textured, contextual conversation prompted by the book is salutary, lowering the temperature of the debate and bringing attention to new aspects of the issue. More broadly, the method is relevant to scholarly inquiry in other areas of family law. Sanger demonstrates that to understand a hotly contested legal conflict, it is critical to look at it from multiple angles, drawing in the social and cultural context and, especially, seeing the issue from the perspective of those most affected by the conflict. This embedded humanism may well be useful in other fields, but it is highly relevant to family law given the mutually constitutive relationship between law and social context, as well as the profound effect of legal regulation on the daily life of families. The book thus succeeds in two ways. It opens the conversation about abortion, and it provides a method for scholars to think about the enormous range of influences in family law and the felt experience of that legal regulation.

Despite the remarkable breadth of social and cultural inputs Sanger considers, it is vital to bring more fully into the conversation other important factors that affect women's experiences with abortion—most notably race and class. The odious history and ongoing policy of controlling the fertility of women of color, and especially low-income women of color,<sup>8</sup> and the disproportionate rates of abortion among low-income women and women of color<sup>9</sup> mean the experiences of these women are distinctive and should be added to the conversation. This Review thus engages in the call for conversation Sanger issues, drawing out additional voices to address these and other aspects of women's experiences. The talk continues.

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7. 410 U.S. 113 (1973); *see, e.g.*, CATHY CLEAVER RUSE & ROB SCHWARZWALDER, FAMILY RESEARCH COUNCIL, *THE BEST PRO-LIFE ARGUMENTS FOR SECULAR AUDIENCES* 1, 4 (2011), <https://downloads.frc.org/EF/EF11J30.pdf> [<https://perma.cc/27TG-FA93>].

8. *See infra* text accompanying note 20.

9. *See* JENNA JERMAN ET AL., GUTTMACHER INST., *CHARACTERISTICS OF U.S. ABORTION PATIENTS IN 2014 AND CHANGES SINCE 2008* (2016), [https://www.guttmacher.org/sites/default/files/report\\_pdf/characteristics-us-abortion-patients-2014.pdf](https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf) [<https://perma.cc/9ES7-ZC84>] (reporting results of a study of abortion patients in 2014 and noting that 39% were white, 28% Black, 25% Hispanic, 6% Asian or Pacific Islander; reporting that white women were underrepresented, with an abortion index of 0.7 as compared with 1.9 for Black women and 1.2 for Hispanic women; further reporting that 49% of patients had incomes below the federal poverty level and an additional 26% had incomes from 100% to 199% of the federal poverty level). These abortion rates do not reflect the overall demographics of the United States. *See 2010 Census Shows America's Diversity*, U.S. CENSUS BUREAU (Mar. 24, 2011), [https://www.census.gov/newsroom/releases/archives/2010\\_census/cb11-cn125.html](https://www.census.gov/newsroom/releases/archives/2010_census/cb11-cn125.html) [<https://perma.cc/E9C6-Y3P5>] (reporting findings from the 2010 census: 72% of the population identifies as white, 13% as Black, 16% as Hispanic, and 5% as Asian).

This Review proceeds as follows. Part I describes Sanger's book-length bid for dialogue. Part II argues that the book largely succeeds at initiating an open and generous conversation about women's experiences with abortion but that we need to focus on additional aspects of those experiences as well, especially the way race and class mediate a woman's experience terminating a pregnancy. Part III demonstrates that *About Abortion's* method expands the boundaries of family law scholarship, with deeply generative impact.

## I. THE CONVERSATION

The underpinning of *About Abortion* is Sanger's contention that a pervasive secrecy surrounds abortion, distorting how abortion is discussed and regulated (pp. xi, xiii). To begin this argument, Sanger distinguishes secrecy from privacy. Privacy is the choice to keep information personal; privacy is voluntary, confers dignity, and flows from and reinforces autonomy (pp. 48, 60). By contrast, secrecy is a "more ominous proposition" (p. 60), because rather than choosing to keep information private, the subject knows that divulging the information can lead to harm, including, in the context of abortion, "harassment, stigmatization, or fear of violence" (p. 61). As Sanger sums up the matter, "secrecy is a much darker, more psychologically taxing, and socially corrosive phenomenon than privacy" (p. 62).

To counter this secrecy and to better inform democratic debate about the regulation of abortion, Sanger seeks to bring women's experiences with abortion into the open. Sanger contends that citizens cannot know what they think about abortion without knowing more about abortion, and especially without knowing more about the experiences of women (pp. xiii, 22, 49).

With such a setup, a reader might expect an ethnography, relating stories about individual women who have decided whether to terminate a pregnancy. The chapter describing judicial bypass proceedings for pregnant minors has this feel, bringing the reader into the courtroom, in the shoes of the pregnant teen (Chapter Seven). As Sanger describes, in most states, a pregnant minor must either involve a parent in the decision to terminate a pregnancy or seek judicial approval for the teen to consent to the procedure without involvement from a parent.<sup>10</sup> Judicial approval requires a court determination that the minor is sufficiently mature to consent to the procedure.<sup>11</sup> Sanger contends that even though courts approve the vast majority of petitions, the requirement that a teen participate in a hearing is deeply troubling (p. 158). In addition to the immediate harms of delaying a medical procedure and risking public exposure, Sanger focuses on the more insidious harm of requiring a young woman to tell a court about intensely personal

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10. P. 154. For a summary of state parental involvement laws, see *Parental Involvement in Minors' Abortions*, GUTTMACHER INST. (May 1, 2018), <https://www.guttmacher.org/state-policy/explore/parental-involvement-minors-abortions> [<https://perma.cc/XA9Y-DHWN>].

11. See *Bellotti v. Baird*, 443 U.S. 622, 647–48 (1979). If the court decides the minor is not mature enough to consent to the procedure, then the court must determine whether it is in the girl's best interests to allow her to consent to the abortion. See *id.* at 648.

matters: sex, pregnancy, and a home life that prevents the young woman from involving a parent (p. 158). Sanger concludes these proceedings “have come to operate as a form of punishment” (p. 159). Drawing out the nuance in the proceedings, Sanger distinguishes the natural embarrassment a teenager may feel discussing these issues with anyone from the humiliation a teenager experiences when discussing these issues in court (pp. 160–61). Sanger then follows this argument with a rich description of the actual proceedings and the cultural script—demonstrating maturity and remorse—teenagers are required to follow (pp. 161–76).

Most of the book, however, operates at the level of sociocultural geography, not ethnography, showing how abortion is interwoven in American life. As evidence that fetuses are visually dominant in American society, Sanger describes viewers finding a fetus in satellite images of Hurricane Katrina (p. 70). As evidence that abortion remains politically divisive, Sanger cites the headlines accompanying the revelation that Miss America 2015 had interned with Planned Parenthood (p. 1). And as evidence that we are openly reminded that some women choose not to abort a fetus with a medical abnormality, Sanger depicts Sarah Palin’s family passing around baby Trig at the Republican National Convention (p. 19). As these examples demonstrate, Sanger sees abortion everywhere. According to Sanger, “[s]o many things in American public life are about abortion because abortion itself is about so many things” (p. 4), including medicine; the legal rights of women, states, doctors, and the fetus; religion; morality; sex; lawmaking; personal decisionmaking; gender; and more (pp. 5–17).

At the center of this multipronged exploration of abortion is the place of the fetus, meriting three full chapters. She defends this fetal primacy by noting that “the fetus has become actively involved across a range of endeavors—religious, scientific, artistic, medical, literary, political, and, of course, procreative. Each form of engagement between citizens and fetuses, real or representational, further imbricates the fetus into . . . everyday life” (p. 72). She then proceeds to describe this fetal presence. Historically, most people did not know what a fetus looked like, but, beginning with the widespread use of sonograms, the fetus is now entirely familiar. Not only are sonogram photos widely shared in person and on social media, the images are woven into law, politics, high art, and pop culture.

Sanger understands the goal of advocates who lead with the fetus: to breathe life into the fetus, imbuing the fetus with a strong cultural and social significance as well as making the fetus a life, a child.<sup>12</sup> This makes fetuses powerful signifiers in the abortion debate, particularly when they are enlisted to convince women to carry a pregnancy to term. Sanger describes the multiple state laws that require women seeking abortions to undergo sonograms and then be offered the opportunity to view the image (Chapter Five). Some

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12. Pp. 80–81. Sanger also notes, however, that the omnipresence of fetuses, as well as some of the “playfulness” with which they are deployed, means that pro-life advocates no longer have a monopoly on the cultural significance of fetuses. P. 106.

states require doctors to describe the fetus out loud, pointing to internal organs and so on (p. 108). Through this process, Sanger contends, a pregnant woman “is, in effect, asked by law to witness her child soon before its death” (p. 108). Sanger’s wide-angle lens thus shows how technological developments improving the quality of fetal images fed the cultural significance of sonograms and how social media accelerated this collective understanding. Sanger argues that mandatory ultrasound laws draw on this cultural significance because even if a woman does not look at the sonogram, she knows what she *would* see, and the message is clear: this is a child you are about to kill (p. 120).

Sanger then zooms in on women’s experiences of mandatory sonogram laws. Sanger does not mince words. In the context of abortion, the sonogram documents the impending “extinction” of the fetus (p. 131). But she notes that proximity to death is not new. Sanger posits that to better understand how women might feel upon seeing a sonogram of a soon-to-be aborted fetus, it is useful to understand the nineteenth-century traditions of photographing a grieving mother with the body of a deceased child or photographing supposed spirits of deceased family members (p. 134). Birth and death were more intimately entwined in family life before the mid-twentieth century. Both happened at home, and premature death was commonplace. In response, we had a culture of consolation, which acknowledged the loss, and seeing a deceased family member was part of the culture (pp. 137–38).

At this point in the book, the reader is so accustomed to Sanger’s method—of looking broadly at the social and cultural context to understand the intimate experiences of women—that this historical departure does not feel abrupt. Instead, it feels natural to move from present-day Halloween costumes (p. 101) to an 1857 picture of a mother holding her dead toddler (p. 138) and an 1870 picture of a mother supposedly with her deceased son’s spirit shown in the background as a faint outline (p. 143).

Sanger finds surprising connections between this older cultural milieu and modern social practices, such as photographing a stillborn infant, which some parents find consoling (p. 140), or choosing to see the fetus after an abortion, especially if there was a fetal abnormality, so the woman can process the loss (p. 151). Similarly, Sanger notes that the spirit photography of the 1800s is not so different from the visualization techniques used in numerous contexts today, including by women seeking to overcome fertility difficulties who are told to visualize themselves pregnant (pp. 145–46).

Sanger also uses this discussion of loss to explore the difference between loss and regret. By naming the loss that some woman may feel, and by distinguishing loss from regret, Sanger offers a powerful rebuttal to the regret rationale adopted in *Gonzales v. Carhart*.<sup>13</sup> *Carhart* upheld the federal Partial Birth Abortion Act in part because the Act could be understood as an attempt to protect women from the regret they may experience after an abor-

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13. Compare pp. 133–52, with 550 U.S. 124 (2007).

tion.<sup>14</sup> Without embracing that rationale, Sanger contends that pro-choice advocates are perhaps too quick to gloss over the real loss that women may feel following an abortion (p. 133). This loss, however, is different from regret. As Sanger notes, regret is about the decision, whereas loss is about the consequences of the decision (p. 133). A woman may feel loss that she did not have a supportive partner who would have helped coparent a child, or loss that she did not have the financial means to care for a child, or loss that a desired pregnancy created a fetus with devastating abnormalities. For Sanger, “acknowledging the possibility of loss is neither prediction nor endorsement; it is simply recognition” (p. 133). By understanding fetal imagery as the most recent iteration of a long-standing tradition of literally looking loss in the face, we can better imagine that loss, as well as recognize the range of women’s experiences with loss.

Again emphasizing the variety of women’s responses, Sanger uses the mandatory sonogram laws to show that what women see and feel upon viewing the sonogram is highly variable, depending on such factors as whether the pregnancy was wanted or unwanted, whether the abortion is in response to a fetal anomaly, and so on (p. 130). Throughout the book, Sanger repeatedly reminds the reader that many women terminate wanted pregnancies because of a discovery of a fetal abnormality. Sanger is not distinguishing “bad abortions” (selfish, irresponsible women with healthy fetuses) from “good abortions” (loving would-be mothers who want a child but choose to terminate a pregnancy because of an abnormality). Instead, Sanger is adding texture to the reader’s understanding of abortion, each time moving away from a monolithic story about the practice and experience of ending a pregnancy.

The penultimate chapter is a fascinating exploration of the gender dynamics of abortion. To challenge the “ferociously maternalistic account of abortion” (p. 188), Sanger explores what men do when faced with having to make decisions about the disposition of an embryo or fetus. Sanger identifies three circumstances in which men are asked to make these decisions, albeit without personal bodily repercussions: disputes about frozen embryos, commercial surrogacy contracts where an intended father determines the circumstances under which he would want the surrogate to terminate a pregnancy, and the withdrawal of medical care from a brain-dead woman where doing so will also end the life of the fetus (p. 193). By exploring each of these circumstances, Sanger gets “closer to the decisional bone” of what men would do if they had to decide whether to terminate a pregnancy (p. 193). She uses these examples to demonstrate that men’s concerns about becoming a parent are “strikingly similar” to those offered by women: relationship issues, worry about the child, and disruption of a life plan (pp. 205–09). A man’s decision, however, reads differently from a woman’s decision to terminate a pregnancy. Women’s decisions are associated with selfishness,

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14. *Carhart*, 550 U.S. at 159.



stigma, and sex. Men's decisions carry limited social and political significance (p. 210).

Sanger concludes the book by arguing that the normalization of abortion talk can contribute to the normalization of abortion. Much like previously taboo subjects such as cancer, divorce, and sexual orientation, Sanger wants to bring the discussion of abortion into the open, so women can discuss their decisions, before and after an abortion (p. 216). Relying on social contact theory, which holds that interaction between those with a perceived stigma and those without the stigma reduces prejudice, Sanger describes the research showing that when people with anti-abortion views hear directly from individuals in their lives about an abortion experience, the person with the anti-abortion view is more likely to develop a nuanced understanding of the person who terminated the abortion—for example, that she is also a mother and is religiously observant (pp. 217–18). It is precisely this kind of sharing that Sanger seeks. As she notes, “Normalizing abortion talk does not answer the question of how any particular woman should resolve her unwanted pregnancy” (p. 230), nor should it trivialize the decision or encourage more abortions. Rather, the goal is to make an abortion more like a medical procedure, and less like a “presumptive moral outrage” (p. 230).

## II. EXPANDING THE CONVERSATION

*About Abortion* is successful in initiating a detailed and textured conversation about women's experiences with abortion, and it models the “openness and generosity” (p. 238) essential for this dialogue. Moreover, the book is beautifully written and deeply engrossing. As broad as Sanger's ambit is, however, the conversation could—and should—be even broader. In particular, abortion talk should heed more fully the distinctive issues of race and class. Bringing these and other voices into the conversation only underscores Sanger's thesis: there is much to learn about women's experiences with abortion.

### A. *The Possibilities of Abortion Talk*

Sanger prompts an open and generous conversation by exemplifying respectful discourse. The book is not structured as an us-versus-them battle, and given her commitment to the legality and availability of abortion, Sanger is exceptionally evenhanded. She acknowledges the significance of the decision to end a pregnancy, and she does not shy away from the reality that abortion ends an existence, whether one considers that existence an unborn life or a mass of cells (p. 131). Similarly, Sanger recognizes the stakes of the decision to terminate a pregnancy. When analyzing mandatory ultrasound laws, she asks, “What is so bad about the requirement if it makes pregnant women think harder about a decision as significant as abortion?” (p. 111). Sanger then goes on to explain why the requirement *is* problematic, but even acknowledging the significance of the decision manifests a respect for those who seek to discourage or outright prohibit abortions.

Whether this lower-decibel, meet-you-halfway approach encourages more conversation among those with different views is another question. Asked differently, what might a pro-life reader learn from the book? Surely the reader would be relieved that it is not a pro-choice polemic, and the reader may well be pleased that Sanger acknowledges the significance of the decision. But ultimately, as a pro-choice liberal,<sup>15</sup> I find it hard to assess the book from a pro-life perspective. And this is precisely the problem Sanger is trying to address: we cannot set aside our own narratives and commitments to imagine another point of view.

Perhaps it is more apt, at least for this reviewer, to ask what a pro-choice reader might learn from *About Abortion*. The short answer—a lot. Through Sanger's wide-angle lens, the reader learns that abortion is not simply a decision between a woman and her doctor, as famously framed by *Roe v. Wade*.<sup>16</sup> Instead, abortion is entangled with notions of gender, motherhood, the place of the individual in a liberal democracy, and so much more. And through Sanger's telephoto lens, the reader learns, from the perspective of the woman, what it is like for women in many different circumstances to terminate a pregnancy. Through this description of context and experiences, the book is highly persuasive. Sanger convincingly shows that abortion is unexceptional, and that women, who are trusted with so many important decisions and responsibilities, should be trusted with this decision as well (p. 238). In short, the book more than succeeds in proving its central thesis that a greater understanding of the lived experience of abortion helps citizens form more nuanced opinions about the legal regulation of abortion.

The book also models an open and generous discourse in a different sense. Sanger does not always make connections between the experiences of women and the social and cultural context she so beautifully describes,<sup>17</sup> but this authorial absence may be a feature, not a bug. By laying various practices side by side—postmortem photographs and fetal sonogram images, for example—Sanger leaves it to the reader to find connections. By starting but not finishing the conversation, Sanger invites others to join. For this reason, the book begs to be discussed and thus is sure to be immensely successful in both the classroom and discussion groups. Sanger has indeed started a conversation.

Ultimately, the existence of a balanced, reflective book about abortion is highly salutary and will hopefully prompt balanced, reflective conversation

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15. The felt need to identify myself as such is not lost on me, again reaffirming the strong lines in the debate.

16. 410 U.S. 113, 163 (1973) (“[T]he attending physician, in consultation with his patient, is free to determine, without regulation by the State, that, in his medical judgment, the patient’s pregnancy should be terminated.”).

17. After the in-depth descriptions of nineteenth-century photographic traditions, for example, Sanger does not explore what these ultimately tell us about a woman’s experience of being required to look at a fetal sonogram image in the twenty-first century, apart from a few reflections on a woman’s experience seeing a sonogram of a desired pregnancy only to find out the fetus has serious abnormalities. P. 147.

about abortion. At the very least, the book shows what is lost in the current polarized debate.

### B. *More Voices*

As much as Sanger surfaces women's experiences with abortion, there is more to be said, particularly about race and class. Sanger emphasizes the one-in-three statistic about the prevalence of abortion (p. xiii), but the incidence of abortion is not spread evenly across demographic groups. The abortion rate among Black women approaches three times the rate of white women,<sup>18</sup> and three out of four abortion patients have incomes below 200 percent of the poverty level.<sup>19</sup> Race and class are also salient in debates about abortion because the fertility of low-income women of color has long been a site of exploitation and discrimination.<sup>20</sup> Sanger acknowledges the salience of race and class,<sup>21</sup> but examining these aspects of women's experiences in detail would reveal important differences for women of color and low-income women, as well as important avenues for reform.

Beginning with race, before *Roe v. Wade*, Black women had far greater difficulty than white women securing either a legal abortion or a comparatively safe illegal abortion.<sup>22</sup> But as noted above, Black women today are far more likely to have an abortion than white women.<sup>23</sup> The conversation about women's experiences would thus ask how and why this change occurred and what it means for Black women terminating a pregnancy. It would also be relevant to know whether the higher prevalence of abortion makes the prac-

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18. *Abortion Rates by Race and Ethnicity*, GUTTMACHER INST. (Oct. 19, 2017), <https://www.guttmacher.org/infographic/2017/abortion-rates-race-and-ethnicity> [<https://perma.cc/5WVJ-5LTB>] (reporting the 2014 abortion rate for Black women as 27.1/1,000 as compared with 10/1,000 for white women).

19. See JERMAN ET AL., *supra* note 9, at 6 tbl.1 (49% of patients lived below the federal poverty level, and an additional 26% lived below 200% of the federal poverty level.).

20. For a foundational text, see DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* (1997). For a more recent analysis of race, reproduction, and state control, see KHIARA M. BRIDGES, *THE POVERTY OF PRIVACY RIGHTS* (2017), and KHIARA M. BRIDGES, *REPRODUCING RACE: AN ETHNOGRAPHY OF PREGNANCY AS A SITE OF RACIALIZATION* (2011) [hereinafter BRIDGES, *REPRODUCING RACE*].

21. For examples of references to race, see p. 2 (noting the connection between abortion and "long-standing social tensions, such as those around race" and then describing attempts by pro-life advocates to highlight the disproportionate rate of abortions among Black women) and p. 229 (noting that white but not Black girls were sent to homes for pregnant teens). For examples of references to class, see pp. 27–28 (describing the Supreme Court decisions holding that neither the federal nor state governments are obligated to pay for a medically unnecessary abortion despite the constitutional protection of the procedure); p. 165 (noting the cost of abortions as an obstacle for teenagers); and p. 227 (noting that some women cannot use social media to participate in the #ShoutYourAbortion movement because they do not have access to a smartphone, laptop, or good internet).

22. See Mark A. Graber, *The Ghost of Abortion Past: Pre-Roe Abortion Law in Action*, 1 VA. J. SOC. POL'Y & L. 309, 333–55 (1994) (describing this history).

23. See *supra* text accompanying note 18.

tice more or less stigmatized within various Black communities. The conversation would ask how Black women experience government regulation of abortion in relation to broader discrimination at the hands of the state across numerous areas, from housing and employment to policing and education.<sup>24</sup> And the discussion would ask how Black women experience the intrusive regulation associated with abortion in relation to the intrusive regulation that accompanies state support more broadly.<sup>25</sup> A starting point for this dialogue is the considerable scholarship on race and reproductive rights,<sup>26</sup> which explores many of these issues, including a detailed ethnography of low-income women seeking reproductive healthcare.<sup>27</sup>

It would also be illuminating to discuss the role of race in the pro-life movement and the potential interest convergence between pro-life advocates and the Black Lives Matter movement.<sup>28</sup> As Sanger alludes to in the beginning of the book, pro-life advocates have attempted to introduce race as a rallying call for abortion opponents, with billboards displaying such slogans as “The Most Dangerous Place for an African American is in the Womb” (p. 2). Considering this issue from the distinctive perspective of a Black woman seeking an abortion—what she might think and feel upon seeing that billboard—would help readers better see and understand a greater plurality of women’s experiences, to mention but one way to surface this plurality.

Examining the role of race in abortion points to a different but related inequality: access to effective methods of birth control. As compared with white women, Black women are less likely to use contraception, less likely to use more effective forms of birth control, and more likely to experience failure of their chosen method of birth control.<sup>29</sup> Researchers posit numerous explanations for this disparity, including unequal access to healthcare, particularly family planning services,<sup>30</sup> and an ongoing suspicion of state control of fertility grounded in historical discrimination.<sup>31</sup> Given these unequal

24. See R.A. Lenhardt, *The Color of Kinship*, 102 IOWA L. REV. 2071, 2074–77 (2017) (describing how the legal system may appear race neutral but, in operation, disproportionately affects specific communities and thus perpetuates racial inequality).

25. See Wendy A. Bach, *The Hyperregulatory State: Women, Race, Poverty, and Support*, 25 YALE J.L. & FEMINISM 317, 319–20 (2014).

26. See *supra* note 20.

27. See BRIDGES, REPRODUCING RACE, *supra* note 20.

28. See Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 522–24 (1980).

29. See Christine Dehlendorf et al., *Disparities in Family Planning*, 202 AM. J. OBSTETRICS & GYNECOLOGY 214, 215–16 (2010).

30. See *id.* at 216–17.

31. See *id.* at 216 (describing a survey of 500 Black women in which one-third of the respondents agreed with the statement: “[M]edical and public health institutions use poor and minority people as guinea pigs to try out new birth control methods” (quoting Sheryl Thorburn & Laura M. Bogart, *Conspiracy Beliefs About Birth Control: Barriers to Pregnancy Prevention Among African Americans of Reproductive Age*, 32 HEALTH EDUC. & BEHAV. 474, 478 tbl.1 (2005)).

patterns of contraception use, it is unsurprising that Black women have much higher rates of unintended pregnancies than white women<sup>32</sup> and, in turn, higher rates of abortion. Putting the abortion experiences of Black women in this context—of both fighting state control over fertility and also suffering from lack of access to effective birth control—sheds light on the particular circumstances that Black women may face as compared with white women.

As with race, the conversation about women's experiences should be attentive to differences across class lines. Sanger notes the concerns about paying for an abortion as well as the financial reasons why women choose not to bear a child,<sup>33</sup> but the conversation would be enriched by a more detailed exploration of these issues, particularly the financial considerations that drive abortion decisions for low-income women. Further, the conversation could touch on a greater range of class-related issues. It would be illuminating to hear, for example, about the experiences of low-income women trying to secure family planning services. Access to healthcare—in both rural and urban areas—is a significant issue for low-income women, especially in states that did not expand Medicaid under the Affordable Care Act.<sup>34</sup> Even women who have Medicaid often cannot secure the most effective form of birth control<sup>35</sup>—long-acting reversible contraceptives (LARCs).<sup>36</sup> Given these difficulties, it is unsurprising that low-income women experience particularly high rates of unintended pregnancies and abortion.<sup>37</sup>

The voices and concerns of women across races and classes would enrich discussions about reform. This would surely start with access to affordable, effective birth control, particularly LARCs. Indeed, a recent study

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32. See GUTTMACHER INST., UNINTENDED PREGNANCY IN THE UNITED STATES (2016), [https://www.guttmacher.org/sites/default/files/factsheet/fb-unintended-pregnancy-us\\_0.pdf](https://www.guttmacher.org/sites/default/files/factsheet/fb-unintended-pregnancy-us_0.pdf) [<https://perma.cc/D5ZG-N3E4>] (noting that white women have the lowest rates of unintended pregnancies at 33/1,000, as compared with 79/1,000 for Black women).

33. *E.g.*, pp. 27–28, 165, 207–08.

34. See RACHEL GARFIELD & ANTHONY DAMICO, KAISER FAMILY FOUND., THE COVERAGE GAP: UNINSURED POOR ADULTS IN STATES THAT DO NOT EXPAND MEDICAID 7 (2017), <http://files.kff.org/attachment/Issue-Brief-The-Coverage-Gap-Uninsured-Poor-Adults-in-States-that-Do-Not-Expand-Medicaid> [<https://perma.cc/H8ZD-7XPF>].

35. See VIKKI WACHINO, CTR. FOR MEDICAID & CHIP SERVS., STATE MEDICAID PAYMENT APPROACHES TO IMPROVE ACCESS TO LONG-ACTING REVERSIBLE CONTRACEPTION 2 (2016), <https://www.medicaid.gov/federal-policy-guidance/downloads/cib040816.pdf> [<https://perma.cc/XP9H-8Q74>].

36. See U.S. FOOD & DRUG ADMIN., BIRTH CONTROL GUIDE, <https://www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM517406.pdf> [<https://perma.cc/P7TH-BH59>] (comparing methods of birth control and noting that LARCs are the most effective form of reversible birth control).

37. See GUTTMACHER INST., *supra* note 32 (“The rate of unintended pregnancy among poor women (those with incomes below the federal poverty level) was 112 per 1,000 in 2011, more than five times the rate among women with incomes of at least 200% of the federal poverty level (20 per 1,000).”).

showed that LARCs play an important role in reducing unwanted pregnancies and abortions.<sup>38</sup>

In sum, to understand women's experiences more completely, we have more to discuss. Sanger's method—of simultaneously examining the larger context while also focusing on women's actual experiences—has shown the way. As the next Part demonstrates, this approach also generates insights in other areas of family law.

### III. A METHOD FOR FAMILY LAW SCHOLARS

In addition to initiating a conversation, *About Abortion* provides a useful blueprint for scholarly inquiry. Much legal scholarship falls into readily identifiable categories and uses familiar methods,<sup>39</sup> but most legal scholarship does not begin to deploy Sanger's capacious approach. Family law is no exception.<sup>40</sup> This is not to criticize other methodologies but instead to show the benefits, at least in some contexts and perhaps particularly in family law, of adopting a broad, contextual approach to the interplay between law, cultural meaning, and personal experience.

An engaging and inventive scholar and teacher, Sanger has long adopted an innovative method steeped in cultural and social inquiry.<sup>41</sup> In *About Abortion*, Sanger elevates this approach, deftly weaving literature, history, religion, popular culture, and social observation with legal rules. Part I of this Review gives a sense of this method, but a more detailed example demonstrates both the method and the insights it generates. Early in the book, Sanger describes the state-level Missing Angel Acts, which allow par-

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38. See CONTRACEPTIVE CHOICE PROJECT, <http://www.choiceproject.wustl.edu/#CHOICE> [<https://perma.cc/K693-7FDR>] (describing the study); Jeffrey F. Peipert et al., *Preventing Unintended Pregnancies by Providing No-Cost Contraception*, 120 OBSTETRICS & GYNECOLOGY 1291, 1295 (2012) (finding that the abortion rate for study participants ranged from 4.4 to 7.5 per 1,000, depending on the year, as compared with the national abortion rate during the same period of 19.6 per 1,000).

39. See Martha Minow, *Archetypal Legal Scholarship: A Field Guide*, 63 J. LEGAL EDUC. 65, 65–69 (2013).

40. Some scholars use a relatively wide-ranging method. See, e.g., Elizabeth F. Emens, *Regulatory Fictions: On Marriage and Counter-marriage*, 99 CALIF. L. REV. 235, 241–57 (2011) (describing alternative marriage models based on examples from literature). In my own work, I have shown that many areas of the law that we do not think of as family law, from zoning regulations to sentencing guidelines, should be considered family law. See CLARE HUNTINGTON, *FAILURE TO FLOURISH: HOW LAW UNDERMINES FAMILY RELATIONSHIPS*, ch. 3 (2014). I have made the neighboring point that many sociological phenomena that we do not think of as law have an effect on family law. In particular, I have argued that the repeated ways we perform family, from wearing a wedding ring to picking up children after school, both create and reinforce dominant understandings of family, which in turn shape the law and the legal regulation of families. See Clare Huntington, *Staging the Family*, 88 N.Y.U. L. REV. 589, 592, 611, 618 (2013) [hereinafter Huntington, *Staging the Family*].

41. See, e.g., Carol Sanger, *Separating from Children*, 96 COLUM. L. REV. 375 (1996) (examining the separation of parents from children in multiple contexts, including the London blitz and the abandonment of children in ancient Rome and the Middle Ages).

ents to obtain a birth certificate for a stillborn infant (p. 4). She acknowledges the value of these statutes, which purport to provide some measure of comfort to grieving parents by recognizing the life of a child who then died (p. 4), but Sanger also notes the political and cultural work accomplished by these statutes, showing how they humanize a fetus and open the door to greater regulation of fetuses (pp. 4, 21).

Many family law scholars would make similar connections, but Sanger goes further, returning to the Missing Angel Acts repeatedly in the book (pp. 21, 98). In particular, she relates the birth certificates to the relatively recent Japanese practice of *mizuko kuyo*—a rite for an aborted fetus (pp. 96–98). Beginning in the mid-1970s, independent religious sects developed the rite for women who had an abortion (p. 96). A woman buys a small stone statue of the deity Jizo, the protector of fetal and child spirits, and places the statue, often dressed in baby clothes, in a dedicated garden (p. 96). In doing so, the woman offers her apologies to the fetus and asks Jizo to guide the fetus through the world of dead souls (p. 96). As Sanger explains, because this rite comes in the context of widespread acceptance of abortion in Japan, *mizuko kuyo* does not have a particular political valence (pp. 96–97). Sanger then circles back, making the connection between this practice and a birth certificate for a stillborn infant, contending that they both offer “official recognition that a particular child existed” (p. 98).

Sanger is able to pull so much into her frame. Indeed, the discussion of *mizuko kuyo* is in a chapter that also describes car advertisements, Mesoamerican sculpture, a fifteenth-century tapestry, a sixteenth-century midwifery manual, a nineteenth-century Swiss anatomist, Demi Moore, Damien Hirst, and much more (pp. 71, 75, 78, 87–93). It is a tremendous credit to Sanger’s skill as a writer, and her perceptiveness as a scholar, that these myriad sources cohere and illuminate, rather than distract and alienate. By looking widely, Sanger challenges our understanding of what constitutes and influences the law, and by zeroing in on women’s experiences, Sanger shows the insights that can be generated from this close consideration. Through this dual-focus method, Sanger deepens a reader’s understanding of abortion. With the *mizuko kuyo* discussion, for example, she shows that abortion can both be an acceptable practice and simultaneously involve loss and sadness and create a need for consolation and ritual.

This method may well hold lessons for multiple areas of law, but it is particularly well suited to illuminating family law. Family law wrestles constantly with contentious legal questions that cut to the core of family life, such as the disproportionate representation of Black and Native American children in the child welfare system,<sup>42</sup> the legality of corporal punishment,<sup>43</sup> and marriage equality, first for same-sex couples and now for those in plural

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42. See CHILDREN’S BUREAU, U.S. DEP’T HEALTH & HUMAN SERVS., THE AFCARS REPORT: PRELIMINARY FY 2015 ESTIMATES AS OF JUNE 2016, at 2 (2016).

43. See, e.g., *Commonwealth v. Dorvil*, 32 N.E.3d 861 (Mass. 2015) (recognizing a parental privilege to use corporal punishment).

relationships.<sup>44</sup> As with abortion, these issues are highly sensitive and politically fraught, with legal rules profoundly affecting the lives of individuals and a social and cultural context that deeply influences citizens' views of appropriate regulation. In each of these areas, the legal system does not have a clear view of the lived experience of those who are the objects of these legal rules, whether it is a mother facing daily scrutiny from the child welfare system or a group of adults living in a plural relationship.

To illustrate the benefits of Sanger's method, consider its application to one of the most pressing issues in family law: the legal regulation of nonmarital families.<sup>45</sup> The legal system is struggling to adapt to the rapid rise of nonmarital childbearing, with one in four children now born to unmarried parents,<sup>46</sup> most of whom will never marry and instead will end their relationship early in the child's life.<sup>47</sup> As I have argued elsewhere, family law is designed for married families and does not map well onto the particular needs and circumstances of nonmarital families.<sup>48</sup> State laws create inequality between unmarried mothers and fathers, requiring men to take affirmative steps to establish legal rights and secure custody.<sup>49</sup> Further, states impose unrealistic financial expectations on unmarried fathers, who are far more disadvantaged than married fathers; these unrealistic child support orders then sow considerable conflict between unmarried parents.<sup>50</sup> And states simply have not developed adequate institutions to address the particular needs of nonmarital families.<sup>51</sup>

Legal scholars are currently engaged in debates about the legal system's approach to nonmarital families. Some, including myself, argue that the legal system should do more to encourage equality between unmarried mothers and fathers and strengthen these families.<sup>52</sup> Other scholars argue that the current approach responds to the more tentative commitment between un-

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44. See *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *Brown v. Buhman*, 947 F. Supp. 2d 1170, 1176 (D. Utah 2013) (finding Utah's criminal prohibition on bigamy unconstitutional as applied to cohabitation), *vacated as moot*, 822 F.3d 1151 (10th Cir. 2016).

45. See Clare Huntington, *Postmarital Family Law: A Legal Structure for Nonmarital Families*, 67 STAN. L. REV. 167, 167 (2015) ("The American family is undergoing a seismic shift, with marriage rates steadily declining and more than four in ten children now born to unmarried parents.").

46. See JOYCE A. MARTIN ET AL., U.S. DEP'T HEALTH & HUMAN SERVS., BIRTHS: FINAL DATA FOR 2015, NATIONAL VITAL STATISTICS REPORTS 47 tbl.16 (2017).

47. See Sara S. McLanahan & Irwin Garfinkel, *Fragile Families: Debates, Facts, and Solutions*, in MARRIAGE AT THE CROSSROADS: LAW, POLICY, AND THE BRAVE NEW WORLD OF TWENTY-FIRST-CENTURY FAMILIES 142, 145–47 (Marsha Garrison & Elizabeth S. Scott eds., 2012).

48. See Huntington, *supra* note 45, at 202–12.

49. See *id.* at 203–05.

50. See *id.* at 205–09.

51. See *id.* at 209–10.

52. *Id.* at 224–36; R.A. Lenhardt, *Black Citizenship Through Marriage? Reflections on the Moynihan Report at Fifty*, 25 S. CAL. INTERDISC. L.J. 347, 358–61 (2016).



married parents, reflects the actual breakdown of responsibilities, and protects mothers from violent relationships, given the high rate of violence in nonmarital relationships.<sup>53</sup>

In this debate, scholars regularly invoke qualitative and quantitative studies of nonmarital families,<sup>54</sup> including ethnographies,<sup>55</sup> longitudinal social science studies,<sup>56</sup> and historical accounts and analyses of how the state has used marriage as a tool for domination and control of marginal families.<sup>57</sup> These are all highly relevant sources, and they help scholars compare the embedded assumptions and operation of the law with the reality of nonmarital family life.<sup>58</sup>

Sanger's approach would deepen this inquiry, opening the door to an even thicker analysis. Her dual-focus method directs attention to the larger social and cultural context of nonmarital family life, asking how citizens form their views about nonmarital families and thus influence legal regulation. And her method seeks a textured understanding of the day-to-day life of nonmarital families, asking how they experience their relationships and particularly the legal rules that affect how they interact.

The larger social and cultural context is particularly relevant to the formation of citizens' views about nonmarital families because social barriers isolate communities where marriage is the norm from communities where it is not. Marriage rates track race and class lines, with white and higher-income individuals more likely to marry than people of color and lower-income individuals.<sup>59</sup> In light of the tendency for people to live, work, and socialize within demographic groups, and especially within a group as de-

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53. See June Carbone & Naomi Cahn, *Nonmarriage*, 76 MD. L. REV. 55, 79 (2016); Leslie Joan Harris, *Family Policy After the Fragile Families and Relationship Dynamics Studies*, 35 LAW & INEQ. 223, 225–35 (2017).

54. For examples of this reliance, see Harris, *supra* note 53, at 225–35 (drawing on sociological evidence of violence in nonmarital relationships); Carbone & Cahn, *supra* note 53, at 79, 106, 118 (citing empirical evidence about nonmarital families).

55. See, e.g., BRIDGES, REPRODUCING RACE, *supra* note 20; KATHRYN EDIN & MARIA KEFALAS, PROMISES I CAN KEEP WHY POOR WOMEN PUT MOTHERHOOD BEFORE MARRIAGE 4–6 (2005); KATHRYN EDIN & TIMOTHY J. NELSON, DOING THE BEST I CAN: FATHERHOOD IN THE INNER CITY 157, 169, 208, 214 (2013).

56. See FRAGILE FAMILIES AND CHILD WELLBEING STUDY, <https://fragilefamilies.princeton.edu/> [<https://perma.cc/4WMN-Q34R>].

57. See, e.g., KATHERINE FRANKE, WEDLOCKED: THE PERILS OF MARRIAGE EQUALITY (2015); R.A. Lenhardt, *Marriage as Black Citizenship?*, 66 HASTINGS L.J. 1317 (2015).

58. Carbone & Cahn, *supra* note 53, at 86–93; Huntington, *supra* note 45, at 202–11.

59. Alison Aughinbaugh et al., *Marriage and Divorce: Patterns by Gender, Race, and Educational Attainment*, MONTHLY LAB. REV. (Oct. 2013), <https://www.bls.gov/opub/mlr/2013/article/marriage-and-divorce-patterns-by-gender-race-and-educational-attainment.htm> [<https://perma.cc/XHH8-CGY3>] (“[A]bout 33 percent of Blacks have never married [by age 45], compared with 10 percent and 16 percent of Whites and Hispanics, respectively. Blacks are also less likely to have remarried than Whites and Hispanics when their first marriages ended.”); see *id.* (“[A]bout two-thirds of college graduates had married and remained in their first marriage at age 35 versus about half of high school graduates (with or without some college) and 44 percent of people with less than a high school diploma.”).

financed along socioeconomic lines, marital and nonmarital families generally do not interact.<sup>60</sup> This lack of social contact means individuals within the marrying-norm group are forming their views about nonmarital families through the larger social and cultural context, not through personal interactions. Further, cohabitation and nonmarital childbearing do not share the same secrecy that surrounds abortion, but there is a lingering stigma,<sup>61</sup> and this stigma is not weakened by social contact. For scholars to analyze the political economy of legal regulation of nonmarital families, then, it is essential to appreciate this process.

To understand how citizens form their views of nonmarital families, scholars should begin by exploring cultural representations of nonmarital families, in both high art and popular culture. Scholars should more closely examine the political valence of nonmarital families. This would include an examination of the mandatory performances of candidates for public office, marching their spouses and marital children across the stage,<sup>62</sup> and the political rhetoric, by candidates and elected officials, that casts nonmarital childbearing as irresponsible and abnormal.<sup>63</sup> Scholars should consider religious messaging about cohabitation and nonmarital childbearing.<sup>64</sup> And scholars should analyze the social images of nonmarital families, from the foundational “tangle of pathology” language in the Moynihan Report to Walter Scott, running from the police for fear of arrest following nonpayment of child support.<sup>65</sup> As these initial examples suggest, there are many

60. See BILL BISHOP, *THE BIG SORT: WHY THE CLUSTERING OF LIKE-MINDED AMERICA IS TEARING US APART* (2008).

61. See Melissa Murray, *What's So New About the New Illegitimacy?*, 20 AM. U. J. GENDER SOC. POL'Y & L. 387, 407, 413–16, 420–30 (2012).

62. For a detailed analysis of the performative aspects of family life and how they shape both societal views and the law, see Huntington, *Staging the Family*, *supra* note 40.

63. See, e.g., *Rick Santorum in Fox News Debate on MLK Day in Myrtle Beach*, ONTHEISSUES, [http://www.issues2000.org/Archive/2012\\_GOP\\_SC\\_MLK\\_Rick\\_Santorum.htm](http://www.issues2000.org/Archive/2012_GOP_SC_MLK_Rick_Santorum.htm) [<https://perma.cc/KV5T-YQ5R>] (quoting Rick Santorum saying in a presidential primary debate that “[a] study done in 2009 determined that if Americans do three things, they can avoid poverty. Three things: work, graduate from high school, and get married before you have children. Those three things result in only 2% of people ending up in poverty.”).

64. *Cohabitation*, FOR YOUR MARRIAGE, <http://www.foryourmarriage.org/cohabitation/> [<https://perma.cc/9FSL-4PA3>] (“Every act of sexual intercourse is intended by God to express love, commitment and openness to life in the total gift of the spouses to each other. Sexual intercourse outside of marriage cannot express what God intended.”).

65. OFFICE OF POLICY PLANNING & RESEARCH, U.S. DEP'T OF LABOR, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* 5, 47 (1965), <https://web.stanford.edu/~mrosenfe/Moynihan%27s%20The%20Negro%20Family.pdf> [<https://perma.cc/RS9Y-RS7E>]; Frances Robles & Shaila Dewan, *Skip Child Support. Go to Jail. Lose Job. Repeat.*, N.Y. TIMES (Apr. 19, 2015) <https://www.nytimes.com/2015/04/20/us/skip-child-support-go-to-jail-lose-job-repeat.html> (on file with the *Michigan Law Review*) (describing the shooting of Walter Scott). Some family law scholars already examine these and other aspects of the social and cultural context of nonmarital families. See, e.g., Lenhardt, *supra* note 52, at 350–55 (describing the lingering effect of the Moynihan report); R.A. Lenhardt, *Race, Dignity, and the Right to Marry*, 84

aspects of the social and cultural context and many questions and sources for family law scholars to examine.

Focusing in from wide angle to telephoto, it is just as important for family law scholars to understand nonmarital intimacy and parenting from the perspective of nonmarital families themselves. Social science studies and ethnographies provide a starting point, but Sanger's method encourages an even finer-grained examination, focusing on how these families experience the legal rules that govern their interaction. Just as Sanger asks what a woman might see and feel when offered a fetal sonogram image before an abortion, legal scholars should explore more closely how unmarried parents and their children experience the current legal regime as well as nonmarital family life.<sup>66</sup> Although some commentators are quick to find dysfunction in nonmarital families,<sup>67</sup> concentrating on the lived experiences of nonmarital families reveals strengths, including the greater integration of unmarried Black men in the lives of their children as compared with unmarried white fathers.<sup>68</sup> Further, as Sanger shows in *About Abortion*, a broad range of sources can shed light on personal experiences, including blog posts,<sup>69</sup> poetry,<sup>70</sup> music, and art,<sup>71</sup> to name but a few.

This brief description illustrates the tremendous potential of Sanger's approach to law, culture, and the felt experience of legal regulation, pointing to new directions in legal scholarship. By expanding family law's boundaries, Sanger has provided both inspiration and a method for this inquiry. The point is not that abortion is like all other questions in family law or that we need to initiate a conversation about these other topics, bringing them out of the shadows. Rather, using Sanger's method demonstrates that by looking

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FORDHAM L. REV. 53, 61–62 (2015) (describing the relationship between Walter Scott and family law).

66. For an example of the benefits of this kind of close examination in a related context, see Kaaryn Gustafson, *Degradation Ceremonies and the Criminalization of Low-Income Women*, 3 U.C. IRVINE L. REV. 297, 304–36 (2013) (describing the “ceremonial degradation” of low-income women of color in multiple contexts).

67. See, e.g., Amy Wax & Larry Alexander, *Paying the Price for Breakdown of the Country's Bourgeois Culture*, INQUIRER (Aug. 9, 2017, 4:56 PM), <http://www.philly.com/philly/opinion/commentary/paying-the-price-for-breakdown-of-the-countrys-bourgeois-culture-20170809.html> [https://perma.cc/NBT3-XXPC].

68. EDIN & NELSON, *supra* note 55, at 215; Marcia J. Carlson et al., *Coparenting and Nonresident Fathers' Involvement with Young Children After a Nonmarital Birth*, 45 DEMOGRAPHY 461, 473–74 (2008); Robert I. Lerman, *Capabilities and Contributions of Unwed Fathers*, FUTURE CHILD., Fall 2010, at 63, 64, 75.

69. SINGLE MOTHERS BY CHOICE, <https://www.singlemothersbychoice.org/blog/> [https://perma.cc/S2M6-XSVC].

70. Louis Rams, *The Single Father*, POEMHUNTER.COM, <https://www.poemhunter.com/poem/the-single-father/> [https://perma.cc/YF9N-3FS4].

71. See, e.g., *Past Exhibitions*, NAT'L MUSEUM WOMEN ARTS, <https://nmwa.org/explore/exhibitions/past-exhibitions> [https://perma.cc/6FEB-MXJ8] (describing an exhibition of the work of June Wayne, whose lithographs “illustrate her mother Dorothy's life as an immigrant, a single parent and a successful saleswoman during the first half of the 20th century”).

both broadly and closely we can better understand the governed and the governors, how one affects the other, and, ideally, find more attuned, responsive legal regulation.

#### CONCLUSION

*About Abortion* is a successful, far-ranging exploration of abortion, initiating a true conversation about one of the most divisive topics in the United States. Sanger's optimism about the possibilities of abortion talk is tempered by realism,<sup>72</sup> but her invitation for more conversation is both welcome and productive. There are more voices to add, but as a foundational matter she has demonstrated the value of talking—and listening. More broadly, Sanger has introduced embedded humanism as a method for family law scholarship, encouraging inquiry into the social and cultural context of an issue while also examining the lived experiences of those who are regulated.

With potentially far-reaching changes to abortion jurisprudence on the horizon and with no end in sight for the polarized debate about the place of abortion in American society, we need abortion talk now more than ever. By modeling a respectful, inquisitive conversation, Sanger encourages citizens and scholars alike to join in, hopefully elevating us all.

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72. See p. xiv (“I doubt that there is any harmonic convergence hovering above waiting to sort out the issue if only we would all just listen more carefully.”).

