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The Science, Fiction, and Science Fiction of Unsex Mothering

I. Glenn Cohen[1]

Harvard Journal of Law and Gender Symposium on Darren Rosenblum's *Unsex Mothering: Toward a Culture of New Parenting*

In her novel *Woman on the Edge of Time*, the Canadian Feminist writer Marge Piercy's protagonist, Connie Ramos, incarcerated in a mental institution, time travels to a set of possible futures that reflect utopian and dystopian visions of social make-up.[2] Among other things, the more utopian possible future world has embraced many of the ideas explored by Darren Rosenblum's *Unsex Mothering*: sex roles, gender hierarchy, and motherhood as we know it have been eliminated; children are no longer born by women, but instead incubated in a "brooder" and raised by three genetically unrelated "co-mothers," at least two of whom, regardless of their sex, take hormones allowing them to nurse such that even men breast feed.[3] Ethnic and cultural heritage too has been reconfigured and distributed geographically, such that all citizens of a particular city regardless of their ethnic backgrounds follow the Native American ways, while another city might follow the ways of a different cultural or ethnic background.[4]

I think of Rosenblum's fascinating paper as beginning the legal scholarship twin project to Piercy's novel. In this short response, I want to examine a set of possible future worlds with various kinds of unsexed motherhood and press Rosenblum on the normative criteria by which one might choose between them, something his Article does not focus on.

I. A MULTIVERSE OF UNSEXED MOTHERING

While Piercy's protagonist travels to several possible futures, for our purposes a more useful thought experiment is of someone traveling to other possible parallel universes. This is a frequent trope of science fiction, where in these parallel universes many things are just like our own but some things are radically different.[5]

Imagine our protagonist has the ability to control his or her travel across parallel universes in the multiverse.[6] We could imagine a series of possible versions of our lives with different kinds of unsexed motherhood. Rosenblum mentions or at least gestures at some of these, but let me be more explicit and taxonomical about it by describing the way in which possible universes can differ in regard to his project:

First, we have differences between possible worlds pertaining to sex and its fixedness.

Name	Description
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Androgynia:	There is but one biological sex.[7]
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Transgenderia Pregnantia: There are two biological sexes but one can shift one's biological sex to the other (but only once), and yet when the shifting is complete a male who becomes a female can get pregnant and a female who shifts to becoming a male cannot.

Transgenderia Socia: There are two biological sexes but one can shift one's biological sex to the other (but only once), and the shifting does not affect the internal reproductive organs such that only those born biological women can reproduce.

Then we have differences based on the way reproduction takes place.

Artificia Mandatoria: For reasons of biology or law, a child can only be produced by artificial means requiring no genetic or gestational contribution by any parent.

Artificia Optionalia: Parents may opt for but are not required to produce a child by artificial means that require no genetic or gestational contribution by any parent. Those doing it the "old-fashioned" way use coital reproduction between members of opposite sexes.

Then we can specify differences as to requirements for parenting, biological and social:

Dyadica Biologica: Two parents are required for reproduction, whatever their sex.

Dyadica Socia: Two parents are required for rearing of the child even if not for its biological production.[8]

Then we can specify differences as to how rearing duties are divided:

Equalia: All rearing duties and benefits of parenting are performed/enjoyed identically by all parents of a child.

Equitia: All rearing duties and benefits of parenting are split equitably between the parents, but they do not do it identically.

Ouvertia: Parenting roles like "mother" and "father" are fixed but can be occupied by members of either biological sex.

Fixtia: Parenting roles like "mother" and "father" are fixed to biological sex, with women as mothers and men as fathers.

Contractia: Parenting roles are set at a default by sex as in our world but they can be readjusted by the agreement of both parents to whatever components or division is desired.

This is merely a preliminary and certainly non-exhaustive suggestion in terms of the list of variables. We then have a large number of combinatorial possibilities producing quite different possible visions of unsexed motherhood that our hypothetical multiverse jumper could choose from.

Would he or she prefer to travel to the universe “androgynia artificia optionalia dyadica socialia”—where everyone is of the same sex and reproduction can occur either through same-sex sexual contact or artificial reproduction, but it requires two parents to raise each child, or “transgenderia socia dyadica biologica”—where individuals begin with a biological sex, which they can change other than for pregnancy related purposes, and require someone born of the opposite sex to reproduce, but can rear children alone? Even the less outlandish possibilities present some interesting hard choices. Is Rosenblum’s vision of unsexed motherhood better captured by the “dyadica biologica ouvertia” universe—where both sexes are needed to reproduce and there are distinct “mother” and “father” roles but either gender can play them, “dyadica biologica contractia”—where the default mother and father roles can be adjusted based on preference, or “dyadica biologica equalia”—where each person in the parenting dyad occupies the role of mother and father all the time?

II. A NORMATIVE GUIDE FOR UNSEXED MOTHERING

Now that we can see the multiverse of unsexed mothering possibilities, we can ask: how are we to choose between them? Rosenblum in this work (though this is perhaps only a small part of a bigger project) does not really try to suggest normative criteria for deciding which of the possible universes to favor, or (more down to earth) what the law should aim at here. In the small space that remains, let me suggest a few ways he could go about doing that, but the list is far from exhaustive:

(1) **Administrability.** If we drop our science fiction fig leaf and instead, perhaps more like Piercy’s protagonists, imagine these as possible futures that the law (among other institutions) could push society toward, some of the possible futures seem more within our grasp than others. One way for Rosenblum to choose would be to favor the social arrangement that (1) maximally queers motherhood and (2) is actually feasible. This approach would still require both a conception of which universe maximally queers motherhood and a normative argument for why that should be our goal. Therefore, this approach may in turn depend on some of the other approaches I list.

(2) **Distribution and the Interests of Status Quo Holders.** If we again imagine this as a choice between possible futures, but near futures, perhaps one way to think about this would be what would be better for people who currently exist, and may win or lose from the move to one of these new unsexed models. Of course, how to factor in those prior

holdings is complex. One possibility would be to see if the change is Kaldor-Hicks efficient—do the winners make enough that they could compensate the losers? Another approach (that would probably freeze any change) would be to ask whether the change is Pareto Superior—is at least one person made better off and no one made worse off? In between there are many other possibilities, including asking whether the change would maximally benefit the worst off.[9]

(3) **Better for the Children.** One approach would be to give the children’s interests a veto or at least a very large say in which of these schemes we move to. This would raise the empirical question: what is best for children? One problem with this approach that I’ve written about elsewhere is that when legal or even social rules are altered to protect the children, but they alter whether or not particular children come into existence, they cannot be defended on Best Interests of the Children rationale.[10]

(4) **Blank Slate: All Things Considered Better.** A different possible normative criterion is to imagine we were operating on a blank slate. Perhaps we can change the rules only prospectively or phase them in such a way that there is no one who is hurt with a claim of entitlement under the old system. Another way to get at this would be to imagine one really were jumping between universes and choosing which of them to live in. Figuring out which of these possible worlds is better, all things considered, would be a challenging and exciting project. It is not one that Rosenblum particularly develops here, but it is one I very much hope he undertakes in expanding this paper into a larger project.

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[2] MARGE PIERCY, *WOMAN ON THE EDGE OF TIME* (1976).

[3] *Id.* at 73, 103–106, 134.

[4] *Id.* at 103, 129.

[5] The *locus classicus* is the original Star Trek’s mirror universe. *See* Star Trek: Mirror, Mirror (1967). But this idea is still very common in science fiction. *See, e.g.,* Sliders (Fox, Sci-Fi Channel 1995–1999); Fringe (Bad Robot Productions, Warner Bros. Television 2008–present).

[6] Apparently the psychologist-philosopher William James coined the term “multiverse” in 1895, but its usage to mean a collection of parallel universes dates back to 1963. Oxford English Dictionary, available at <http://www.oed.com>. There is a branch of quantum physics that treats the notion of the multiverses quite seriously, and believes that everything that could happen somewhere does happen in some universe. *See, e.g.,* Max Tegmark, *Parallel Universes, in Science and Ultimate Reality: from Quantum to Cosmos*

(J.D. Barrow et al. eds., 2003), available at <http://space.mit.edu/home/tegmark/multiverse.pdf>.

[7] Again science fiction has imagined this. *See* Star Trek The Next Generation: The Outcast (Paramount Television March 16, 1992) (Commander Riker falls in love with a member of the J'naii species, who are an androgynous species that view the expression of any sort of male or female gender, and especially sexual liaisons, as a sexual perversion).

[8] There is nothing magical about the number two. As in Piercy's novel we can imagine three or more parents playing biological or social roles. Courts have not always been as receptive. For example, the California Supreme Court might have rejected out of hand the ACLU's suggestion of more than two parents in one of its surrogacy cases. *Johnson v. Calvert*, 851 P.2d 776, 781 n.8 (Cal. 1993).

[9] *Cf.* JOHN RAWLS, A THEORY OF JUSTICE § 13, at 65–68 (rev. ed., Belknap Press 1999) (the difference principle).

[10] *See generally* I. Glenn Cohen, *Regulating Reproduction: The Problem with Best Interests*, 96 MINN. L. REV. 423 (2012).