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The Father's Rights Movement, Law Reform, and the New Politics of Fatherhood: Some Reflections on the UK Experience

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THE FATHERS' RIGHTS MOVEMENT, LAW REFORM, AND THE NEW POLITICS OF FATHERHOOD: SOME REFLECTIONS ON THE UK EXPERIENCE

*Richard S. Collier**

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* Professor of Law, University of Newcastle, United Kingdom. This Article is based on a public lecture given in October 2007 to the Center on Children and Families at the University of Florida Levin College of Law. I am grateful to those who attended and participated in my discussion. I especially would like to thank Nancy Dowd and her colleagues for their generosity and in making me feel so welcome during my visit. This Article draws on material contained in the book *The Man of Law: Essays on Law, Men and Gender* (London: Routledge, forthcoming 2009). I would like to acknowledge the support of the British Academy (BATOB0607/SG42903) for funding the research projects on fathers' rights and law reform. I would, in particular, like to thank Sally Sheldon, with whom some of the ideas discussed in Parts II & III of this Article were originally developed, and were initially considered in the books *Fragmenting Fatherhood: A Socio-Legal Study* (Oxford: Hart 2008) and *Fathers' Rights Activism and Law Reform in Comparative Perspective* (Oxford: Hart, 2006).

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I. INTRODUCTION

According to the founder of “Fathers 4 Justice,” Matt O’Connor:

The current system of family justice is a grotesque obscenity that is untenable in its current form. We do not recogni[z]e the authority of these secret courts. Whatever it takes, however long it takes and whatever the sacrifice, we will prevail and achieve the reforms that every child and family in this country desperately deserve and need.¹

Focusing on the area of fathers’ rights and law reform, this Article reconsiders the interrelationship between law, gender, and masculinity within one particularly high profile, and politically sensitive, area of family law. “What has been missing from policy and reform discussions,” Martha Fineman has suggested, “is a debate about the nature of fatherhood and the transformation of the role of the father in response to changing expectations, norms and practices.”² “How,” she has asked, does a “desire for gender neutrality and the ideal of egalitarianism play a role in the creation of a new set of norms for fatherhood?”³

What follows explores these questions in the context of recent debates in England and Wales concerning post-separation contact. Critics of developments within fathers’ rights politics⁴ have been troubled by the

1. Matthew O’Connor, Founder, Fathers 4 Justice, <http://www.fathers-4-justice.org/f4j/> (last visited Jan. 3, 2009).

2. MARTHA ALBERTSON FINEMAN, *THE AUTONOMY MYTH* 195 (2004).

3. *Id.*

4. This critical literature is now vast. For simply a flavor of the debates and concerns, see

arguments advanced by, and the possible impact of, an increasingly vocal international “fathers’ rights movement.”⁵ These critics have suggested that there is a pressing need to articulate what significance adopting a rights-based approach might have upon the idea of welfare and its practical application in the field of family law. Concern has been expressed about the implications of fathers’ rights activism in terms of its influence on legal policy and practice, and for women and children especially. Within one strand of literature, the resurgence of fathers’ claims in the legal arena has been interpreted as akin to a “backlash” to feminism, a problematic, troubling and regressive shift in the terrain of family politics.⁶ This Article contributes to these debates by reconsidering how an embedding of gender neutrality and the ideal of egalitarianism in law has played a key role in the

generally J. CROWLEY, *DEFIANT DADS: FATHERS’ RIGHTS ACTIVISTS IN AMERICA* (2008) [hereinafter CROWLEY, *DEFIANT DADS*]; *FATHERS’ RIGHTS ACTIVISM AND LAW REFORM* (Richard Collier & Sally Sheldon eds., 2006) [hereinafter *FATHERS’ RIGHTS*]; Miranda Kaye & Julia Tolmie, *Discoursing Dads: The Rhetorical Devices of Fathers’ Rights Groups*, 22 MELB. U. L. REV. 162 (1998) [hereinafter Kaye & Tolmie, *Discoursing Dads*]; Susan B. Boyd, *Demonizing Mothers: Fathers’ Rights Discourses in Child Custody Law Reform Processes*, 6 J. ASS’N FOR RES. ON MOTHERING 52 (2004) [hereinafter Boyd, *Demonizing Mothers*]; Helen Rhoades, *The ‘No Contact Mother’: Reconstructions of Motherhood in the Era of the ‘New Father,’* 16 INT’L J.L. POL’Y & FAM. 72 (2002) [hereinafter Rhoades, *The “No Contact Mother”*]; Helen Rhoades, *The Rise and Rise of Shared Parenting Laws – a Critical Reflection*, 19 CANADIAN J. FAM. L. 75 (2002) [hereinafter Rhoades, *The Rise and Rise of Shared Parenting Laws*]; Carol Smart, *Losing the Struggle for Another Voice: The Case of Family Law*, 18 DALHOUSIE L.J. 173 (1995) [hereinafter Smart, *Losing the Struggle*]; Carol Smart, *Equal Shares: Rights for Fathers or Recognition for Children?*, 24 CRITICAL SOC. POL’Y 484 (2004) [hereinafter Smart, *Equal Shares*]; Susan B. Boyd & Claire F.L. Young, *Who Influences Family Law Reform? Discourses on Motherhood and Fatherhood in Legislative Reform Debates in Canada* [hereinafter Boyd & Young, *Who Influences Family Law Reform?*], in *STUDIES IN LAW, POLITICS, AND SOCIETY* 43 (2002) [hereinafter *STUDIES IN LAW*]; Reg Graycar, *Law Reform by Frozen Chook: Family Law Reform for the New Millennium?*, 24 MELB. U. L. REV. 737 (2000); Richard Collier, *Fathers 4 Justice, Law and the New Politics of Fatherhood*, 17 CHILD & FAM. L.Q. 511 (2005) [hereinafter Collier, *Fathers 4 Justice*]; Jocelyn Elise Crowley, *Adopting ‘Equality Tools’ from the Toolboxes of Their Predecessors: the Fathers’ Rights Movement in the United States* [hereinafter Crowley, *Adopting ‘Equality Tools’*].

5. On the idea of a “movement,” see *FATHERS’ RIGHTS*, *supra* note 4, ch. 1; see also MICHAEL A. MESSNER, *POLITICS OF MASCULINITIES: MEN IN MOVEMENTS* (1997); ANNA GAVANAS, *FATHERHOOD POLITICS IN THE UNITED STATES: MASCULINITY, SEXUALITY, RACE AND MARRIAGE* (2004). *But* THE FATHERHOOD MOVEMENT: A CALL TO ACTION (Wade F. Horn et al. eds., 1999).

6. See, e.g., Michael Flood, *Backlash: Angry Men’s Movements* [hereinafter Flood, *Backlash*], in THE BATTLE AND BACKLASH RAGE ON: WHY FEMINISM CANNOT BE OBSOLETE 261 (Stacey Elin Rossi ed., 2004) [hereinafter THE BATTLE AND BACKLASH RAGE ON]. See also Susan B. Boyd, *Backlash and the Construction of Legal Knowledge: The Case of Child Custody Law*, 20 WINDSOR Y.B. ACCESS JUST. 141 (2001); Susan B. Boyd, *Backlash Against Feminism: Canadian Custody and Access Reform Debates of the Late Twentieth Century*, 16 CANADIAN J. WOMEN & L. 255 (2004).

creation of a new set of norms for fatherhood within the context of shifting understandings of fathers' rights and responsibilities around post-separation parenting.

This discussion focuses on recent developments around these issues in England and Wales.⁷ However, the main argument of this Article has broader application and will address a debate about gender, law, and parenting that has become increasingly resonant across jurisdictions, including the United States.⁸ Drawing on a rather different literature from that which has informed much of the discussion to date, I shall argue that the present political and policy debate concerning fathers' rights has been marked by profound contradictions and tensions. On closer examination, these reflect a deep-seated cultural uncertainty about the nature of contemporary fathering, masculinity, and indeed, about the role of the law itself.

This Article is structured around two halves. The first half consists of Parts II & III and will set the scene by outlining recent developments in family policy and fathers' rights activism in England and Wales, emphasizing key themes and concerns. For readers who are unfamiliar with the law and debates in this specific jurisdiction, the first part will provide a clear picture of how legal policy has (and has not) responded to fathers' rights groups.

In Part II, I place the debates about fathers' rights and law reform in three specific contexts. First, I outline what is currently known about fathers and separation in this jurisdiction. Second, I detail legal developments in England and Wales concerning post-separation contact that have, I suggest, profoundly reshaped ideas of the "good father" within this context. Third, I frame these debates in relation to the emergence of a culturally and politically resonant idea of the father as a "victim" of the law.

In Part III, I look more closely at the arguments that have been advanced by fathers' rights groups in the United Kingdom. I focus, in particular, on how ideas about gender convergence, gender neutrality, rights, responsibility, care, justice, and equality have been deployed within the legal arena. In this area, fathers' rights groups have sought to

7. Laws in Scotland are different. *See, e.g.*, JOE THOMSON, FAMILY LAW IN SCOTLAND (5th ed. 2006).

8. *See generally* NANCY E. DOWD, THE MAN QUESTION: FEMINIST JURISPRIDENCE, MASCULINITIES AND LAW (forthcoming N.Y. Univ. Press, 2009) [hereinafter DOWD, THE MAN QUESTION]; NANCY E. DOWD, REDEFINING FATHERHOOD (2000) [hereinafter DOWD, REDEFINING FATHERHOOD].

“refashion and reposition fatherhood in the legal and cultural imaginary”⁹ in ways that, I argue, have drawn on particular ideas about equality, gender neutrality, and the image of the caring father as a sharer of responsibilities. Building on earlier discussions in my work regarding the “fragmentation” of fatherhood,¹⁰ the politics of law and masculinity,¹¹ and shifting ideas about rights, responsibilities, and gender in the law, the first half of the Article provides a general context for the analysis of fathers’ rights, law, and gender to follow. What has emerged, I suggest, is a “new politics of fatherhood” in the legal arena.

The second half of the Article is comprised of Parts IV, V, and VI. This half focuses on the interrelationship between legal regulation, men and gender, and shifting ideas of the (gendered) male subject within this area of family law. In Part IV, I outline the critique of fathers’ rights that has evolved within a rich interdisciplinary literature. I proceed, in Part V, to look more closely at the relationship between gender neutrality, rights and equality in the creation of a new set of norms around fatherhood by exploring two issues. The first issue concerns discursive shifts in fathers’ claims pertaining to rights, justice, and care that, I suggest, have accompanied the strategic changes in fathers’ rights politics outlined in the first half of the Article. The second issue focuses on a reshaping of ideas about men and masculinities in these debates.

In Part VI, I reconsider a range of constructions of the “man of law” in this area of legal regulation. I first question assumptions about conflict and emotion and, then, about men, feminism, and the power of law. I further draw on recent studies of fathers’ rights groups have explored the evolution of debates about law, rights, and gender.¹²

Concluding remarks readdress the question of what a “new set of norms for fatherhood” might look like by turning to a broader reconfiguration of ideas about men and masculinity within legal policy.

9. Carol Smart, *The Ethic of Justice Strikes Back: Changing Narratives of Fatherhood* [hereinafter Smart, *The Ethic of Justice*], in *FEMINIST PERSPECTIVES ON FAMILY LAW* 123 (Alison Diduck & Katherine O’Donovan eds., 2006) [hereinafter *FEMINIST PERSPECTIVES*].

10. RICHARD COLLIER & SALLY SHELDON, *FRAGMENTING FATHERHOOD: A SOCIO-LEGAL STUDY* (2008) [hereinafter *FRAGMENTING FATHERHOOD*].

11. Richard S. Collier, *Reflections on the Relationship Between Law and Masculinities: Rethinking The “Man Question,”* 56 *CURRENT LEGAL PROBS.* 345 (2003) [hereinafter Collier, *Reflections on the Relationship*]; RICHARD S. COLLIER, *THE MAN OF LAW: ESSAYS ON LAW, MEN AND GENDER* (forthcoming 2009).

12. I will, in the following, also refer to the preliminary findings of a research project conducted in England and Wales that traced the evolution of debates about law reform and fathers’ rights since 2002. Richard S. Collier, *The UK Fathers’ Rights Movement and Law: Report to the British Academy*, British Academy rlf/SRF/2005/88 (2008) (unpublished, on file with author) [hereinafter Collier, *UK Fathers’ Rights*].

This theme has much to offer in developing an understanding of the relationship between law, men, and gender. The aim of this Article, in short, is to chart a path through recent debates about fathers' rights and recast the questions asked. How might it be possible to develop an alternative reading of law, fatherhood, and masculinity that looks at the relationship between law, men, and gender in a different way?

II. CONTEXTUALIZING THE DEBATE ABOUT FATHERS' RIGHTS, LAW, AND GENDER: THE "NEW POLITICS OF FATHERHOOD"

A. Contexts: Separated Fathers, Family Law, and Social Change

Divorce has long been a site of contestation and struggle in the law. The question of how law responds to the "transformations of intimacy"¹³ that shape contemporary family practices¹⁴ can be seen, in a sense, as the very stuff of family law. There are signs that these struggles, and what they tell us about the relationship between law, men, and gender, may be changing. Recently, this has been particularly evident in the area of post-divorce and separation contact.

The legal status, responsibilities, and rights of men who are fathers — whether married or unmarried, cohabiting or separated, biological or social in nature — is a topic with a long and well-documented history.¹⁵ Events during the past decade, however, suggest a heightened concern about, and growing politicization of, the relationship between law and fatherhood.

In approaching the changes that have taken place in the legal arena around fatherhood, it is important to note at the outset two narratives. One, aligned with the themes of crisis and fragmentation around masculinity and "family life," emphasizes the idea of fragility in men's relationships with women and children, the fractured, contingent, and problematic nature of men's parenting. Interlinked with the argument that men's absence from families is associated with a range of social problems, men's (lack of) familial and economic responsibility is connected to an array of

13. ANTHONY GIDDENS, *THE TRANSFORMATIONS OF INTIMACY* (1992). See also ULRICH BECK & ELISABETH BECK GERNSEHEIM, *THE NORMAL CHAOS OF LOVE* (1995) [hereinafter BECK & GERNSEHEIM, *THE NORMAL CHAOS*]. For an alternative reading of these changes, see CAROL SMART, *PERSONAL LIFE: NEW DIRECTIONS IN SOCIOLOGICAL THINKING* (2007) [hereinafter SMART, *PERSONAL LIFE*].

14. See generally DAVID MORGAN, *FAMILY CONNECTIONS: AN INTRODUCTION TO FAMILY STUDIES* (1996).

15. See, e.g., FRAGMENTING FATHERHOOD, *supra* note 10.

concerns about social disorder. This particularly has been the case in relation to issues of child poverty, youth crime, and (male) criminality.¹⁶ Drawing on a notion of men and masculinity as a distinctive kind of social problem,¹⁷ such arguments cut across political positions and can be found, for example, in strands of both conservative and feminist writing.

The other narrative, in contrast, positions ideas about men, masculinity, and social change in a rather different light. Far from pointing to crisis tendencies in family life and men's parenting, a more optimistic stance is adopted. Highlighting the extent to which men's practices, aspirations, and experiences have changed, the relationship between men and children is seen as having become, not less, but more enduring. Instead of a "flight from commitment,"¹⁸ separation actually opens the door to a new kind of involved parenting on the part of men. Combining a boardly optimistic and pessimistic interpretation of men and change has become a recurring theme and proved to be a toxic mixture within contemporary debates about fathers and family law reform.

Before I look more closely at these legal debates, it is necessary to say a brief word on men's post-separation parenting in the UK context. Each year in England and Wales, it is estimated that between 150,000 and 200,000 parental couples separate.¹⁹ Of the 12 million children in the country, more than one in four now have separated parents.²⁰ About 45% of marriages now end in divorce,²¹ with about a third of children in England and Wales experiencing parental divorce before the age of 16.²² In the vast majority of cases, estimated at approximately 90%, children living in single-parent families in England and Wales will live with their

16. See, e.g., THE CENTRE FOR SOCIAL JUSTICE, THE FAMILY LAW REVIEW: AN INTERIM REPORT (2008), on the idea of "guesting fathers." For the U.S. context, see, e.g., DAVID BLANKENHORN, FATHERLESS AMERICA: CONFRONTING OUR MOST URGENT SOCIAL PROBLEM (1995); a different reading of these debates can be found in LOST FATHERS: THE POLITICS OF FATHERLESSNESS IN AMERICA (Cynthia R. Daniels ed., 1998).

17. See generally Jonathan Scourfield & Mark Drakeford, *New Labour and the 'Problem of Men,'* 22 CRITICAL SOC. POL'Y 619 (2002).

18. BARBARA EHRENREICH, THE HEARTS OF MEN: AMERICAN DREAMS AND THE FLIGHT FROM COMMITMENT (1983).

19. DEPARTMENT OF CONSTITUTIONAL AFFAIRS ET AL., PARENTAL SEPARATION: CHILDREN'S NEEDS AND PARENTS' RESPONSIBILITIES, 2004, Cm. 6273, at 1 [hereinafter PARENTAL SEPARATION].

20. *Id.*

21. OFFICE FOR NATIONAL STATISTICS, POPULATION TRENDS 28 (2008), available at http://www.statistics.gov.uk/downloads/theme_population/Population_Trends_131_web.pdf.

22. JOAN HUNT WITH CERIDWEN ROBERTS, FAMILY POLICY BRIEFING 3: CHILD CONTACT WITH NON-RESIDENT PARENTS 1 (2004), available at http://www.nuffieldfoundation.org/fileLibrary/pdf/Contact_briefing_paper.pdf.

mothers.²³ However, a significant proportion of children do stay in contact with their fathers following separation.²⁴ As such, the term “absent father” must be used with caution in this context.²⁵

In recognizing the fluidity of these “new families,”²⁶ it can be argued that most children grow up in broadly stable family settings.²⁷ The majority of post-separation parenting arrangements, estimated at approximately 90%, also are uncontested.²⁸ It is in relation to the other 10% that the issue of parental conflict and hostility has become of increasing concern to politicians and policymakers. This view has been informed by shifting understandings of post-separation life, where a growing body of work has sought to highlight the important role of the father in child development and welfare, and the problems that can follow from parental conflict.²⁹

Conflict, the nature of which can change over time, has been widely seen to have substantial negative effects on children, both within intact and separated families.³⁰ Albeit in ways marked by gender differences,³¹ conflict can have a serious impact on adults, including the relationship of both parents with their children.³² The now considerable literature detailing the negative effects of parental conflict on children after separation and divorce³³ is beyond the scope of this Article. However, such literature has

23. Alison Blackwell & Fiona Dawe, *Non-Residential Parental Contact, Final Report Based on Data From the National Statistical Omnibus Survey for the Department of Constitutional Affairs*: London, Department of Constitutional Affairs 2003; HUNT WITH ROBERTS, *supra* note 22, at 1.

24. HOME OFFICE RESEARCH, DEVELOPMENT, AND STATISTICS DIRECTORATE, 2001 HOME OFFICE CITIZENSHIP SURVEY: PEOPLE, FAMILIES AND COMMUNITIES 113-37 (2003).

25. FRAGMENTING FATHERHOOD, *supra* note 10; JONATHAN BRADSHAW ET AL., ABSENT FATHERS? (1999).

26. THE NEW FAMILY? (Elizabeth Bortolaia Silva & Carol Smart eds., 1998) [hereinafter THE NEW FAMILY?]; CAROL SMART & BREN NEALE, FAMILY FRAGMENTS? (1999).

27. See, e.g., MAVIS MACLEAN & JOHN EEKELAAR, THE PARENTAL OBLIGATION: A STUDY OF PARENTHOOD ACROSS HOUSEHOLDS (1997); Margaret O'Brien, *Social Science and Public Policy Perspectives on Fatherhood in the European Union* [hereinafter O'Brien, *Social Science*], in THE ROLE OF THE FATHER IN CHILD DEVELOPMENT 127 (Michael E. Lamb ed., 4th ed. 2004).

28. HUNT WITH ROBERTS, *supra* note 22, at 1.

29. See, e.g., THE ROLE OF THE FATHER IN CHILD DEVELOPMENT, *supra* note 27; EIRINI FLOURI, FATHERING AND CHILD OUTCOMES (2005).

30. See generally GORDON HAROLD ET AL., NOT IN FRONT OF THE CHILDREN? (Jenny Reynolds ed., 2001); BRYAN RODGERS & JAN PRYOR, DIVORCE AND SEPARATION: THE OUTCOMES FOR CHILDREN (1998).

31. See, e.g., Graeme B. Wilson, *The Non-resident Parental Role for Separated Fathers: A Review*, 1 INT'L J.L. POL'Y & FAM. 286 (2006).

32. *Id.*

33. *Id.*

become an important part of an evidence base that, at the policy level, has inspired a growing and accepted view that “fathers matter.”

Among the factors predicting children’s positive or negative life chances after their parents’ separation, the quality of their relationship with their mother and the quality (but not necessarily the quantity) of their relationship with their father have been seen to be of crucial importance.³⁴ It is clear that the mother-child relationship may be compromised by conflict during separation. It is however, revealingly, the relationship between father and child that has been widely seen in recent years as the particular casualty of separation and divorce.

Set against this backdrop, three specific issues have been central to fathers’ rights organizations in their attempts to advance the view that the present law in England and Wales is out of step with social change. First, a considerable and growing number of children do not live with their genetic fathers.³⁵ A significant number of non-residential parents (primarily fathers) lose touch with their children following divorce.³⁶ Second, there is a correlation between this fact and the presence of conflict. Research suggests that, for a range of complex interpersonal, psychological, material, and economic factors,³⁷ post-separation relationships between non-resident fathers and their children can be difficult to both establish and maintain.³⁸ It is argued that the most pivotal among these factors is the mother, who in some cases can be “vengeful” by preventing contact between father and child.³⁹ Third, and finally, all of this has deleterious psychological and material consequences for children, fathers, mothers, and society itself.⁴⁰ In charting how a new politics of

34. See JAN PRYOR & BRYAN RODGERS, *CHILDREN IN CHANGING FAMILIES: LIFE AFTER PARENTAL SEPARATION* (2001).

35. See generally O’Brien, *Social Science*, in *THE ROLE OF THE FATHER IN CHILD DEVELOPMENT*, *supra* note 27. This is just one part of the broader “fragmentation” of fatherhood in law charted by Collier and Sheldon. *FRAGMENTING FATHERHOOD*, *supra* note 10.

36. See Bob Simpson et al., *Fathers After Divorce*, in *CHILDREN AND THEIR FAMILIES: CONTACT, RIGHTS AND WELFARE 202* (Andrew Bainham et al. eds., 2003) [hereinafter *CHILDREN AND THEIR FAMILIES*].

37. See generally *PARENTING AFTER PARTNERING: CONTAINING CONFLICT AFTER SEPARATION* (Mavis Maclean ed., 2007) [hereinafter *PARENTING AFTER PARTNERING*]; see also Wilson, *supra* note 31.

38. See generally *PARENTING AFTER PARTNERING*, *supra* note 37; *PARENTLINE PLUS, STEPFAMILIES: NEW RELATIONSHIPS, NEW CHALLENGES* (2005); MARJORIE SMITH ET AL., *A STUDY OF STEP PARENTS AND STEP PARENTING* (2003).

39. Georgina Vallance-Webb, *Child Contact: Vengeful Mothers, Good Fathers and Vice Versa*, 38 *FAM. L.* 678 (2008).

40. See generally Shelley Day Sclater & Martin Richards, *How Adults Cope with Divorce – Strategies for Survival*, 25 *FAM. L.* 143 (1995); SHELLEY DAY SCLATER, *DIVORCE: A*

fatherhood has emerged from these debates about conflicted separation, how has law responded to these dilemmas? In what way has law been used to promote consensus, reduce conflict, and encourage “good enough” relationships between fathers and children?

B. *Legal Frameworks in England and Wales: Reshaping the “Good Father”*

Divorce is increasingly seen in the United Kingdom not as a single event, but an ongoing process,⁴¹ one that obliges parents to “position themselves in relation to often competing discourses (legal, welfare, therapeutic and, more recently, human rights) and to find ways of living alongside them.”⁴² “Framed at the intersections of legal practice, social policy, welfare ideology, relationship breakdown and personal pain,”⁴³ family law policy over the past twenty years has reflected the rethinking of the father figure and related concerns about conflicted separation. In this section, I will outline some of the key features of this shift in terms of the development of the law in England and Wales.

From the mid- to late-1980s onward, there emerged a new consensus on the part of politicians and policymakers regarding the belief that it is desirable for non-resident parents to have contact with their children, provided that such arrangements are considered safe and in the best interests of the child.⁴⁴ Within this “new welfarism” in family law,

PSYCHOSOCIAL STUDY (1999); Felicity Kaganas, *Grandparents’ Rights and Grandparents’ Campaigns*, 19 CHILD & FAM. L.Q. 17 (2007); Felicity Kaganas & Christine Piper, *Grandparents and Contact: ‘Rights vs Welfare’ Revisited*, 15 INT’L J.L. POL’Y & FAM. 250 (2001); Susan B. Boyd, *Legal Regulation of Families in Changing Societies* [hereinafter Boyd, *Legal Regulation of Families*], in THE BLACKWELL COMPANION TO LAW AND SOCIETY 255 (Austin Sarat ed., 2004) [hereinafter THE BLACKWELL COMPANION].

41. See generally Scott Coltrane & Michele Adams, *The Social Construction of the Divorce “Problem,”* 52 FAM. REL. 363 (2003).

42. Felicity Kaganas & Shelley Day Sclater, *Contact Disputes: Narrative Constructions of “Good” Parents*, 12 FEMINIST LEGAL STUD. 3, 3–4 (2004); see generally Shelley Day Sclater & Felicity Kaganas, *Contact Mothers: Welfare and Rights*, in CHILDREN AND THEIR FAMILIES, *supra* note 36, at 155.

43. Kaganas & Sclater, *supra* note 42, at 155.

44. See generally UNDERCURRENTS OF DIVORCE (Shelley Day Sclater & Christine Piper eds., 1999) [hereinafter UNDERCURRENTS OF DIVORCE]; SMART & NEALE, *supra* note 26; Carol Smart, *Wishful Thinking and Harmful Tinkering? Sociological Reflections on Family Policy*, 26 J. SOC. POL’Y 1 (1997) [hereinafter Smart, *Wishing Thinking*]; Bren Neale & Carol Smart, *Experiments with Parenthood?*, 31 SOCIOLOGY 201 (1997) [hereinafter *Experiments with Parenthood?*]; Carol Smart, *The “New” Parenthood: Fathers and Mothers After Divorce* [hereinafter Smart, *The “New” Parenthood*], in THE NEW FAMILY?, *supra* note 26; Carol Smart & Bren Neale, *“I Hadn’t Really Thought About It”: New Identities/New Fatherhoods*, in RELATING INTIMACIES: POWER AND

children have been conceptualized as vulnerable and the conflicted divorce and separation as potentially damaging.⁴⁵ Located within the context of a broader refocusing on ideas of citizenship and responsibility in social policy,⁴⁶ Carol Smart and Bren Neale have suggested⁴⁷ that what has occurred constitutes nothing less than a clear and determined attempt to affect “social engineering” in the area of the family. In Smart’s words, it was an effort to “chang[e] the very nature of post-divorce family life.”⁴⁸ This involved a marked paradigm shift in how the state relates to the family; and in this process, the repositioning of fatherhood has been a central element.⁴⁹

This re-visioning of post-separation life rested on two interrelated ideas: first, a rethinking of fathers’ financial responsibilities, most clearly evident in law and policy around the provision of child support;⁵⁰ and, second, a new understanding of the place of the separated father within child welfare and development. In terms of both economics, i.e., promoting and enforcing men’s financial responsibility⁵¹ and child outcomes, there has been a heightened recognition that families need fathers. In relation to both areas, the law has radiated messages about separated fathers’ responsibilities, with the economic imperative of securing and enforcing the child maintenance obligation as a key theme. Along with the Children Act 1989,⁵² the enactment of the Child Support

RESISTANCE (Julie Seymour & Paul Bagguley eds., 1999) [hereinafter Smart & Neale, “*I Hadn’t Really Thought About It*”]. On developments in the context see the excellent account of JUNE CARBONE, *FROM PARTNERS TO PARENTS: THE SECOND REVOLUTION IN FAMILY LAW* (2000).

45. See generally RODGERS & PRYOR, *supra* note 30; PRYOR & RODGERS, *supra* note 34. See also Christine Piper, *Divorce Reform and the Image of the Child*, 23 J.L. & SOC’Y 364 (1996).

46. See generally HELEN REECE, *DIVORCING RESPONSIBLY* (2003); Robert van Krieken, *The ‘Best Interests of the Child’ and Parental Separation on the ‘Civilising of Parents,’* 68 MODERN L. REV. 25 (2005).

47. See generally SMART & NEALE, *supra* note 26; *Experiments with Parenthood?*, *supra* note 44; Smart & Neale, *Good Enough Morality? Divorce and Postmodernity*, 17 CRITICAL SOC. POL’Y 3 (1997).

48. Smart, *Wishful Thinking*, *supra* note 44.

49. See generally Smart, *The “New” Parenthood*, in *THE NEW FAMILY?*, *supra* note 26; Smart & Neale, “*I Hadn’t Really Thought About It*,” *supra* note 44; Janice Drakich, *In Search of the Better Parent: The Social Construction of Fatherhood*, 3 CANADIAN J. WOMEN & L. 69 (1989).

50. See generally FRAGMENTING FATHERHOOD, *supra* note 10. For a detailed discussion of child support, see also NICK WIKLEY, *CHILD SUPPORT: LAW AND POLICY* (2006).

51. Alongside the Children Act, 1989, C. 41 (U.K.), the Child Support Act, 1991, C. 48 (U.K.) has been seen as a key moment in shifting understandings of the place of the non-resident father in post-separation family life.

52. Children Act, 1989, C. 41 (U.K.).

Act 1991⁵³ constituted a central moment in refiguring the role of the non-resident father in post-separation family life.

However, with specific regard to the area of contact and conflict, what has happened?⁵⁴ By 2005, the UK government stated that a “core belief” of its family policy was its commitment to ensuring that “both parents should continue to have a meaningful relationship with their children after separation as long as it is safe and in the child’s best interests.”⁵⁵ Encapsulating the view that the non-residential father is “once a parent, always a parent,” the desirability of contact has been embedded within legislation and case law in the years following the enactment of the Children Act of 1989,⁵⁶ as well as in numerous policy initiatives, ministerial statements, and aspects of legal practice. At this stage, two points are of particular relevance to the discussion of how debates about fathers’ rights, the law, and gender have shifted in recent years.

First, in approaching law, we should not overstate what is new about the belief that fathers should not be written out of their children’s lives. The Children Act of 1989 moved away from the language of custody and access toward a language of residence and contact explicitly premised on the assumption that both parents should not consider themselves to be “winners” or “losers” in divorce, and that parental responsibility is ongoing for both women and men.⁵⁷ The role of law envisaged in the Act is simply to assist parents in resolving disputes and make orders in cases where the parties are unable to agree on contact arrangements.⁵⁸ Of key importance to the contestations around fathers’ rights, however, is that there is no legal presumption of contact or shared equal parenting contained in the Children Act of 1989.

53. Child Support Act, 1991, C. 34 (U.K.).

54. The following legal developments should be seen, that is, while tracking to well-established themes in family policy, against the backdrop of the high-profile fathers’ protests in the years since 2002 as detailed in this Article.

55. DEPARTMENT OF CONSTITUTIONAL AFFAIRS ET AL., *Parental Separation: Children’s Needs and Parents’ Responsibilities: Next Steps*, 2005, Cm. 6452, at 4 [hereinafter *Parental Separation, Next Steps*].

56. These developments in case law have been well documented in family law. For an excellent overview of the leading cases and debates in this area, see generally ALISON DIDUCK & FELICITY KAGANAS, *FAMILY LAW, GENDER AND THE STATE: TEXT, CASES AND MATERIALS* ch. 14 (2d ed. 2006); JONATHAN HERRING, *FAMILY LAW* ch. 9 (3d ed. 2007).

57. See also ANDREW BAINHAM, *CHILDREN: THE MODERN LAW* (3d ed. 2003).

58. Decisions on residence and contact are determined by the welfare principle of Children Act, 1989, C. 41, § 1 (U.K.); see also JOAN HUNT & ALISON MACLEOD, *OUTCOMES OF APPLICATIONS TO COURT FOR CONTACT ORDERS AFTER PARENTAL SEPARATION OR DIVORCE* (2008).

Secondly, interlinked with this development, there has been a shift in understanding what role law itself can and should play in this area. We have moved away from questions of moral judgment and the determination of fault toward a concern with process. The contemporary legal governance of post-separation parenting in England and Wales has been described by Helen Reece in terms of a model of “divorcing responsibly,” in which both women and men are assumed to be (or, at least, that they should be) committed to the co-parenting ideal and are able to act in ways that are rational, settlement-minded, and altruistic.⁵⁹ Both mothers and fathers are encouraged to be cognizant of the social and economic costs of divorce and the risks associated with parental conflict. Further, both are encouraged to commit to a model of civilized divorce that will entail particular responsibilities, such as facilitating contact.⁶⁰

There has been no assumption on the part of government that law alone can solve problems in this area.⁶¹ Rather, the assumption is that law can send messages about what parents should be doing while seeking to shape behavior by encouraging, cajoling, and ultimately, in a small minority of cases, enforcing such values by appropriate sanction.⁶² This approach reflects the overarching commitment to the “new democratic family,” gender equality, and parental responsibility in the thinking of current New Labour Government.⁶³

C. Cultural Contexts: What is Meant By the Father as “Victim” of Family Law?

Finally, and inseparable from these developments, it is important to note the impact of a broader cultural reframing of fatherhood on social and legal policy, a move interlinked with social and economic changes in ideas about men and masculinity. Mapping to long-term shifts around formal equality, gender neutrality, rights, and responsibility,⁶⁴ these developments have reshaped ideas of the father as a “victim” of law. This forms an important part of the backdrop against which fathers’ rights groups have

59. See generally REECE, *supra* note 46, ch. 6; van Krieken, *supra* note 46; John Dewar, *The Normal Chaos of Family Law*, 61 MOD. L. REV. 467 (1998).

60. See generally van Krieken, *supra* note 46; Richard Collier, *The Dashing of a ‘Liberal Dream’? The Information Meeting, the ‘New Family’ and the Limits of Law*, 11 CHILD & FAM. L.Q. 257 (1999).

61. See generally *Parental Separation, Next Steps*, *supra* note 55.

62. See generally Children and Adoption Act, 2006, C. 20 (U.K.).

63. See generally Brid Featherstone & Liz Trinder, *New Labour, Families and Fathers*, 21 CRITICAL SOC. POL’Y 534 (2001); VAL GILLIES, *MARGINALISED MOTHERS: EXPLORING WORKING-CLASS EXPERIENCES OF PARENTING* (2006).

64. See also RESPONSIBILITY, LAW AND THE FAMILY (Jo Bridgeman et al. eds., 2008).

sought to mobilize a set of arguments about men, gender, and social change in the legal arena.

What is meant by the idea of the father as a “victim” of the law? During the period since the enactment of the Divorce Reform Act of 1969 (DRA 1969)⁶⁵ and the Matrimonial Causes Act of 1973 (MCA 1973),⁶⁶ there has occurred some marked shifts in how the effects of divorce on men and women have been understood.⁶⁷ Running through the legal reforms since the early 1970s,⁶⁸ it is possible to trace a heightening of concern about whether it is fathers, rather than mothers, who have become the victims of injustice in the law. I have elsewhere charted this as a transition from the late 1960s to the present day in terms of a move from a discourse of “women’s emancipation” to one of “sex war” in law.⁶⁹

The reforms introduced by the DRA 1969 and MCA 1973 have been widely interpreted as part of an emancipatory moment, marked by a concern to protect women from the consequences of new, liberalized divorce law.⁷⁰ From the early 1970s onward, however, it is possible to detect a growing concern about the implications of legal changes on men drawing on two interrelated ideas. First, there has been an embedding of gender neutrality in the law, a belief that “divorce law must be just to husbands as well as to wives,”⁷¹ and, second, a series of cultural shifts in ideas about men and masculinity.

It is striking how, from the early 1970s to mid-1980s, and as the economic and social bases of the earlier reforms were undermined by changes in women’s increased employment and other cultural and sexual–political re-alignments, the view of the innocent wife as the potential primary victim of divorce reform shifts.⁷² Far from women being

65. Divorce Reform Act, 1969, C. 55 (U.K.).

66. Matrimonial Causes Act, 1973, C. 18 (U.K.). Prior to the enactment of this legislation, divorce law in England and Wales had been “fault based” and built around the idea that whilst one spouse was “guilty” of a matrimonial offence, the other was “innocent.” For discussion, see KATHERINE O’DONOVAN, *FAMILY LAW MATTERS* (1993).

67. For an excellent discussion of this, see also JOHN EEKELAAR, *FAMILY LAW AND PERSONAL LIFE* 141-43 (2006).

68. Notably, legislation such as the Matrimonial and Family Proceedings Act, 1984, C. 42 (U.K.), the Children Act, 1989, C. 41 (U.K.); the Child Support Act, 1991, C. 34 (U.K.) (as amended); and the Family Law Act, 1996, C. 27 (U.K.) (FLA 1996).

69. Richard S. Collier, *From “Women’s Emancipation” to “Sex War”?: Beyond the Masculinized Discourse of Divorce*, in UNDERCURRENTS OF DIVORCE, *supra* note 44.

70. O’DONOVAN, *supra* note 66.

71. ROYAL COMMISSION ON MARRIAGE AND DIVORCE, REPORT 1951–1955, 1956, Cmd. 9678, at 46.

72. O’DONOVAN, *supra* note 66, at 77-79 (noting that in the debates preceding the 1969 DRA, the divorcing husband was constructed as a “middle-aged Casanova” . . . “a butterfly flitting

positioned as potential victims of divorce law, the figure of the divorced father emerges as the object of law's injustice, a theme reflected in a range of cultural texts including films, novels, and television programs.⁷³ In this process, ideas about equality and justice relating to men and women continued to advance, calling for the laws on property and financial provision to be reformed.⁷⁴

By the early 1980s, it had become increasingly unfair for men to have to support a former wife who was capable of supporting herself and, in many cases, would have access to a second partner's finances. For women, such a position promoted a circle of economic dependence on husbands, damaging women's emancipation by encouraging, in a term imported from North America, "alimony drones." These concerns fuelled the debates about the enactment of the Matrimonial and Family Proceedings Act of 1984 and the need for a post-divorce "clean break."⁷⁵ Questions concerning the substantive outcomes of divorce continue to resonate in policy debates about fathers in England and Wales, especially in the area of child support. By the mid- to late- 1990s, however, there was a shift in the debate as other cultural influences began to inform the construction of the divorced father as a rather different kind of "victim" of family (in)justice from that which had existed during the 1970s and 1980s. Increasingly, it was the father's post-separation relationship with his children that assumed center stage. This shift in the debate brought two elements together in such a way as to reframe the father as a potential "victim" of the law.

First, economic, demographic, technological, and cultural changes facilitated a reappraisal of men's contribution to practices of care and caring and the scope of fathers' responsibilities during and after marriage. In a legal context, in which ideas of formal equality and gender neutrality have been embedded, this brought with it a heightened focus on whether the present law was "just" and "fair" to men. Second, a culturally pervasive (if ill-defined) narrative of a contemporary "crisis" about fatherhood became increasingly resonant in the early to mid-1990s. Related to this, there also was a convergence of ideas about crises in the heterosexual family and the nature of safe and dangerous paternal

from flower to flower" *Hansard*, 1967–68, HC, vol. 758, col. 884).

73. The film *Kramer v. Kramer*, released in 1979, exemplifies this shift and a new discourse around the separated father, raising questions about the disposition in law at the time to award custody to the mother. *KRAMER V. KRAMER* (Columbia Pictures Corp. 1979).

74. For a detailed discussion about this period, see CAROL SMART, *THE TIES THAT BIND: LAW, MARRIAGE AND THE REPRODUCTION OF PATRIARCHAL RELATIONS* (1984).

75. *See id.*

masculinities.⁷⁶ An international phenomenon, perhaps particularly evident in North America, it is during this period that the emergence of a “new men’s movement,” marked by diverse strands and perspectives, increasingly sought to engage with the consequences of these changes around marriage and divorce for men and, in particular, for fathers. It is against this backdrop that fathers’ rights groups increasingly have focused on law reform campaigns in the area of divorce and separation. In the following section, I will look more closely at how, in debates about law reform in England and Wales, fathers’ organizations have sought to engage with the law.

III. WHAT IS THE FATHERS’ RIGHTS MOVEMENT?

A. *The Scope of “Fathers’ Rights”*

In the United Kingdom, as in other countries, there exists no one fathers’ rights perspective or agenda. Rather, there is, within what is at best a loosely based coalition, a diversity of approaches and political views. The growing international literature on fathers’ rights reveals this diversity⁷⁷ and the different elements that make up a “fathers’ movement.” It is necessary to differentiate between the views of fathers’ rights groups and those of “fathers” in a more general sense. Fighting for formal equality is not necessarily a primary motivation in becoming involved in a fathers’ group. Further, national economic, political, and cultural contexts pertaining to distinctive legal systems mediate how debates about law reform evolve at particular moments.⁷⁸ Notwithstanding such diversity, an embrace of rule-based or formal equality has been a significant strategy of fathers’ rights groups internationally in their resort to law. It has been a starting point for devising concrete, tactical strategies for change, the focus of a rallying call to action, and a source of collective motivation.⁷⁹

76. See generally in the context of debates concerning crime and men’s criminality, RICHARD COLLIER, *MASCULINITIES, CRIME AND CRIMINOLOGY: MEN, HETEROSEXUALITY AND THE CRIMINAL(ISED) OTHER* (1998).

77. See also *FATHERS’ RIGHTS*, *supra* note 4.

78. See generally *id.*

79. See generally CROWLEY, *DEFIANT DADS*, *supra* note 4; Crowley, *Adopting “Equality Tools,” in FATHERS’ RIGHTS*, *supra* note 4; Miranda Kaye & Julie Tolmie, *Fathers’ Rights Groups in Australia and Their Engagement with Issues in Family Law*, 12 *AUSTRALIAN J. FAM. L.* 19 (1998); Kaye & Tolmie, *Discoursing Dads*, *supra* note 4; Collier, *UK Fathers’ Rights*, *supra* note 12.

The period following the enactment of the MCA 1973 provides the backdrop against which the beginnings of contemporary fathers' rights politics can be located. It is during this time that a number of organizations emerge that have sought to campaign on a wide range of issues relating to fathers and law. The pressure group and registered charity Families Need Fathers (FNF), which was formed in 1974, is of particular significance in how it has secured a public profile in debates about law reform.⁸⁰

FNF is a well-established organization, a key stakeholder and active participant within a range of family policy debates. It has, in contrast to the more recent group Fathers 4 Justice (F4J), been described as representing the "respectable" face of fathers' rights.⁸¹ FNF seeks to provide support to divorced and separated parents, irrespective of gender or marital status, on shared parenting issues arising from the family breakdown.⁸² Other groups, such as the recently formed Equal Parenting Alliance, similarly have emphasized that their membership and remit extends beyond that of fathers.⁸³

Four further points can be made in mapping the scope of fathers' rights groups in the United Kingdom. First, as in the United States,⁸⁴ some organizations have had a limited life span, far shorter than that of FNF, reflecting the pivotal role of a small number of individuals in their establishment and day-to-day running. The commitment of these individuals should not be underestimated in maintaining activity at local and national levels and in driving forward reform agendas.

Secondly, the evolution of fathers' rights groups reflects themes and concerns considered in the wider literature on social movements.⁸⁵ Such an evolution raises issues about individual and collective commitments to group aims, the formation of organizational and personal identities (in

80. FNF seeks to provide advice and support on a range of issues to divorced and separated parents. See, e.g., SUE SECKER, FOR THE SAKE OF THE CHILDREN: THE FNF GUIDE TO SHARED PARENTING (2001).

81. See generally Richard Collier, *'The Outlaw Fathers Fight Back': Fathers' Rights Groups, Fathers 4 Justice and the Politics of Family Law Reform — Reflections on the UK Experience*, in FATHERS' RIGHTS, *supra* note 4, at 53; Collier, *Fathers 4 Justice*, *supra* note 4.

82. Families Need Fathers, Charity Profile (Jan. 2000), <<http://www.fnf.org.uk/about-us/charity-profile>> (last visited Dec. 28, 2007); see also FNF Main Page, <http://www.fnf.org.uk/fnfindex.htm> (last visited Mar. 26, 2009).

83. Equal Parenting Alliance, Our Policies, <http://www.equalparentingalliance.org/policy-index.html> (last visited Nov. 17, 2008).

84. See generally CROWLEY, *DEFIANT DADS*, *supra* note 4.

85. See, e.g., ROBERT A. KENEDY, *FATHERS FOR JUSTICE: THE RISE OF A NEW SOCIAL MOVEMENT IN CANADA AS A CASE STUDY OF COLLECTIVE IDENTITY FORMATION* (2004) (giving an analysis).

relation, say, to how groups meet individual “self-expansion” needs),⁸⁶ as well as questions about how specific organizations interact, position themselves, and mirror each other within a particular non-governmental organizational (NGO) sector.⁸⁷ The issue of transient membership raises further questions about the method and logic of collective action in mobilizing around law reform, and the strength and durability of fathers’ rights groups in terms of whether this constitutes a discernable “movement” at all.⁸⁸ Importantly, in the context of contemporary fathers’ rights politics, there appears no clear correlation between the level of group activity and the group’s presence on the Internet.

Third, UK fathers’ rights groups have evolved in ways that draw on different political trajectories. For some, in particular those largely active via an Internet-based practice, there is a significant degree of overlap of concern between groups that promote fathers’ legal rights and those more clearly aligned to an explicitly anti-feminist “new men’s movement” agenda. It is in the latter context that the explicit manifestation of hostility to feminism and, at times, misogynistic sentiment can be found within debates about men’s legal rights.⁸⁹ Here, developments in fathers’ rights and law tend to be aligned with broadly conservative political views and the frequent use of a “sex war” rhetoric that mirrors the essentialism and categorical thinking found in other social movements. Such claims should not, however, be seen as representative of all men involved in the development of fathers’ rights agendas. It is important to distinguish those fathers’ rights groups focused primarily on issues of family law reform, such as FNF, and others with charitable status from the more nebulous, individual-driven and usually Internet-based men’s movement organizations aligned with men’s movement politics.

With this in mind, group differences relating to aims, objectives and political affiliations can be considerable. Some, such as F4J, exist as pressure groups largely outside the mainstream reform debate. These groups are comprised of “outlaw” fathers seeking to shape the cultural terrain by raising public awareness about fathers’ rights.⁹⁰ Others, broadly aligned to these general aims, exist as a web-based presence, while some, such as FNF, engage more directly with the law reform process as key

86. See, e.g., Crowley, *Adopting “Equality Tools,”* in *FATHERS’ RIGHTS*, *supra* note 4, ch. 7.

87. Collier, *UK Fathers’ Rights*, *supra* note 12 (for example, around groups that receive government funding and have charitable status).

88. See generally MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* (1965); KENEDY, *supra* note 85.

89. See also FIDELA ASHE, *THE NEW POLITICS OF MASCULINITY: MEN, POWER AND RESISTANCE* ch.5 (2007).

90. Collier, *Fathers 4 Justice*, *supra* note 4.

stakeholders in policy debates. These groups can be differentiated from a body such as the Fatherhood Institute (formally, Fathers Direct) and other charitable organizations seeking to support separated parents, such as the Centre for Separated Families.⁹¹ There can be an overlap of concern and agreement on specific issues, as evidenced in recent joint-announcements and shared participation in initiatives aimed at supporting parents.⁹² There is also evidence that some men may be members of more than one group.⁹³ These organizations can nonetheless be seen as distinct, representing different stakeholder interest groups and adopting different strategic agendas in relation to how fathers' interests might best be promoted via an engagement with law.

Fourth, and finally, there exists a wide range of other organizations that, while by no means fathers' groups per se, have sought to address related issues and agendas about men's rights and, as such, can be seen as a key part of the political landscape in which debates about the law have developed. Those addressing fathers' groups' concerns include, for example, the UK Men's Movement,⁹⁴ the Cheltenham Group,⁹⁵ the National Association for Child Support Action,⁹⁶ the National Society for Children and Family Contact,⁹⁷ and the False Allegations Support Organization.⁹⁸ Other organizations aligned more with FNF, such as the Association for Shared Parenting,⁹⁹ provide general advice and support for families. Notwithstanding the diversity and heterogeneity of organizations concerned with issues about fathers' legal rights, some recurring objectives

91. The Centre for Separated Families Website, <http://www.separatedfamilies.info> (last visited Dec. 23, 2008).

92. We recently have seen, for example, joint statements on separated family policy principles (e.g., Families Need Fathers and Others, Letter to the Editor, *Times*, June 12, 2007), conferences aimed at "Putting Children First" (Oct. 2008, Centre for Separated Families), <http://puttingchildrenfirst.info/> (last visited May 7, 2009), and other initiatives seeking to share best practice (e.g., "Kids in the Middle," launched in July 2008 by Relate, One Parent Families, Families Need Fathers and the Fatherhood Institute).

93. See generally Collier, UK Fathers' Rights, *supra* note 12.

94. UK Men's Movement, The Men's Rights Organisation, <http://www.ukmm.org.uk> (last visited Dec. 22, 2008).

95. The Cheltenham Group, Men's Rights in Our Society, <http://www.c-g.org.uk/> (last visited Dec. 22, 2008).

96. UK Child Support Advice, When CSA Get It Wrong – NACSA Put It Right!!, <http://www.nacsa.co.uk/> (last visited Dec. 22, 2008).

97. National Society for Children and Family Contact Website, <http://www.nscfc.com/> (last visited Dec. 22, 2008).

98. <http://www.false-allegations.org.uk/> (last visited Dec. 22, 2008).

99. The Association for Shared Parenting, <http://www.sharedparenting.f9.co.uk/> (last visited Jan. 7, 2009); see <http://www.fatherhoodinstitute.org/index.php?id=4&cID=766> (last visited May 7, 2009).

tend to unite many fathers' rights activists both within and beyond the United Kingdom.¹⁰⁰ An issue touched on, but now considered in more detail, concerns the nature of their grievances with the law and the legal system.

B. *What is Wrong with the Law?*

Fathers' rights groups in the United Kingdom have embraced a claim to equal treatment bolstered by reliance on a rights discourse that increasingly has become politically resonant in the legal arena following the incorporation of the European Convention on Human Rights through the Human Rights Act of 1998.¹⁰¹ Developing from this embrace of rule-based or formal equality, the political strategies of fathers' rights groups encompass a broad range of issues. Within England and Wales, this claim to equality has been manifested most clearly in the call for the introduction of a legal presumption of contact and a related assumption that shared residence arrangements should become the "normal arrangement" in cases where there are two fit, capable parents. There is, at present, no presumption of contact or shared parenting in the relevant provisions of the Children Act of 1989.¹⁰² Decisions as to residence and contact orders are taken, rather, via reference to a "welfare checklist" in which the maintenance of the status quo is a key feature.¹⁰³

Key grievances expressed with the law in England and Wales include:

1. the lack of structured decision-making and failure to introduce a statutory legal presumption of contact and equal, shared parenting;¹⁰⁴
2. the weak enforcement of court orders following noncompliance by resident parents, predominantly mothers;
3. the demand for a more open, accessible, and accountable court system (the transparency issue) along with related concerns regarding the delay with which cases come to court, an issue seen to have particularly detrimental consequences for fathers;
4. a dissatisfaction with the actual amount of contact and residence awarded to fathers by the court;

100. See generally FATHERS' RIGHTS, *supra* note 4.

101. See generally Shazia Choudhry & Helen Fenwick, *Taking the Rights of Parents and Children Seriously: Confronting the Welfare Principle under the Human Rights Act*, 25 OXFORD J. LEGAL STUD. 453 (2005); Jonathan Herring, *The Human Rights Act and the Welfare Principle in Family Law – Conflicting or Complementary?* 11 CHILD & FAM. L.Q. 223 (1999).

102. See generally Children Act, 1989, C. 41 (U.K.).

103. Children Act, 1989, C. 41, § 1(3)(c).

104. Children Act, 1989, C. 41, § 1.

5. concerns about mothers' control over the legal process (identified as a form of situational power) and related issues of "parental alienation syndrome,"¹⁰⁵
6. a concern about the adjudicatory role and pro-mother bias of many judges, lawyers, and, in particular, employees of the Children and Family Court Advisory Support Service (CAFCASS), a body that has an influential role in disputes via their involvement in welfare reporting;
7. a concern with the practices of the Child Support Agency and substantive provisions of the Child Support Act of 1991, as amended;
8. related issues of housing, finance, tax, and welfare benefits, along with the provision of legal aid (with cost issues impacting on the resulting need for some fathers to represent themselves in court),¹⁰⁶
9. a critique of interpretations of violence in the family justice system, including what is seen as the frequent making of false allegations of domestic violence and sexual abuse against fathers; and
10. a political failure to "take seriously" the circumstances of separated fathers and commit to and adequately fund policy reform (for example, early interventions and compulsory mediation) that might address concerns.

Noting how questions of law are central to each of these concerns, it is necessary at this stage to look more closely at the specific events of recent years and, in particular, at how debates about fathers' rights in the legal arena have intensified in the wake of a marked shift in the form of fathers' protests.

C. The "New Militancy": Questions of Strategy

Who *are* those guys? What does it all mean — the Marvel Comics costumes, the orchestrated gantry stunts, the banners, the Santa outfits, the nooses, the desperate measures?¹⁰⁷

The political and public profile of fathers' rights agendas has changed considerably since 2002, a move that can be traced to a shift in the strategy of law reform campaigning. Some fathers have become frustrated with the

105. See Carol S. Bruch, *Parental Alienation Syndrome and Alienated Children – Getting it Wrong in Child Custody Cases*, 14 CHILD & FAM. L.Q. 381, 381 (2002).

106. Note, for example, Ann Mumford, *Towards a Fiscal Sociology of Tax Credits and the Father's Rights Movement*, 17 SOC. & LEGAL STUD. 217, 217 (2008); Collier, UK Fathers' Rights, *supra* note 12.

107. John Walsh, *The Caped Crusade*, INDEPENDENT, Feb. 5, 2004.

traditional, more established routes of law reform campaigning, tactics increasingly deemed inadequate in representing fathers' interests. In the United Kingdom, as in other countries, a new militancy has emerged around fathers' rights in the form of a growing call for something stronger — a campaign that will make politicians, policymakers, and the public sit up and take notice.

Turning to the methods of other social movements, not least feminism and the women's movement,¹⁰⁸ several fathers' groups have embraced a form of direct action politics. In the United Kingdom, this development is best represented by the emergence of the pressure group Fathers 4 Justice (F4J). Founded in December 2002 by Matthew O'Connor, a "designer, marketing and public relations man by trade,"¹⁰⁹ F4J has been described as "a new civil rights movement campaigning for a child's right to see both parents and grandparents."¹¹⁰ F4J has positioned itself within a long tradition of outsider groups protesting at the injustices of the law. As a group embracing "Fathers, Mothers, Grandparents, Teachers, Doctors, Company Directors, Policemen, Barristers — a complete cross section of society,"¹¹¹ F4J has been described as "suffragents," men and women engaged in a campaign explicitly branded via use of the suffragette's traditional purple and consciously adopting the argumentative strategies of progressive social movements.¹¹²

F4J is, in comparison with FNF, a relatively new organization. Yet, the group has attracted considerable media attention both nationally and internationally in the short time it has been active as the result of a series of demonstrations involving fathers and their supporters.¹¹³ The scale of this media coverage should not be underestimated and, while the direct impact of F4J on specific reforms is, I argue, open to question, what has

108. See generally Crowley, *Adopting "Equality Tools,"* in FATHERS' RIGHTS, *supra* note 4.

109. <http://f4j-ottawa.piczo.com/f4j-introucingf4j?cr=3?linkvar=000044> (last visited Mar. 28, 2009).

110. "[We] have adopted a twin track strategy based around publicity and press. Raising awareness through publicity 'making the injustice visible' and mobilising a 'dads [sic] army' — applying pressure to the system and MP's to bring around meaningful change and enforce the will of Parliament." Fathers 4 Justice, <http://www.fathers-4-justice.it/intro.htm> (last visited Mar. 21, 2009).

111. *Id.*

112. Collier, *Fathers 4 Justice*, *supra* note 4.

113. Reputation Intelligence, *F4J Heralds a New Era in Political Campaigning: Media Report*, 2004. For simply a flavor of this reporting, see generally Jim Gilchrist, *The Outlaw Fathers Fighting Back*, SCOTSMAN, May 29, 2003; Gaby Hinsliff, *Militant Fathers Will Risk Jail over Rights to See Their Children*, OBSERVER, Apr. 20, 2003; Sam Marsden, *Fathers' Rights Protest on Court Roof*, PRESS ASSOCIATION NEWS, May 18, 2004; Robin Perrie, *Unholy Fathers*, SUN, July 12, 2004; Susan Dominus, *The Fathers' Crusade*, N.Y. TIMES, May 8, 2005.

happened has reshaped the broader political terrain and cultural context in which policy discussions about family law now take place. F4J-led protests have been diverse in form, organization and planning, and public visibility. They have encompassed, for example:

1. the traditional civil rights march;¹¹⁴
2. physical attacks on government offices, in particular those of CAFCASS, and protests outside the homes of politicians, solicitors, barristers, and judges (including, in September 2004, the British Royal Family);¹¹⁵
3. highly visible stunts, including the interruption of live television programs;¹¹⁶
4. a succession of confrontations with senior government figures including, in May 2004, an incident involving the throwing of a condom of purple flour at the then British Prime Minister.¹¹⁷ As one activist put it at the time, “we are going to target solicitors, members of the judiciary and barristers and we have a list of the people we are looking at.”¹¹⁸

F4J has become most well known for a series of protests involving men dressed as comic book characters scaling a succession of cranes, bridges, courthouses, and other public structures and buildings around the country. This has become the “public face” of fathers’ rights protests in the United Kingdom and is an image often used in the media whenever general discussion of fathers and fatherhood takes place.¹¹⁹ The coverage that the F4J campaign has received, backed by the public support of Sir Bob Geldof,¹²⁰ has been critical as well as broadly supportive of the means and

114. *The Rising: Outlaw Fathers Fight Back* (Oct. 2003) and *The McDad Day Demo* (planned for June 2005, subsequently cancelled).

115. *Campaign Staged on Palace Balcony*, BBC News, Sept. 13, 2004, <http://news.bbc.co.uk/1/hi/uk/3652502.stm> (last visited May 8, 2009).

116. *Lottery Show Delayed by Protest*, BBC NEWS, <http://news.bbc.co.uk/1/hi/uk/5001386.stm> (last visited Jan. 7, 2009).

117. *Blair Hit During Commons Protest*, BBC NEWS, May 19, 2004, http://news.bbc.co.uk/1/hi/uk_politics/3728617.stm.

118. Helen Carter, *Fathers Bridge Protest Just the Start: Group Campaigning for Men to Have More Contact with Their Children Plans Protest at Judges Homes*, GUARDIAN, Feb. 3, 2004, at 6.

119. See generally Sabine Durrant, *What are Fathers For? An Interview with Richard Collier*, GUARDIAN, Jan. 3, 2009.

120. See Transcript of The Today Program. Radio 4. Apr. 3, 2004. *Rights for Fathers – Lord Geoff Filkin and Sir Bob Geldof* (GICS Media Monitoring Unit, London, 2004) (copy of transcript with author); Bob Geldof, *The Real Love that Dare Not Speak Its Name*, in CHILDREN AND THEIR FAMILIES 171 (Andrew Bainham et al. eds., 2003).

ends of the organization. Much discussion has focused on the ethics and efficacy of the protests as a form of gesture politics.¹²¹

The brief history of F4J is marked, moreover, by considerable internal disagreement, controversy, and, at the time of writing, uncertainty as to the future of the organization.¹²² In September 2008, the group announced that it would be shut down and re-launched as a helpline “for all parents whose family lives are in crisis.”¹²³ This move is unlikely, however, to mean the end of direct action protests by some fathers and their supporters. Following various public rebrandings, the protests of F4J and their supporters continue to attract attention, promoting discussion of the state of the law. Some F4J activists have become highly visible public figures and have attracted attention by publishing personal accounts of their involvement in fathers’ rights campaigns.¹²⁴

In light of the new consensus and pro-contact culture in the legal practice of England and Wales, how have these campaigns fed into the development of legal policy in the years since 2002? The evolution of debates about the laws relating to contact and residence in recent years would appear to have been directly affected by the protests of fathers’ rights activists. It is against the backdrop of these high-profile campaigns that some policymakers, politicians, and members of the judiciary have articulated a growing view that something needs to be done in relation to the laws concerning contact.

Senior figures in the judiciary have expressed serious concern about the difficulties they face in dealing with contested cases, notably in relation to

121. See, e.g., Angela Phillips, *Most Fathers get Justice*, GUARDIAN, Oct. 13, 2004.

122. The founder of F4J, Matthew O’Connor, announced in January 2006 that the group would be disbanded following the reporting in the British media of a “plot” to kidnap the 5-year-old son of the Prime Minister Tony Blair. Stewart Tendler, *Fathers 4 Justice is Disbanded Over ‘Plot’ to Kidnap Leo Blair*, TIMES, Jan. 19, 2006. Controversy had ensured earlier following television reports concerned with the background of several members of the group. ITV, “Tonight With Trevor MacDonald,” Nov. 14, 2005. Meanwhile, the emergence of a splinter group, termed the “Real Fathers 4 Justice,” sought to continue the campaign of F4J. Sandra Laville, *Batman and Robin Quit Protest Group*, GUARDIAN, June 9, 2005 (“You’ve Heard of the Real IRA. Now meet Real Fathers4Justice, the caped crusaders who refuse to give up the fight”).

123. Emily Dugan, *‘Come and Join Us’: Fathers 4 Justice Welcomes Mums*, INDEPENDENT ON SUNDAY, Sept. 28, 2008, at 18.

124. It was announced in February 2006, in a curious twist to the history of F4J, that “the ‘heroes’ of direct-action group Fathers 4 Justice were to be immortalised in *F4J: The Movie*.” Guy Adams, *Men in Tights: Movie Debut for Fathers 4 Justice*, INDEPENDENT, Feb. 2, 2006. The F4J “brand” cannot be confined to the United Kingdom, as it has informed debates in other jurisdictions. See generally MATT O’CONNOR, *FATHERS 4 JUSTICE: THE INSIDE STORY* (2007); DAVID CHICK, *DENIED ACCESS* (2006); MARK HARRIS, *FAMILY COURT HELL* (2006).

the enforcement of court orders.¹²⁵ Some, on occasion, have made public what normally would have been private rulings, making clear their belief that the family justice system frequently has failed fathers.¹²⁶ The present law and related legal practice is now generally agreed, moreover, across political parties, to have failed to adequately promote a continuing and constructive relationship with both parents. With specific regard to post-divorce parenting, the government has accepted that the present legal system is inadequate, failing in the way it deals with contact cases.¹²⁷

What, then, are the legal reforms that have run alongside these fathers' protests? In April 2004, in the midst of F4J's campaign to raise public awareness of the issues, the government announced its commitment to "new laws to end the child custody wars."¹²⁸ The Green Paper *Parental Separation: Children's Needs and Parents' Responsibilities* (2004) outlined a range of proposals aimed at diverting as many divorcing parents as possible from the courts and promoting "generous parenting" for both.¹²⁹ In January 2005, the government published its response to the Green Paper, *Parental Separation: Children's Needs and Parents' Responsibilities, Next Steps*.¹³⁰ Part I of the resulting Children and Adoption Act of 2006¹³¹ embraced an approach that, at least to a degree, can be seen as having directly engaged the concerns of fathers' rights activists.¹³² The legislation seeks to facilitate and monitor contact¹³³ and

125. Note, for example, the highly publicized judgement of Munby J in *Re D (A Child) (Intractable Contact Dispute: Publicity)* [2004] 1 FLR 1226. This development prompted the observation on the part of Matt O'Connor of F4J that "twelve months ago such judgments would have been unthinkable." Frances Gibb, *Judge Apologises as Justice 'Fails Fathers'*, TIMES, Apr. 2, 2004. See Mark Piercy, *Intractable Contact Disputes*, 34 FAM. L. 815 (2004).

126. See Gibb, *supra* note 125; Simon Jolly, *Implacable Hostility, Contact and the Limits of the Law*, 7 CHILD & FAM. L.Q. 228 (1995); Justice Bracewell, *Judging an Imperfect World*, GUARDIAN, Oct. 22, 2003, available at <http://www.guardian.co.uk/lifeandstyle/2003/oct/22/familyandrelationships.children1> ("I have had to send a parent to prison and it doesn't achieve anything. Also, it may affect the child who feels to blame if mummy goes to prison").

127. Acknowledged in the consultation paper Children Act Sub-committee of the Advisory Board on Family Law, *Making Contact Work, The Facilitation of Arrangements for Contact Between Children and their Non-residential Parents; and the Enforcement of Court Orders for Contact*, London: Lord Chancellor's Department, 2001.

128. Clare Dyer, *New Laws to End Child Custody Wars: Divorcing Parents May Be Forced into Mediation*, GUARDIAN, Apr. 3, 2004.

129. See PARENTAL SEPARATION, *supra* note 19, at 18-31.

130. *Parental Separation, Next Steps*, *supra* note 55.

131. Children and Adoption Act 2006, C. 20, §§ 1-8 (U.K.) (concerning the introduction of warning notices and provision for compensation for financial loss).

132. Preceded by the 2005 Children (Contact) and Adoption Bill. See generally Julie Wallbank, *Getting Tough on Mothers: Regulating Contact and Residence*, 15 FEMINIST LEGAL STUD. 189 (2005); Frances Gibb, *Children and Adoption Act 2006: Child Contact Powers 'Could*

address the key issue of enforcement of court orders.¹³⁴ The Act further emphasizes legal policy, educating parents via the provision of access to information.

At the time of this writing, with the debate about fathers' rights and family law reform continuing unabated,¹³⁵ the Children and Adoption Act of 2006 has renewed discussion regarding the enforcement measures contained in Part I of the Act. These "Penalties for Partners who Block Child Access"¹³⁶ have been widely interpreted by academic commentators as the product of a policy debate and reform process influenced by fathers' rights groups in ways that may have uncertain and possibly, from the fathers' perspective themselves, counter-productive consequences.¹³⁷ The introduction of the debt and enforcement powers of the Child Maintenance and Enforcement Commission (CMEC), meanwhile, alongside the child maintenance options scheme,¹³⁸ has further reshaped the landscape in which these debates about fatherhood take place.

Notwithstanding these reforms, an important question remains to be asked, one that I shall address directly in the remainder of this Article. How is one to make sense of these events? For all the public visibility of some fathers' groups, legal reform to introduce shared equal parenting has been unequivocally rejected by the British government.¹³⁹ Instead, the government's position has been informed by research, including work by law and society scholars,¹⁴⁰ that directly counters some of the key arguments advanced by fathers' groups.

In the next section, I shall look more closely at the arguments made by fathers' rights organizations while focusing on reconceptualizing the relationship between men, law, and gender. In so doing, I wish to

Worsen Parent Wars, *TIMES*, Dec. 8, 2008, at 11, available at <http://business.timesonline.co.uk/tol/business/law/article5303886.ece>; FRAGMENTING FATHERHOOD, *supra* note 10, ch. 5.

133. Children and Adoption Act of 2006 §§ 1-2.

134. Children and Adoption Act of 2006 §§ 3-4. It is envisaged that it will be in relatively few cases in which there has been implacable failure to comply with an order, that the courts will find it necessary to impose such a sanction.

135. *See, e.g.*, Vallance-Webb, *supra* note 39.

136. Jamie Doward, *Penalties for Partners Who Block Child Access*, *OBSERVER*, Sept. 7, 2008.

137. *See, e.g.*, Gibb, *supra* note 125.

138. Child Support and Maintenance Commission, Changes to Child Maintenance, <http://www.childmaintenance.org/childsupport/index.html> (last visited Mar. 28, 2009).

139. "Some fathers' groups have come to believe that the courts and the law are biased against them. *We do not accept this view.*" PARENTAL SEPARATION, *supra* note 19, at 1 (emphasis added).

140. *See, e.g.*, Carol Smart et al., *Residence and Contact Disputes in Court* (Department for Constitutional Affairs) (2003), a study of disputes over residence and contact brought to three County Courts in England in 2000, cited by Margaret Hodge in 416 Parl. Deb., H.C. (6th Ser.) (2004) 67W.

reconsider what it means to speak of the (gendered) male subject and the relationship between masculinity and the law in this context. Turning to a broader reconfiguration of ideas about men and masculinity within legal policy, I reconsider the implications of this study for developing an anti-essentialist engagement with masculinity.

IV. THE CRITIQUE OF FATHERS' RIGHTS – ARGUMENTS, MYTHS, AND REALITIES

Are fathers really the “new victims” of contact laws? Research across jurisdictions has explored diverse aspects of the membership and development of fathers' rights groups, the arguments these groups advance, and their impact on law reform debates.¹⁴¹ Recognizing that fathers' rights agendas differ among jurisdictions,¹⁴² an interrogation of gender neutrality and formal equality has been central to these critical analyses, as well as a questioning of the concept of (family) autonomy and the idea of the “private” family.¹⁴³ This engagement with men, fatherhood, and gender has been allied with broader anti-essentialist, materialist feminist critiques of law, positioned as part of a larger debate about the possibilities and limits of feminist jurisprudence.¹⁴⁴ Within both this and other work concerned with the rhetorical devices of fathers' groups, it is possible to identify a number of recurring and problematic themes

141. See, e.g., Joyce A. Arditti & Katherine R. Allen, *Understanding Distressed Fathers' Perceptions of Legal and Relational Inequities Postdivorce*, 31 *FAM. & CONCILIATION CTS. REV.* 461 (1993); Carl Bertola & Janice Drakich, *The Fathers' Rights Movement: Contradictions in Rhetoric and Practice*, 14 *J. FAM. ISSUES* 592 (1993); Angela Melville & Rosemary Hunter, 'As Everybody Knows': *Countering Myths of Gender Bias in Family Law*, 10 *GRIFFITH L. REV.* 124 (2001); Linda Nielsen, *Demeaning, Demoralizing and Disenfranchising Divorced Dads: A Review of the Literature*, 31 *J. DIVORCE & REMARRIAGE* 139 (1999); Miranda Kaye & Julia Tolmie, 'Lollies at a Children's Party' and Other Myths: *Violence, Protection Orders and Fathers' Rights Groups*, 10 *CURRENT ISSUES IN CRIM. JUST.* 52 (1998).

142. See generally *FATHERS' RIGHTS*, *supra* note 4. On differences between Canada and Australia, see Helen Rhoades & Susan B. Boyd, *Reforming Custody Laws: A Comparative Study*, 18 *INT'L J.L. POL'Y & FAM.* 119 (2004).

143. See generally FINEMAN, *THE AUTHORITY MYTH*, *supra* note 2; MARTHA FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995) [hereinafter FINEMAN, *THE NEUTERED MOTHER*].

144. See generally Margaret Thornton, *Neoliberal Melancholia: The Case of Feminist Legal Scholarship*, 20 *AUSTRALIAN FEMINIST L.J.* 7 (2004); NICOLA LACEY, *UNSPEAKABLE SUBJECTS: FEMINIST ESSAYS IN LEGAL AND SOCIAL THEORY* (1998); Ngaire Naffine, *In Praise of Legal Feminism*, 22 *LEGAL STUD.* 71 (2002); Joanne Conaghan, *Reassessing the Feminist Theoretical Project in Law*, 27 *J.L. & SOC'Y* 351 (2000); *FEMINIST LEGAL THEORY: AN ANTI-ESSENTIALIST READER* (Nancy Dowd & Michelle Jacobs eds., 2003); DOWD, *THE MAN QUESTION*, *supra* note 8.

underscoring the arguments of fathers' rights groups set out in Parts II & III. These include:

1. the embrace by many fathers' groups of a formal equality claim, an appeal to treat fathers equally that aligns the political aims of fathers' organizations in questionable ways with those of other progressive social movements;
2. a deployment of formal legal rights (what Smart and Neale have characterized as the evoking of a self-interested, individualized form of power)¹⁴⁵ that runs alongside an appeal to notions of men's capabilities and willingness to care (what has been termed the co-existence of "rights talk" and "care talk"),¹⁴⁶
3. a claim of victim status supported by a selective use of statistics and a frequent, emotionally powerful use of personal anecdotes of men's suffering in the field of family justice;¹⁴⁷
4. a conflation of the interests of fathers and children, in such a way that they become, in effect, one and the same; and
5. a concern to protect or defend the (heterosexual) "family"¹⁴⁸ from the social ills of absent fathers and, in particular, from the growing problem of lone motherhood.¹⁴⁹

Concern has been expressed over the effect that enforcing court orders may have on women and children — a debate heightened in England and Wales following the enactment of the Children and Adoption Act of 2006¹⁵⁰ — as well as related issues about post-separation financial arrangements. The central claim that fathers are the new "victims" of family law has been described as profoundly wrong. Several academic commentators have suggested, rather, that the needs and choices of women and children have been marginalized as a result of the growing focus on fatherhood within the law relating to contact.

145. Smart & Neale, *"I Hadn't Really Thought About It,"* *supra* note 44.

146. See Smart, *Equal Shares*, *supra* note 4, at 484; Smart, *The Ethic of Justice*, in *FEMINIST PERSPECTIVES*, *supra* note 9, at 123; Carol Smart, *Preface*, in *FATHERS' RIGHTS*, *supra* note 4, at vii.

147. See generally Kaye & Tolmie, *Discoursing Dads*, *supra* note 4; Boyd & Young, *Who Influences Family Law Reform?*, in *STUDIES IN LAW*, *supra* note 4; Graycar, *supra* note 4.

148. Collier, *Fathers 4 Justice*, *supra* note 4; Kaye & Tolmie, *Discoursing Dads*, *supra* note 4.

149. Boyd, *Demonizing Mothers*, *supra* note 4.

150. See generally Julie Wallbank, *Clause 106 of the Adoption and Children Bill: Legislation for the 'Good Father'?*, 22 *LEGAL STUD.* 276 (2002). See also Wallbank, *supra* note 132.

There has been a negative depiction of women within much of the fathers' rights discourse, and a blaming of mothers in particular,¹⁵¹ that is indicative of a virulent strand of anti-feminism, if not misogyny, within parts of the fathers' rights movement. Mothers appear within parts of the fathers' rights discourse as alimony drones,¹⁵² mendacious and vindictive,¹⁵³ and unruly and irresponsible figures.¹⁵⁴ Lone motherhood is especially linked to the ideas of masculine crisis in such a way that the absence of fathers becomes, somewhat tautologically, both the cause and consequence of social and family breakdown.¹⁵⁵ In marked contrast, fathers consistently are depicted as respectable and socially "safe"¹⁵⁶ subjects, "sharer[s] of responsibilities,"¹⁵⁷ and active participants in paid employment, child care, and domestic labor. The limited scale of change in fathers' practices is seen as evidence of the continued hold of something more akin to a historically familiar concern to "take care of men" in legal and social policy.¹⁵⁸

A. Further Consequences of Fathers' Claims

In terms of practice in family justice systems,¹⁵⁹ a growing body of theoretical and empirical research has questioned the consequences of these developments for parents who divorce. Exploration of the practices of the courts, lawyers, family welfare professionals, and parents has noted, for example, the emergence of the figure of the "implacably hostile," bad, selfish mother in case law during the 1990s.¹⁶⁰ Attention has been paid to the double standard at play whereby no such figure as the "implacably irresponsible" father appears. Within the fathers' rights discourse it is

151. Kaye & Tolmie, *Discoursing Dads*, *supra* note 4; Boyd, *Demonizing Mothers*, *supra* note 4.

152. Kaye & Tolmie, *Discoursing Dads*, *supra* note 4.

153. *Id.*; Boyd & Young, *Who Influences Family Law Reform?*, in *STUDIES IN LAW*, *supra* note 4, at 58.

154. Bertoia & Drakich, *supra* note 141, at 603.

155. Fathers 4 Justice suggest, "Fathers have struggled to adapt to a brave new world where they have effectively been replaced by the state as the protector and provider to their children." Fathers 4 Justice Glasgow, <http://gohypernet.com/F4J> (last visited Mar. 22, 2009).

156. See generally RICHARD COLLIER, *MASCULINITY, LAW AND THE FAMILY* (1995).

157. See Smart & Neale, "I Hadn't Really Thought About It," *supra* note 44, at 123.

158. See generally ANTHONY MCMAHON, *TAKING CARE OF MEN: SEXUAL POLITICS IN THE PUBLIC MIND* (1999).

159. See, e.g., Rebecca Bailey-Harris et al., *From Utility to Rights? The Presumption of Contact in Practice*, 13 INT'L J.L. POL'Y & FAM. 111 (1999); Carol Smart & Bren Neale, *Arguments Against Virtue: Must Contact Be Enforced?*, 27 FAM. L. 332 (1997).

160. See generally Rhoades, *The "No Contact Mother," supra* note 4; Rhoades, *The Rise and Rise of Shared Parenting Laws, supra* note 4; Smart, *Losing the Struggle, supra* note 4.

assumed fatherhood only is revealed as problematic for the law at the point of divorce or separation. Yet, Smart and Neale have argued, there exists a disjuncture between the equality rhetoric advanced by fathers' rights groups and the continuing (gendered) realities of parenting, both during subsisting relationships and after divorce and separation.¹⁶¹ It is the resident parent, rather than the non-resident, who appears to be most bound by the obligations of the co-operative parenting project: "Good mothers not only refrain from obstructing contact but actively facilitate it. Good fathers, at least for the purposes of contact, take some interest in their children and do not harm them or, generally speaking, behave violently to mothers. Good parents co-operate and do not litigate."¹⁶²

Helen Rhodes and Susan Boyd, writing of developments in Australia and Canada respectively, have observed further consequences of the new ideology of motherhood in family law in the form of "new stories" about selfish mothers.¹⁶³ These stories have troubling implications for women who wish to raise genuine concerns about the capacity of some fathers to care for their children.¹⁶⁴ This issue has assumed critical importance in relation to questions of violence.¹⁶⁵ It has been argued that non-resident fathers are far from being victims of the law, because they have been empowered by the new contact culture in ways that have complicated the screening of domestic violence cases.¹⁶⁶ With the idea of the "clean break"

161. See, e.g., SMART & NEALE, *supra* note 26. See also Smart, *The "New" Parenthood*, *supra* note 44; Smart, *Equal Shares*, *supra* note 4.

162. Kaganas & Sclater, *supra* note 42, at 13.

163. Rhoades, *The "No Contact Mother,"* *supra* note 4; Boyd, *Demonizing Mothers*, *supra* note 4.

164. See generally Rhoades, "No Contact Mother," *supra* note 4; Rhoades, *The Rise and Rise of Shared Parenting Laws*, *supra* note 4.

165. The literature on this subject is extensive. For a useful overview of the relationship between contact and domestic violence, including the approach of the courts, see HUNT WITH ROBERTS, *supra* note 22, at 7-9. See also Felicity Kaganas & Christine Piper, *Contact and Domestic Violence*, in UNDERCURRENTS OF DIVORCE, *supra* note 44; Victor Hall, *Domestic Violence and Contact*, 27 FAM. L. 813 (1997); Claire Sturge with Danya Glaser, *Contact and Domestic Violence – The Experts' Court Report*, 30 FAM. L. 615 (2000); Helen Reece, *UK Women's Groups' Child Contact Campaign: 'So long as it is safe,'* 18 CHILD & FAM. L.Q. 538 (2006); Brid Featherstone & Sue Peckover, *Letting Them Get Away With it: Fathers, Domestic Violence and Child Welfare*, 27 CRITICAL SOC. POL'Y 181 (2007); Hilary Saunders, Women's Aid Report, TWENTY-NINE CHILD HOMICIDES: LESSONS STILL TO BE LEARNT ON DOMESTIC VIOLENCE AND CHILD PROTECTION (2004); see also Re L (Contact: Domestic Violence), Re V (Contact: Domestic Violence), Re M (Contact: Domestic Violence), Re H (Contact: Domestic Violence) [2000] 2 FLR 334; MARIANNE HESTER & LORRAINE RADFORD, DOMESTIC VIOLENCE AND CHILD CONTACT ARRANGEMENTS IN ENGLAND AND DENMARK (1996).

166. See, e.g., Collier, *Fathers 4 Justice*, *supra* note 4; Smart, *The Ethic of Justice*, in FEMINIST PERSPECTIVES, *supra* note 9.

repositioned as undesirable, new pressures have been placed on some women to agree to contact arrangements, notwithstanding their concerns about domestic violence. At the same time, the issue of violence has been systematically marginalized within much divorce mediation practice, all in the name of promoting the “harmonious divorce.”¹⁶⁷

This critique can be taken further. Research suggests that the reasons for the breakdown of contact arrangements may be far more complex than any image of women “refusing” or “blocking” access would suggest. Leaving aside the questionable empirical reality of large numbers of mendacious, vengeful mothers acting in this way, some stakeholder groups (such as, in the United Kingdom, Gingerbread/One Parent Families) suggest that most women want fathers to have contact and actively facilitate this goal in their negotiations with non-resident fathers.¹⁶⁸

Recent studies have questioned whether non-resident parents, as a group, are treated unreasonably by the family courts.¹⁶⁹ It seems that courts start from the position that contact is in the child’s best interests, and that most non-resident parents successfully attain the type of contact they asked for.¹⁷⁰ Moreover, far from women deploying a form of “uni-directional power,” as it has been termed, many mothers can experience a form of debilitating power on the part of fathers, a constraining of their own drive to independency, autonomy, and self-development after separation, with some fathers seeking to exert control.¹⁷¹

These themes are echoed in Felicity Kaganas,¹⁷² analysis of the development of case law in England and Wales during the 1990s. She suggests that to warrant the description of bad father, a man must behave in exceptionally callous ways.¹⁷³ Indeed, it is “almost impossible to conceive of a father who is harmful to children unless he inflicts direct violence on them.”¹⁷⁴ In a more recent review of the development of case law and policy, Kaganas and Shelley Day Sclater put the point as follows: “[T]he dominant welfare discourse [has been] interpreted so as to create

167. See, e.g., David Greatbatch & Robert Dingwall, *The Marginalization of Domestic Violence in Divorce Mediation*, 13 INT’L J.L. POL’Y & FAM. 174 (1999).

168. See also VICTORIA PEACEY & JOAN HUNT, PROBLEMATIC CONTACT AFTER SEPARATION AND DIVORCE? A NATIONAL SURVEY OF PARENTS (2008).

169. See *id.*

170. See generally HUNT & MACLEOD, *supra* note 58.

171. See generally SCLATER, *supra* note 40.

172. See generally Felicity Kaganas, *Contact, Conflict and Risk*, in UNDERCURRENTS OF DIVORCE, *supra* note 44.

173. *Id.*

174. Felicity Kaganas & Shelley Day Sclater, *Contact and Domestic Violence — The Winds of Change?*, 30 FAM. L. 630 (2000).

so strong an association between contact and welfare that neither risks to mothers' health nor, until recently, serious violence on the part of the non-resident father were regarded as sufficient reason to deny an order."¹⁷⁵

What has emerged, therefore, is a body of research charting what appears to be an empowering of fathers as a result of the embedding and consolidation of the pro-contact culture and new welfare discourse. This work suggests that fathers *are* accorded considerable significance in the law. Where the courts decide that sole residence is the appropriate course of action, they also are likely to accept that a child should have regular contact with the non-resident parent.¹⁷⁶ For some, fathers have become so central to the new contact culture that a more plausible reading may be to view the interests of mothers as having been downgraded or "neutered."¹⁷⁷ Smart has further suggested that in the United Kingdom there has been an "erasure" of a moral discourse of care in relation to motherhood.¹⁷⁸

B. Does This Mean Fathers' Rights Groups Are "Wrong"?

In the edited book *Fathers' Rights Activism and Law Reform in Comparative Perspective*,¹⁷⁹ Sally Sheldon and I sought to explore, within an international context, some of the concerns about recent developments in the field of fathers' rights politics. Recognizing that the arguments of fathers' groups have resonated, to varying degrees, with those of other stakeholder groups, policymakers, and politicians, there is considerable force to this critique of fathers' rights groups. In what follows, I wish to recognize these concerns about the consequences of fathers adopting a rights-based approach premised upon appeals to welfare and the discourse of gender convergence in employment, the caring practices, or gendered "roles" of women and men.

Noting the broader social shifts around fatherhood, however, important questions remain unanswered. Does this mean that fathers' rights groups are wrong in their assessment of the law? Are their claims without foundation? Are they manifestations, a form of false consciousness, a failure to recognize the material realities of their structural empowerment as men? If legal scholars are to engage with fathers' rights politics, what is really going on here, and what might it mean for understanding how

175. Kaganas & Sclater, *supra* note 42, at 6-7 (internal footnotes omitted).

176. See generally HUNT & MACLEOD, *supra* note 58.

177. FINEMAN, *THE NEUTERED MOTHER*, *supra* note 143.

178. See Smart, *Losing the Struggle*, *supra* note 4. See also Scott Coltrane & Neal Hickman, *The Rhetoric of Rights and Needs: Moral Discourse in the Reform of Child Custody and Child Support Laws*, 39 SOC. PROBS. 400 (1992).

179. See generally FATHERS' RIGHTS, *supra* note 4.

concrete demands become intelligible as the pursuit of “justice” within the legal arena? Why is it felt so strongly and with such force that law is systematically discriminating against men, given the presence of a body of academic research which seems to suggest that, if anything, the opposite is the case?

In the next two sections, I wish to question the idea that the increased political and cultural prominence of fathers’ rights groups can be seen simply in terms of a backlash to feminism. I will look first at discursive shifts in fathers’ claims regarding rights, justice, and care. I will then discuss how ideas about men and masculinities have been refigured in these debates about fathers’ rights, often in a number of contradictory ways.

V. CONSTRUCTING A “NEW SET OF NORMS FOR FATHERHOOD?”

The idea that recent developments in fathers’ rights politics can be explained as a backlash to feminism is problematic in a number of respects. It misreads the long and complex history of struggles over rights and responsibilities in relation to the family, as well as the way national and cultural contexts mediate how debates play out in particular areas of law.¹⁸⁰ Further, the idea of backlash tends to evoke a simplistic model of social power constructed around a central binary of the powerful and powerless mother and father. There is an implication that male and female interests can somehow be locked within a zero sum game in such a way that, as women gain power, men lose it and vice versa. Such an approach not only aligns itself with essentialist notions of masculinity, but also misreads the complex and frequently contradictory nature of power relations within, as well as beyond, families. It further overlooks how experiences of “family life” are intertwined with and constituted through a diverse set of social practices.

In contrast, empirical studies of post-separation life conducted over the past fifteen years raise some rather different and potentially fruitful questions. Research suggests that relationships formed during marriage and cohabitation can be reshaped in far-reaching ways following separation and that, in the process, different models and understandings of what constitutes “good” fathering may emerge from those that prevailed during subsisting relationships.¹⁸¹ This point has significance in analyzing

180. See, e.g., Maria Eriksson & Keith Pringle, *Gender Equality, Child Welfare and Fathers’ Rights in Sweden*, in FATHERS’ RIGHTS, *supra* note 4.

181. See generally CHARLIE LEWIS ET AL., COHABITATION, SEPARATION AND FATHERHOOD

how equality claims have been reconceptualized within fathers' rights agendas, and why, in particular, they have developed such a resonance for large numbers of men in recent years. It is possible to make two points in this regard.

A. *Rights Talk, Care Talk, and Justice*

First, the historical shift in the focus of fathers' grievances is linked to the manner in which fathers' legal claims have been articulated in recent years. As Smart has suggested, this has happened through a language of rights and justice and by reference to ideas of child welfare and man's capacity to care.¹⁸² This move reflects economic and cultural shifts about parenting practices. It further reflects wider changes in gendered ideas of intimacy, masculinity, and men's familial responsibilities, aspirations, and practices, as well as the development of the law itself. This can be seen in the transition from a central concern about property and finance in the 1970s and early 1980s to what became, by the late 1990s, a growing policy focus on child contact and residence arrangements.

For some men, identifying with the model of the post-separation good father as the "hands-on" caregiver is undercut in a social context in which the father can no longer be valued for "being there" for his children.¹⁸³ However, the fact that the practices associated with being a good father might not be so entwined with the day-to-day caring activities and responsibilities does not mean that such fathers do not love their children. Indeed, to adopt Morgan's notion of family practices, many men would appear to perceive themselves and be viewed by others, including their partners and children, as "doing" family practices by committing to their paid employment and facilitating leisure activities for children.¹⁸⁴ Yet, fathers' experiences of love may be perceived, at the moment of separation, "to be rather superficial (he does all the fun things while she does all the laundry!) and so less weighty or emotionally significant"¹⁸⁵ as

(2002); CAROL SMART & PIPPA STEVENS, COHABITATION BREAKDOWN (2000).

182. See generally Smart, *The Ethic of Justice*, in FEMINIST PERSPECTIVES, *supra* note 9; Smart, *Equal Shares*, *supra* note 4.

183. Jonathan Ives, *Becoming a Father/Refusing Fatherhood: How Paternal Responsibilities and Rights are Generated* 187 (DPhil thesis, University of Birmingham, 2007).

184. See generally JO WARIN ET AL., FATHERS, WORK AND FAMILY LIFE (1999); MARGARET O'BRIEN & IAN SHEMILT, WORKING FATHERS: EARNING AND CARING (2003); WARREN HATTEN ET AL., DADS ON DADS: NEEDS AND EXPECTATIONS AT HOME AND AT WORK (2002). See also Kathryn Backett, *The Negotiation of Fatherhood*, in REASSESSING FATHERHOOD: NEW OBSERVATIONS ON FATHERS AND THE MODERN FAMILY (Charles Lewis & Margaret O'Brien eds., 1987).

185. Smart, *Preface*, in FATHERS' RIGHTS, *supra* note 4, at x.

a result of the way these family practices have been gendered. The result can be a profound sense of loss, pain, injustice, and anger with the law and the legal system, as well as the former partner.

It is against a backdrop of both cultural and legal change, therefore, and the messages conveyed about good parenting within the new contact culture, that the issue of how men relate to equality, "justice," and care has been refigured in the legal arena. The experience of this transition is intimately connected to ideas of masculine identity and culturally normative expectations about men, including those held by many women. It seems that the reframing of parental responsibility in this area of the law, the forceful legal imperatives of the harmonious separation, and the messages conveyed about active fathering within law and popular culture have reshaped men's expectations of equity and fairness in the process of divorce.

B. *Fatherhood and Masculinity*

Secondly, these disputes about fathers' rights are, upon closer inspection, pervaded by some conflicting ideas about men. We find, for example, ideas about fathers as holders of various legal rights; fathers as representatives of both traditional and new forms of paternal responsibility; fathers as victims of law and perpetrators of social harm; fathers who simultaneously embrace and resist social change; and fathers who protect and are themselves potential risks to women and children.¹⁸⁶ These ideas reflect a construction of a "problem of men" in law and social policy that, as noted by Scourfield and Drakeford, focuses on a variety of men's behavior.¹⁸⁷

These debates also are pervaded by conflicting ideas about masculinities. This is the case, for example, in terms of men's emotion, anger, and the gendered nature of what it means to be (ir)rational when participating in law reform debates. Notions of hysteria and a failure to "be reasonable" have been historically associated with women rather than men and are culturally encoded as feminine.¹⁸⁸ The protests of contemporary fathers' groups in the United Kingdom, however, can seem to both embody and simultaneously be the antithesis of traditional ideas about masculinity, such as what it means to be rational, responsible, and reasonable. The gendered nature of some fathers' protests appear to be, on one level, quintessentially masculine. Many of these protests draw on the

186. See generally Smart & Neale, "I Hadn't Really Thought About It," *supra* note 44.

187. See generally Scourfield & Drakeford, *supra* note 17.

188. See, e.g., ELAINE SHOWALTER, *THE FEMALE MALADY: WOMEN, MADNESS AND ENGLISH CULTURE, 1830-1980* (1987).

strategies of other social movements (not least feminism)¹⁸⁹ via a deployment of the male body in space, enmeshed with appeals to danger, risk, heroism, struggle, and importantly, violence or the threat of violence.

At the same time, however, rather different ideas of men's emotions, and rationality have been used to account for the terrain of fathers' rights politics. These men also are seen in their dealings with the law as somehow irrational and irresponsible. On occasion, they even are seen as hysterical, manifesting excessive, uncontrollable emotions of fear, anger, and excitement without reason.

In recognizing that men who show emotion can attract a redemptive value that has not been culturally afforded to women, the recent protests of fathers' rights groups, such as F4J, stand in an ambivalent relation to the co-parenting discourse and supposedly dominant, "hegemonic" ideas about masculinity. Stereotypes of those who participate in fathers' right politics, including obsession, the tendency to self-represent, and being psychologically "stuck" in conflict, are rooted in a model of masculinity that is increasingly seen as culturally anachronistic. Such a model of masculinity and its association with symptoms, mental disorders, and cognitive impairment, does not seem to fit with the model of the reasonable, rational subject that underscores the "new responsabilization" turn in family policy. This model is also at odds with the idea of the new, caring father, evoking an appeal to individual rights that, notwithstanding the Human Rights Act of 1998,¹⁹⁰ sits uneasily within dominant conceptions of parental responsibility in U.K. law.

In the case of certain fathers' protests, notably F4J, there are images of fathers as playful "superheroes" and comic-book characters. At the same time, a repeated imagery of the same individuals as the "foot-soldiers" in a new sex-war "battle," men destroyed and banished to a "Siberia of the broken," men who, in spectacular displays of grief, declare their pain of what they have lost by putting a noose around their heads, "risking everything" for their children.¹⁹¹ Sliding between these very different ideas of masculinity and the role of the father, such discursive shifts are symptomatic of wider contradictions and confusions that pervade

189. See generally CROWLEY, *DEFIANT DADS*, *supra* note 4; Crowley, *Adopting "Equality Tools,"* in *FATHERS' RIGHTS*, *supra* note 4.

190. Human Rights Act, 1998, C. 42 (U.K.).

191. A representation of suicide has, in the United Kingdom, played a particularly significant part within the F4J campaign. For example, in December 2003, a man dressed as Santa Claus tied himself to the gantry above the A40 in London with a rope and put a noose around his neck; he unfurled a banner that read "Children Need Both Parents This Xmas." "Try and arrest me," he was reported as telling police, "and I'll hang myself." John Walsh, *The Caped Crusade*, *INDEPENDENT*, Feb. 5, 2004.

contemporary ideas of fatherhood, masculinity, and the experiences of many men.

In addition to the social significance of the different registers of fathers' voices that appear to be emerging in relation to welfare, justice, and care,¹⁹² it is also necessary to recognize the complex and contradictory nature of the reconfiguration of gender relations that has framed these debates about post-separation parenting, masculinity, and the law. In the repositioning of moral claims to rights and justice, discursive shifts around gender are symptomatic of wider contradictions and confusions that pervade ideas of fatherhood. These issues, I argue in the following section, point to questions about emotion and the affective domain that have significant implications for theorizing the male subject in the law.

VI. FATHERS' RIGHTS AND THE "MAN OF LAW": RETHINKING "PERSONAL LIFE"

A. Conflict, Law, and the Affective Domain

The reading presented thus far has rejected the idea that men have been displaced in families and the notion that a seemingly straightforward, progressive modernization of fatherhood has occurred (and that "new" fathers are, somehow, better than "old").¹⁹³ Rather, paternal masculinity has been reconstituted in ways that reflect an uneasy mix of traditional ideas (for example, of a man's role or male authority) and values and practices associated with the new fatherhood. Turning to literature developing around sociological engagements with family practices and recent studies of identity, subjectivity, and masculinity, it is possible to consider some of this complexity as it relates to fathers' rights.¹⁹⁴

An increasingly salient issue within socio-legal scholarship concerns the dangers that can arise when the law deconstructively attempts to

192. See generally Carol Smart, *Textures of Family Life: Further Thoughts on Change and Commitment*, 34 J. SOC. POL'Y 541 (2005).

193. See, e.g., CHRIS HAYWOOD & MARTIN MAC AN GHAILL, *MEN AND MASCULINITIES: THEORY, RESEARCH AND SOCIAL PRACTICE* (2003).

194. See, e.g., SMART, *PERSONAL LIFE*, *supra* note 13; LYNN JAMIESON, *INTIMACY: PERSONAL RELATIONSHIPS IN MODERN SOCIETY* (1998); Margaret Wetherell & Nigel Edley, *Negotiating Hegemonic Masculinity: Imaginary Positions and Psycho-Discursive Practices*, 9 FEMINISM & PSYCHOL. 335 (1999); Raewyn W. Connell & James W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 GENDER & SOC'Y 829 (2005); Chris Brickell, *Masculinities, Performativity and Subversion: A Sociological Reappraisal*, 8 MEN & MASCULINITIES 24 (2005).

“reveal” or “unpack” the gendered subject(s) of legal discourse.¹⁹⁵ As Smart suggested in her book *Personal Life*, such engagements run the risk of ignoring the significant affective dimensions of social relations, effacing the complexity and interconnectedness of the everyday lives of women, children, and men, and erasing what Smart terms the “real lives” of individuals.¹⁹⁶ This point has a particular bearing on the present discussion of distinctive family practices,¹⁹⁷ experiences of both fathering (and of being fathered), and of masculinity that are inevitably mediated by a range of factors such as age, class, geographical location, religion, race, ethnicity, sexuality, health, and disability.

Therefore, one challenge in approaching the relationship between men, fatherhood, and the law is to avoid the form of analysis whereby real people and “real lives” are reduced to “a pre-existing theoretical mill,” “becoming ciphers for a culturally and historically specific knowledge-building industry.”¹⁹⁸ Beyond the differences that exist between social groups, what it means to *be* a father can vary enormously between individual men, depending on an individual’s life history, biography, current stage of life, or diverse social contexts that situate specific fathering practices.¹⁹⁹

Why is this point significant? Although the highly conflicted separation of the type associated with an involvement in fathers’ rights politics cannot be seen as typical of the majority of separations,²⁰⁰ it would be erroneous to dismiss the rise of fathers’ rights activism as little more than an extreme and minority activity. A cursory review of sociological and psychological developments in studies of men and masculinity suggest that ascribing a unitary motivation to the actions of an individual man, and viewing his engagement with the law and the legal process in a specific local context, potentially “misses out” on much. In particular, it effaces the question of what may be happening to “real people and their lives” in terms of the affective dimensions of social relations and the interconnectedness of the everyday lives of women, children, and men.²⁰¹ It also diverts attention

195. See generally Collier, *Reflections on the Relationship*, *supra* note 11.

196. See SMART, *PERSONAL LIFE*, *supra* note 13.

197. See generally MORGAN, *supra* note 14.

198. SMART, *PERSONAL LIFE*, *supra* note 13, at 190.

199. See, e.g., SITUATED FATHERING: A FOCUS ON PHYSICAL AND SOCIAL SPACES 7-14 (William Marsiglio et al. eds., 2005).

200. See generally HUNT WITH ROBERTS, *supra* note 22; Blackwell & Dawe, *supra* note 23.

201. See generally SMART, *PERSONAL LIFE*, *supra* note 13. See also VIRGINIA HELD, *THE ETHICS OF CARE: PERSONAL, POLITICAL AND GLOBAL* (2006); JOAN C. TRONTO, *MORAL BOUNDARIES: A POLITICAL ARGUMENT FOR AN ETHIC OF CARE* (1993); SELMA SEVENHUIJSEN, *CITIZENSHIP AND THE ETHICS OF CARE* (1998).

from the issue of how these emotions and social experiences are dealt with in the legal arena,²⁰² and the many dimensions, conscious and unconscious, that shape personal action.²⁰³

What might these developments around fathers' rights tell us about the relationship between law, men, and gender? Recent work by family law scholars has argued that the co-parenting shift in family policy exemplifies, in certain respects, a new mode of neo-liberal governance focused on issues of self-development, marked by a pressure to behave in standardized ways in accordance with normative prescriptions.²⁰⁴ As divorce has become part of what sociologists have termed a "project of the self," part of a fluid, reflexive modernity, the "good citizen" has been repositioned across a range of legal contexts (not just in family law)²⁰⁵ as a particular kind of information-seeking, rational subject who will, given appropriate information and education, act "responsibly."²⁰⁶

This raises a number of problems in the context of fathers' rights politics. The seeming irrationality of much of the fathers' rights discourse and the political strategy adopted (*i.e.*, high profile campaigns) sit uneasily with this model of the rational subject. At a more fundamental level, it entails some questionable ideas about what may actually be occurring.

The dominant assumption in family policy has been that consensus between the parties is an a priori social good.²⁰⁷ It is difficult, on one level, to refute such a claim. However, it has been argued that the psychological ambivalences about loss that can accompany the end of human relationships, including emotions such as anger, may be at odds with this powerful rhetoric of the harmonious divorce.²⁰⁸

For example, the harmonious divorce might invalidate and make it nearly impossible to articulate conflicted feelings of loss, guilt, and anger. Brown and Day Sclater suggest that these emotions,²⁰⁹ at least from a

202. *But see* THE PASSIONS OF LAW (Susan A. Bandes ed., 1999); LAW AND THE SENSES: SENSATIONAL JURISPRUDENCE (Lionel Bently & Leo Flynn eds., 1996); MARTHA C. NUSSBAUM, HIDING FROM HUMANITY: DISGUST, SHAME AND THE LAW (2004).

203. SCLATER, *supra* note 40; Shelley Day Sclater, *Divorce – Coping Strategies, Conflict and Dispute Resolution*, 28 FAM. L. 150 (1998); Shelley Day Sclater & Candida Yates, *The Psychopolitics of Post-divorce Parenting*, in WHAT IS A PARENT? A SOCIO-LEGAL ANALYSIS 271 (Andrew Bainham et al. eds., 1999); Joanne Brown & Shelley Day Sclater, *Divorce: A Psychodynamic Perspective*, in UNDERCURRENTS OF DIVORCE, *supra* note 44, at 145.

204. REECE, *supra* note 46.

205. *See, e.g.*, Shelley Day Sclater & Christine Piper, *Re-Moralising the Family? Family Policy, Family Law and Youth Justice*, 12 CHILD & FAM. L.Q. 135 (2000).

206. *See generally* REECE, *supra* note 46; van Krieken, *supra* note 46.

207. *See* SCLATER, *supra* note 40.

208. IAN CRAIB, THE IMPORTANCE OF DISAPPOINTMENT (1994).

209. Brown & Sclater, *supra* note 203.

psychosocial perspective, almost inevitably accompany the process of separation. Further, far from reducing conflict, legislative interventions around co-parenting may themselves be linked to an increase in the frequency of disputes. That is, the ideal of co-parenting supported by law might fuel conflict between some parents where it is not perceived in terms of a shared ideology, but rather as a legal or financial coercion interwoven with other unresolved tensions or conflicts.

These are conflicts that, in the case of the men participating in fathers' rights organizations, might well remain unresolved.²¹⁰ Fathers, like mothers, can experience a profound tension between the ideals of desirable parenting contained in the law and the realities of their own social experience, resulting in a potential sense of disappointment, frustration, and, for some, feelings of anger toward the law and the legal system that need to be managed emotionally. In failing the tests of "therapeutic correctness"²¹¹ and the standards of response expected of the good father, participation in fathers' groups can then, for some men, provide a safe space in which these emotions can be articulated and expressed.²¹²

If we turn to the gendered dynamics of this process, two further points are relevant. First, this has a direct bearing on questions of policy. It calls for a rethinking of how emotion and the psychological and sociological dynamics of separation are dealt with in family justice processes. As Shelley Day Sclater and Martin Richards have suggested,²¹³ it is important not to underestimate the psychological dimensions of separation, and the significance of highly conflicted adult relations. It is known that normative messages about the welfare of the child and "doing the right thing" have filtered through to the accounts of parents in making sense of their actions.²¹⁴

However, psychological processes are deeply intertwined with the formation of gendered rationalities and the lives of men and women as embedded subjects in ways which, in turn, mediate how they experience divorce and deal with the law. In this regard, the shifting gender relations are again of particular salience when considering the psychological dimensions of separation. I have suggested that, for many men, divorce is experienced in a cultural context in which normative ideas of masculinity

210. See generally Collier, UK Fathers' Rights, *supra* note 12. The men most active in fathers' groups may be those who are, from a psychological perspective, "trapped" or "stuck" in a stage of anger and conflict, unable to "move on" without great difficulty. See generally of these stages of grief, ELISABETH KUBLER-ROSS, ON DEATH AND DYING (1989).

211. See generally REECE, *supra* note 46.

212. CROWLEY, DEFIANT DADS, *supra* note 4; FATHERS' RIGHTS, *supra* note 4.

213. See generally Sclater & Richards, *supra* note 40.

214. See generally Kaganas & Sclater, *supra* note 42.

have been fractured and reformed, contested, and politicized.²¹⁵ In such a context, what does evidence of a common experience of depression and other health problems amongst fathers' rights activists mean for developing gender-sensitive intervention in addressing the psychosocial aspects of separation for highly conflicted fathers?²¹⁶ How have these issues been addressed — or not been addressed — by relevant bodies in the field? How might the development of child-inclusive family law dispute-resolution initiatives impact on fathers' perceptions of conflict?²¹⁷

In recognizing that fathers may have specific needs, and remembering that fathers are a diverse and heterogeneous group,²¹⁸ research suggests there is more going on “under the radar” with fathers' rights groups than the high-profile protests of recent years and the collective “staking out” of rights and equality claims would indicate. Alongside an important service-function (the provision of advice and support), participation in groups can address emotional needs on the part of certain fathers. It may be that, in some instances, this participation is seen as “harmful,” in the sense that it encourages the projection of negative feelings onto former partners and the legal system, making a father less able to “move on” from a highly conflicted position.²¹⁹ Yet at the same time, as Crowley suggests in her study of fathers' groups in the United States, participation can be experienced personally as meeting individual “self-expansion” needs and forming personal identity at a time of considerable distress and life transition.²²⁰ These can be characterized as needs that may be otherwise unmet by the legal system. As such, a diverse range of locally based groups provides valuable practical and emotional support, information, advice, and assistance to many fathers. Such an approach suggests that the development of organizational politics around fathers' rights is connected to broader cultural discourses around gender, equality, rights, and responsibilities in ways that provide a grounded context in which renegotiations of personal identity in the process of separation take place.

215. See, e.g., FRAGMENTING FATHERHOOD, *supra* note 10, ch.1. See also Jane Lewis, *The Decline of the Male Breadwinner Model: Implications for Work and Care*, 8 SOC. POL. 152 (2001); KATHLEEN GERSON, *NO MAN'S LAND: MEN'S CHANGING COMMITMENTS TO FAMILY AND WORK* (1993).

216. Of the kind undertaken, for example, by father support workers at a local level in the context of supporting and engaging non-resident fathers.

217. See generally Jennifer McIntosh, *Enduring Conflict in Parental Separation: Pathways of Impact on Child Development*, 9 J. FAM. STUD. 63 (2003).

218. See generally Brid Featherstone, *Taking Fathers Seriously*, 33 BRIT. J. SOC. WORK 239 (2003).

219. Flood, *Backlash*, in *THE BATTLE AND BACKLASH RAGE ON*, *supra* note 6.

220. See CROWLEY, *DEFIANT DADS*, *supra* note 4, at 50.

Second, the issues of emotion and personal life raise the question of how law and society scholarship have conceptualized the gendered male subject. Addressing these issues calls for a greater recognition of how life history and individual biography, personal experience, peer groups, and social networks are linked to the formation of the “gendered rationalities,”²²¹ which, at particular moments and situated contexts, inform how specific individuals encounter the law. These arguments relate to recent sociological calls to acknowledge that what fathers feel and desire may in fact be as important in shaping behavior as what they rationally think.²²² They also support recent interventions aimed at promoting a more coherent and adequately funded political and policy engagement with the emotional and relational dynamics of separation. Such an approach seeks to recognize that structures beyond law can shape ideas of responsibility,²²³ and that a particular model of paternal responsibility has come to encapsulate a broad range of conflicting ideas about fathers in terms of both care-talk, welfare, justice, and rights-based claims.

B. Law, Gender, and the Politics of Fathers’ Rights Activism

Finally, it is necessary to consider how developments in fatherhood, fathers’ rights, and the law might be understood in terms of broader shifts in social power between women and men. It would be misleading to say that fathers’ groups have now moved center stage within the networks and communities concerned with law reform. Arguably, debates in this jurisdiction,²²⁴ have been influenced by research, including that of socio-legal scholars, that directly counters some of the key fathers’ rights claims.²²⁵ Recognizing the scale of distress caused by fathers’ campaigns, and how gender undoubtedly has triggered the targeting of certain individuals in government, suggests that the form of recent protests may have rendered it unlikely that politicians will afford direct-action groups a place at the table in future reform debates.²²⁶ These protests thus appear

221. See generally Anne Barlow et al., *New Labour, the Rationality Mistake and Family Policy in Britain*, in *ANALYSING FAMILIES: MORALITY AND RATIONALITY IN POLICY AND PRACTICE* 110 (Alan H. Carling et al. eds., 2002).

222. HAYWOOD & MAC AN GHAILL, *supra* note 193.

223. See generally RESPONSIBILITY, LAW AND THE FAMILY, *supra* note 64.

224. This is not to say that this terrain has not been shaped by fathers’ groups in different ways elsewhere. See, e.g., FATHERS’ RIGHTS, *supra* note 4.

225. Arenas that have been informed by other voices, some of which could be aligned to (and would align themselves with) certain strands of feminism, include the senior government level. At this level, different kinds of policy arguments have been advanced about “engaging fathers.” See generally Collier, UK Fathers’ Rights, *supra* note 12.

226. *Id.*

contradictory in their effect. By raising the profile of issues and alienating potential support, they also prove counterproductive.

There is reason to believe, moreover, that the political terrain is becoming more fragmented, that fathers' protests have prompted a degree of realignment within the sector,²²⁷ and that what may now be occurring is a move away from direct action protest and toward more mainstream political campaigning. There appears an increasing degree of convergence in the aims and objectives of organizations, at least around some issues,²²⁸ with diverse stakeholders like Families Need Fathers increasingly stressing the limits of adversarial proceedings in court and the need to recognize the emotional dimensions of separation.²²⁹

I have suggested elsewhere that recent developments in fathers' rights raise difficult questions for feminism.²³⁰ It is possible to argue that fathers' groups certainly have overstated the impact and influence of feminism. At the same time, however, feminists may place too much importance on the fathers' movement in the United Kingdom and, notwithstanding the public visibility, may perceive it as having more power and influence within these debates than is really the case. This speaks to the "micro-politics" of the policymaking process itself and the contradictory impacts of feminism.²³¹ It may be more productive therefore to locate these debates in the context of a complex and multi-layered reframing of ideas about gender equality.

VII. CONCLUDING REMARKS

In trying to make sense of these debates and engage with masculinity in a non-essentialist manner, a growing body of socio-legal scholarship,

227. Note, for example, the re-branding on the part of *Fathers Direct* (now *The Fatherhood Institute* as of January 2008) — a change prompted in part by a desire to distance itself from other fathers rights' groups in the field. FATHER'S RIGHTS, *supra* note 4.

228. Whilst this is unlikely to mean the end of direct action protest by some fathers and their supporters, it encourages organizations and family sector leaders to cooperate and bring stakeholders together.

229. Note for example the comments of Jon Davies, Chief Executive of Families Needs Fathers. Doward, *supra* note 136, at 4.

230. Richard Collier & Sally Sheldon, *Fathers' Rights, Fatherhood and Law Reform – International Perspectives*, in FATHERS' RIGHTS, *supra* note 4, at 1. The argument below follows themes discussed in the above work and developed in collaboration with Sally Sheldon.

231. See, e.g., Sonia Lawrence, *Feminism, Consequences, Accountability*, 42 OSGOODE HALL L.J. 583 (2004). A broader question concerns whether some women may benefit more than others from feminism. See further on this issue in relation to equality debates, RETHINKING EQUALITY PROJECTS IN LAW: FEMINIST CHALLENGES (Rosemary Hunter ed., 2008) [hereinafter RETHINKING EQUALITY PROJECTS].

drawing on developments in legal and social theory, has explored the way fathers have been understood, constructed, and regulated within the law.²³² Complementing the now well-established literature on fatherhood in the fields of sociology and social policy, history, popular culture, psychology, gender and family studies,²³³ this Article has tried to explore the relationship between gender, men, and the law in the area of fathers' rights. Some fathers' rights groups, as well as theorists of individualization,²³⁴ have suggested that social and legal change has entailed something akin to a diminution or displacement of the figure of the father in law — a swing in the balance of power between women and men. Such an interpretation, I have argued, is misleading.

Rather, normative ideas of fatherhood have been transformed by the refiguring a nexus of assumptions that historically constituted fathers as a desirable presence within families. This has involved a fragmentation of beliefs about fatherhood in the law,²³⁵ and my focus in this Article, a reshaping of the contours of paternal masculinity in the law. The latter has been the result of social and economic shifts that have redrawn many cultural ideas of fatherhood. At the same time, a commodification of masculinity, a cultural problematizing of parenting practices, and changing ideas about children and childhood, risk, and anxiety,²³⁶ have further refigured understandings of what constitutes a “good” parent and, in this context especially, a “safe” father. The result is an ideal of fatherhood marked by some contrasting and contradictory ideas about men and masculinity.²³⁷

The limits of law in the regulation and management of intimate relationships is an issue well documented within family law scholarship. In facing the “normal chaos” of family life,²³⁸ law simplifies in order to

232. See, e.g., FRAGMENTING FATHERHOOD, *supra* note 10; DOWD, REDEFINING FATHERHOOD, *supra* note 8; BRID FEATHERSTONE, CONTEMPORARY FATHERING: THEORY, POLICY AND PRACTICE (2009).

233. See generally FRAGMENTING FATHERHOOD, *supra* note 10, ch. 1. For an excellent and up-to-date overview of these debates see FEATHERSTONE, *supra* note 232.

234. See generally ULRICH BECK & ELISABETH BECK GERNSEIM, INDIVIDUALIZATION: INSTITUTIONALIZED INDIVIDUALISM AND ITS SOCIAL AND POLITICAL CONSEQUENCES (2002); BECK & GERNSEIM, THE NORMAL CHAOS, *supra* note 13; contrast SMART, PERSONAL LIFE, *supra* note 13, ch. 1.

235. FRAGMENTING FATHERHOOD, *supra* note 10, ch. 4.

236. See generally FRANK FUREDI, PARANOID PARENTING: WHY IGNORING THE EXPERTS MAY BE BEST FOR YOUR CHILD (2002); Richard S. Collier, *Anxious Parenthood, the Vulnerable Child and the “Good Father”*: Reflections on the Legal Regulation of the Relationship Between Men and Children, in FEMINIST PERSPECTIVES ON CHILD LAW (Jo Bridgeman & Daniel Monk eds., 2001).

237. See generally Scourfield & Drakeford, *supra* note 17.

238. See generally Dewar, *supra* note 59, at 467. Contrast BECK & GERNSEIM, THE NORMAL

understand and process. Law deals “in generalities” and is “ill-equipped to take full account of the complexities of human behaviour.”²³⁹ This has a particular bearing on the debates about fathers’ rights.

Recent studies of fathers’ rights groups suggest that the particularities of legal processes are profoundly important in how social changes reshape equality claims within a legal system’s own norms and rationalities.²⁴⁰ This raises questions about what we can expect from the law, and whether the law is confronted here with some different and fundamentally incompatible ways of approaching decision-making. From this perspective, the kinds of “messy,” psychologically complex disputes and conflicts discussed in this Article can be seen as normal and inevitable features of what happens when the law attempts to regulate human relationships, the ambiguous realities of family life, and the complex nature of these “inevitable dependencies.”²⁴¹

In conclusion, it has been argued²⁴² that one of the major weaknesses of the fathers’ rights movement results from its seeming inability to move beyond parallels with liberal feminism, especially in regard to how the power of law, legal regulation, and the idea of equality is conceptualized. Fathers’ rights groups appear to be fixed in their engagement with the law in certain ways of thinking, within a particular “episteme” marked by, in contrast to recent feminist thought, a failure to engage the conceptual basis of the private family,²⁴³ the limits of legal regulation, and a commitment to essentialist ideas of masculinity. To move beyond such an approach, however, would involve acknowledging the limits of formal equality politics itself in this context,²⁴⁴ something that would then serve to question a central tenet of the fathers’ movement — the idea that it is men, and not women, who have become the “new victims” of family law.

CHAOS, *supra* note 13.

239. Kaganas & Sclater, *supra* note 42, at 5. See also CAROL SMART, *FEMINISM AND THE POWER OF LAW* 160 (1989). See also Gunther Teubner, *How the Law Thinks: Toward a Constructivist Epistemology of Law*, 23 *LAW AND SOC’Y REV.* 727 (1989).

240. Susan B. Boyd, ‘Robbed of Their Families’? *Fathers’ Rights Discourses in Canadian Parenting Law Reform Processes*, in *FATHERS’ RIGHTS*, *supra* note 4, at 27 (noting how the Canadian FRM’s demands for the reform of child support law were not taken very seriously, because these reforms had a neo-liberal agenda to privatize economic responsibility within the nuclear family. See also Susan B. Boyd, *Is Equality Enough? Fathers’ Rights and Women’s Rights Advocacy*, in *RETHINKING EQUALITY PROJECTS*, *supra* note 231.

241. See generally FINEMAN, *THE NEUTERED MOTHER*, *supra* note 143.

242. See generally Kaye & Tolmie, *Discoursing Dads*, *supra* note 4, at 168-69.

243. See generally FINEMAN, *THE AUTONOMY MYTH*, *supra* note 2.

244. See generally *RETHINKING EQUALITY PROJECTS*, *supra* note 231.

Far from evoking a self-interested, individualized form of power,²⁴⁵ one closely associated with the deployment of men's formal legal rights and a traditional model of masculinity,²⁴⁶ some rather different questions come into view if we move beyond this frame.²⁴⁷ To what extent, given the still entrenched nature of sexual divisions of labor,²⁴⁸ have questions about men's capacity, capability, and willingness to change been overlooked in these debates? Given the continued autonomy of many men, at least in relation to women, to opt out of these caring relations, what is the actual aim of social policy in this area? To what extent has the involved father discourse been based on a number of problematic assumptions about men and masculinity, and is, in certain respects, a class and race-based, ideological construct? This raises a broader question that is all too often silent in these debates — how do contemporary advanced capitalist neo-liberal societies, ultimately, value social care and intimacy?

It cannot be assumed that all social groups, including categories of men, relate to the new responsibility in law in the same way. Research suggests that the privatization of responsibilities within family law²⁴⁹ and the rise of a new responsabilization have had a particularly hard impact on already vulnerable social groups, not least, as the work of Val Gillies in the United Kingdom shows, some groups of mothers.²⁵⁰ Recognizing the diversity of fathers' experiences, therefore, questions the extent to which policy debates about fatherhood have themselves been informed by problematic assumptions about class, race, ethnicity, and social disadvantage.²⁵¹ Just who is included and excluded from these debates about fathers, rights, and responsibility? How are some men's actions constituted as irrational, unreasonable, overly emotional, and so forth within particular contexts, while others' actions are not? To what extent

245. See generally Smart & Neale, "I Hadn't Really Thought About It," *supra* note 44.

246. See generally TERRY ARENDELL, *FATHERS AND DIVORCE* (1995).

247. See generally SEVENHUIJSEN, *supra* note 201; TRONTO, *supra* note 201.

248. Note the argument of MCMAHON, *supra* note 158.

249. See generally Boyd, *Legal Regulation of Families*, *supra* note 40; Susan B. Boyd, *Review Essay: Being responsible in the New Family Law*, 1 INT'L J.L. IN CONTEXT 199 (2005).

250. See GILLIES, *supra* note 63.

251. See generally FEATHERSTONE, *supra* note 232. For example, it may be that a "father-inclusive" policy agenda itself represents a reframing of, rather than a challenge to, dominant ideas of hegemonic masculinity. See generally Karen Henwood & Joanne Procter, *The 'Good Father': Reading Men's Accounts of Paternal Involvement During the Transition to First-time Fatherhood*, 42 BRIT. J. SOC. PSYCHOL. 337 (2003). See also Steve Hall, *Daubing the Drudges of Fury: Men, Violence and the Piety of the 'Hegemonic Masculinity' Thesis*, 6 THEORETICAL CRIMINOLOGY 35 (2002).

has a feminist engagement with masculinity been sensitive to these questions?

Asking if a “debate about the nature of fatherhood” might inform “policy and reform discussions,”²⁵² I have argued that issues of emotion and the psychological complexity of separation are of considerable significance in approaching fathers’ rights. What is clear is that both resident and non-resident parents can experience problems with contact. Just because the minority who use the legal system are those who are more likely to have problems does not mean that the majority of parents who do not use the legal system may not also face real difficulties and be in need of support.²⁵³ How important is it that recent initiatives aimed at supporting contact activities and improving the “system failures” of the law’s response to the emotional fallout of divorce address the needs of separating and separated fathers? What are the implications in terms of resources, for policy and practice, of developing an engagement with the gendered nature of these emotional and psychosocial aspects of separation?

By placing these debates within the broader context of social and legal changes, it becomes possible to look to the complexity of what may actually be occurring and recognize that these developments raise important questions for legal systems internationally in dealing with separation. These changes tell us much about the shifting relation between law, men, and gender. There has been a transformation in the role of the father that has taken place both in the slipstream of feminism²⁵⁴ and in the context of social and legal changes, as well as the heightened cultural salience of ideas of gender neutrality and formal equality.

252. MARTHA ALBERTSON FINEMAN, *THE AUTONOMY MYTH* 195 (2004).

253. VICTORIA PEACEY & JOAN HUNT, *PROBLEMATIC CONTACT AFTER SEPARATION AND DIVORCE? A NATIONAL SURVEY OF PARENTS* (2008).

254. On the influence of feminism in family policy, see generally *FEMINIST PERSPECTIVES*, *supra* note 9.

