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## Pro Bono Work and Access to Justice for the Poor: Real Change or Imagined Change?

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## RETHINKING FATHERHOOD

*Nancy E. Dowd*

Fathers parent less than mothers.<sup>1</sup> Both within and outside of marriage, they nurture their children (and step-children, and children in general) far less than mothers (and other women) do. Not only do fathers parent less, they abandon their children to a remarkable extent, again far exceeding such conduct by women.

That this conduct occurs is troubling. That we seem to accept it, and care about it so little, is disturbing. Imagine the same data characterizing mothers; my suspicion is that such conduct would be viewed with widespread alarm. Our complacency may be tied to our limited view of what it means to be a father so that this conduct does not violate significantly our model of fathering. Our complacency may also assume that fatherhood has limited significance for men, and that men who exhibit this pattern experience little or no emotional or psychological impact as a result of their disconnection from their children.

At least two things suggest this latter assumption is false. First, alongside the pattern of limited, disconnected fatherhood is evidence of a small but increasing proportion of fathers significantly involved as joint or primary caretakers of their children.<sup>2</sup> Second, a strong fathers' rights movement has arisen that unites around the common proposition that the legal system disregards the desire of fathers to nurture their children.<sup>3</sup>

### I. FATHERHOOD MODES: CURRENT PATTERNS

We know far less about fathers than we do about mothers. We tend to count them less, notice them less, and understand less about the correlations between fatherhood and child care, and between fatherhood and wage work. Based on what we do know, most fathers function very differently than do most mothers. Traditionally, we expected that to be the case: our model presumed that fathers worked in the wage workforce

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1. The data on the general patterns of fathering in this essay are drawn, unless otherwise indicated, from NANCY E. DOWD, *IN DEFENSE OF SINGLE PARENT FAMILIES* (1997).

2. See KATHLEEN GERSON, *NO MAN'S LAND: MEN'S CHANGING COMMITMENTS TO FAMILY AND WORK* 8 (1993) (recognizing as a trend "the rise of the nurturing father").

3. See generally Stephanie B. Goldberg, *Make Room for Daddy*, 83 A.B.A. J. 49 (Feb. 1997) (discussing recent developments in the fathers' rights movement and their legal effects and implications).

and mothers cared for children and the household. This traditional ideal now is a minority family form. Less than 10% of families with children under age 18 conform to the pattern of a single male breadwinner and female stay-at-home spouse. Nevertheless, we retain the traditional model, although cloaked in a new egalitarian, gender-neutral ideology.

The gendered differential in the parenting of fathers and mothers persists, although in somewhat modified form. The presence of children still does not change most men's wage work patterns. Men continue to do wage work with little or no break, temporary or otherwise, because of children. Most fathers take little time off or parenting leave when children are born or adopted, and most do not change the type of work they do or the hours that they work in order to meet the demands of parenthood. In contrast, most women take some leave at the birth or adoption of their children, and women are far more likely to accommodate work to family, and therefore shift their wage work patterns by their choice of job, by their choice of flexible hours, or by limiting their wage work to part-time work. In families with very young children, although parents often continue to work in the wage workforce, in a majority of two-parent families one parent stays home full time to care for children under two, and to a lesser proportion one parent is at home while children are under six. That parent is nearly always the mother. Caretaking patterns of mothers and fathers are similarly distinctive. Fathers on the whole do not perform an equal share of caretaking or housework, regardless of the wage work status of the mother. Fathers take on some domestic tasks; mothers, however commonly, do a "second shift" of household work in addition to their wage work. To the extent men provide greater domestic help, therefore, it does not double the nurturing available to children. Men's actions generally confirm an unequal rather than a coequal caretaking role. In this model, the secondary caretaker has the power and the money in the relationship, and caretaking is overwhelmingly economic.

The reconstruction of traditional gender roles in contemporary families is even more evident, and the pattern even more strongly gendered, in divorced families and families where the couple never marries. Most single-parent fathers are divorced: 8% are widowers, 25% are never married, and the rest are divorced.<sup>4</sup> While most single fathers are unmarried, some have remarried, and they do so to a greater degree than do single mothers (41% versus 23%).<sup>5</sup> Most single fathers do not

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4. DOWD, *supra* note 1, at 49. The proportion of fathers with primary or full custody has doubled, although it is still a small number: from 1.9% in 1970 to 3.1% in 1989. GERSON, *supra* note 2, at 237.

5. DOWD, *supra* note 1, at 49.

have primary or sole custody of their children, although a growing number do. The percentage of children living with their mothers is 87%, and with their fathers 13%.<sup>6</sup>

The income of single-parent fathers with custody is roughly double that of mothers with custody.<sup>7</sup> Nevertheless 18% of single father families live in poverty. Few fathers receive child support, and less support tends to be ordered for fathers as compared to similarly situated mothers.<sup>8</sup>

Most single parent fathers, however, are noncustodial, occasional fathers. The income of single-parent fathers without sole or primary custody is significantly greater than that of men who are primary care givers.<sup>9</sup> Many do not pay child support at all, or pay erratically or incompletely. Economic irresponsibility has given us the "deadbeat dad" as a paradigm and scapegoat. So widespread has been the pattern of fathers failing to pay full or even partial support, even where support is ordered (and in many cases it is not), that the deadbeat dad often seems to be the norm.

Single fathers' non-economic links with their children range from regular visitation to severing of all except a legal relationship. According to one national survey, fathers averaged only two visits per month several years after divorce and almost half of the children in the study had not seen their fathers in the past year. The strongest predictor of ongoing contact is the father's relationship with their ex-wife rather than the strength of paternal involvement prior to divorce. Lack of visitation occurs in about 50% of all cases, and upwards of one-third of children in divorced families will not see their fathers at all after the first year of separation.<sup>10</sup> Ten years after divorce, only one in ten children have contact with their fathers, and two-thirds have had no contact in the prior year.<sup>11</sup> Never-married fathers are even less likely to nurture their children than divorced fathers. Paternity is established for only 30% of nonmarital children. Thus 70% of nonmarital children have biological

6. Steve W. Rawlings, U.S. Department of Commerce, Series P-20, No. 477, Household and Family Characteristics March 1993 XV: XVIII at 5-7 (1994).

7. BUREAU OF CENSUS, U.S. DEPARTMENT OF COMMERCE, STUDIES IN MARRIAGE AND THE FAMILY, SINGLENES IN AMERICA 16 (1989).

8. Douglas B. Downey, *The School Performance of Children from Single-Mother and Single-Father Families: Economic or Interpersonal Deprivation?*, 15 J. FAM. ISSUES 129, 142 (1994).

9. DOWD, *supra* note 1, at 21, 48-49.

10. Karen Czapanaskiy, *Volunteers and Draftees: The Struggle for Parental Equality*, 38 UCLA L. REV. 1415, 1449 (1991) (citing Frank F. Furstenberg, *Good Dads-Bads Dads: Two Faces of Fatherhood*, in THE CHANGING AMERICAN FAMILY AND PUBLIC POLICY (1988)).

11. FRANK F. FURSTENBERG, JR. & ANDREW J. CHERLIN, DIVIDED FAMILIES: WHAT HAPPENS TO CHILDREN WHEN PARENTS PART (1991).

fathers but not legal fathers. The degree to which such fathers nurture or economically support their children is largely unknown.

There are three patterns of fatherhood suggested by this data about fathers. One pattern, typified by the small cadre of single-parent fathers with sole or primary custody and an even smaller proportion of married fathers, is fathering like mothers in both substance and style. A second pattern, evident in the data on two-parent heterosexual families, is fathering as a secondary parent, supporting mothers in their full-time parenting role. In this pattern, the two parents do not parent differently simply in style, but also in form and function. The third pattern is fathering as a limited or disengaged nurturer. This pattern is present both in intact and divorced families, in married and never married fathers, and in single and dual wage-earner families. These fathers sometimes remain economic supporters, but in many instances they are not even providing that means of support. Those fathers may have only a biological or formal legal link to their children. A nurturing relationship with their children may never have existed or has deteriorated over time.

## II. HOW THE LAW HAS CONSTRUCTED FATHERHOOD: BIOLOGICAL RIGHTS, ECONOMIC RESPONSIBILITIES, PROPERTY ENTITLEMENTS

Legal notions of fatherhood reflect, to a remarkable degree, fathering divorced from nurturing. The model of fatherhood embedded in law is dominantly biological and economic. It accords with historic concepts of fathers as property holders in relation to their children. Support for the nurturing aspect of fatherhood is very limited, hidden, and indirect. The view expressed in United States Supreme Court decisions concerning fathers that biology alone should not permit the assertion of parental rights by unmarried fathers<sup>12</sup> would seem to suggest that the “something more” that is necessary is a nurturing role. On the other hand, it appears that the preferred “something more” is legitimation of the relationship with the mother through marriage rather than expansion of the father’s relationship with his child from a merely biological to a nurturing role.<sup>13</sup>

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12. *See, e.g., Lehr v. Robertson*, 463 U.S. 248, 267 (1983) (holding that, where one parent has a custodial relationship with a child but the other parent has abandoned or never established such a relationship, the Equal Protection Clause does not prevent a state from affording different legal rights to the parents); *Michael H. v. Gerald D.*, 491 U.S. 110, 131 (1989) (recognizing that illegitimacy is a legal construct rather than a natural trait); *Quillan v. Walcott*, 434 U.S. 246, 256 (1978) (distinguishing an unmarried father’s interests from those of a married father).

13. The United States Supreme Court also sees fathering as an opportunity defined in

A stronger case for a nurturing role might be found in the move toward gender neutrality in the law, and the elimination of sex stereotypes. The goal of eliminating gender bias in the law by encouraging gender neutrality suggests that men can (although not necessarily that they should) nurture their children as mothers do. In this manner law might support either of the two nurturing patterns of fatherhood. Historically, however, law has articulated fatherhood as ownership and children as property, controlled by and responsible to the patriarch. The perpetuation of a *merely* biological and economic definition of fatherhood is apparent in much modern law, which silently accepts lack of nurturing as unremarkable.

Examples of this biological/economic model are evident in adoption, paternity/legitimation, and divorce law. Under most adoption statutes, the establishment of a biological connection to a child is sufficient to establish an entitlement to determine whether the child may be placed for adoption, even if the father is unwilling to care for the child himself. The father's consent may be unnecessary only if the father has abandoned the child, but abandonment commonly is understood in economic terms as failure to contribute to the support of the child during the pregnancy or after birth. In a notable departure from this view, in 1995, the Supreme Court of Florida expanded the notion of support to include psychological and emotional support by finding abandonment even when the biological father had provided some economic support but was abusive of the mother.<sup>14</sup>

The historic property orientation of fatherhood, defined in biological terms, remains at the core of the concept of legitimation and establishment of paternity. Fatherhood is defined by the status that it can confer upon children, rather than in terms of responsibilities, obligations, relationship, or nurturing. The concept of legitimacy embodies a blatant example of stigma intertwined with gender hierarchy. Legitimacy is father-controlled and father-related. Status is through the father, epitomized by the father's gift of his name to his children. Theoretically, we no longer treat legitimate and illegitimate children differently, or at least significantly differently, although in reality they are treated quite differently. They are less likely to be the beneficiaries of child support, and lower support is ordered on average than for marital children, whose legitimacy is automatic. In addition, the status of illegitimacy continues to have strong significance. This is reflected in a case where the Supreme Court of Florida was confronted with the status of a child born

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relation to other men: "the biological connection . . . offers the natural father an opportunity that no other male possesses." *Lehr*, 463 U.S. at 262.

14. See *In re Adoption of Baby E.A.W.*, 658 So. 2d 961, 965-66 (Fla. 1995).

when the marital couple had separated but not yet divorced, and the child was conceived by the separated wife with a man other than her separated husband.<sup>15</sup> Some courts have refused to acknowledge the biological facts on the grounds that to do so would de-legitimize the child, who would ordinarily benefit from the legal presumption that every child born during a valid marriage is legitimate.<sup>16</sup> Legitimation is a patriarchal concept of fatherhood imbued with a model of fatherhood as ownership and status.

The related area of paternity law is a glaring example of a place where the law discourages fathering. The rate of paternity establishment has remained steady at approximately 30% of all non-marital births.<sup>17</sup> The rates by state range from a high of 67% in Michigan to lows of 14% in Louisiana and 20% in New York.<sup>18</sup> The process of establishing paternity is not inherently difficult, given genetic testing which can exclude a man not the father in more than 99% of cases, for a cost ranging from a low of \$150 to a high of \$500-600. Nevertheless, paternity establishment is time-consuming and the rate of establishment remains stubbornly low. One study identified the reasons for this pattern as connected to the quasi-criminal or criminal nature of some proceedings, triggering heightened procedural and evidentiary standards which slow the process. Even with respect to voluntary acknowledgment, many existing procedures are cumbersome and invasive. The disincentives to establishing paternity lie both with these structural barriers and limited commitment of public funds. Although procedures may improve under the Omnibus Budget Reconciliation Act of 1993,<sup>19</sup> the funding issue remains an open question.

If the purpose of the paternity process is to protect men from becoming fathers, then the process works quite well, although over-

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15. See *Department of Health & Rehab. Servs. v. Privette*, 617 So. 2d 305, 306-07 (Fla. 1993).

16. See Iris Burke, Supervising Attorney, Virgil Hawkins Civil Clinic, University of Florida College of Law, Letter to Judge Chris Altenbernd, Aug. 2, 1996. See, e.g., the following cases involving children conceived during the course of a marriage where the husband is not the father: *Gingola v. Dep't of Health & Rehab. Servs.*, 634 So. 2d 1110, 1111 (Fla. 2d DCA 1994); *M.R. v. A.B.C.*, 683 So. 2d 629 (Fla. 3d DCA 1996); *Alchin v. Alchin*, 667 So. 2d 477, 479 (Fla. 2d DCA 1996); *Robinson v. Department of Rev.*, 661 So. 2d 363, 363 (Fla. 1st DCA 1995). See also the following cases regarding children born during marriage and presumed legitimate: *Grant v. Jones*, 635 So. 2d 47, 47 (Fla. 1st DCA 1994); *Ownby v. Ownby*, 639 So. 2d 135, 137 (Fla. 5th DCA 1994).

17. Esther Wattenberg, *Paternity Actions and Young Fathers*, in *YOUNG UNWED FATHERS: CHANGING ROLES AND EMERGING POLICIES* 214-15 (Robert Lerman & Theodora Ooms eds., 1993).

18. See *id.* at 214.

19. 42 U.S.C. § 666 (1993).

inclusively. If public policy is better served by establishing the paternity of all children as our norm, then the statutory structure and its implementation are clearly lacking. The steps necessary to establish paternity are especially interesting in light of what we know about the relationship between the parents at the time of birth. According to one survey, most children involved in paternity cases were not conceived in casual encounters.<sup>20</sup> Approximately two-thirds of the fathers were present at the births of their children. According to another researcher, nearly 85% of fathers who do not marry the mothers of their children continue their relationship with the mother during the pregnancy, and then this drops to 64% two years after the birth, and 55% three years after the birth.<sup>21</sup>

In addition to reflecting a biological definition of fatherhood, these legal structures also reflect the view that fatherhood is a chosen, voluntary status, rather than one automatically or involuntarily conferred. To use Karen Czapanskiy's terms, fathers are volunteers; mothers are draftees.<sup>22</sup> But as Czapanskiy and others also have pointed out, the choices of whether or not, and to what extent, to father exist even when paternity and legitimation are no longer the issue. Nothing in the law supports nor sanctions fathers' nurturing or lack thereof during or after marriage. Particularly after divorce, when the law is far more intrusive into the lives of fathers and mothers, fathers are not legally sanctioned for failure to spend the time with their children that they have committed to spend under custody and visitation schemes. At the same time, most custody and visitation schemes envision only a limited fathering role. For example, the typical, standard court order in divorce cases usually sets up a schedule of visitation or shared parenting that is far below a 50-50 division of parenting time or tasks.<sup>23</sup> Joint physical custody is the norm in only a minority of divorce cases. The pattern in the vast majority of divorce cases presumes very limited nurturing by fathers. The dominant expectation and focus of the divorce model is economic fathering, i.e., the payment of child support. Financial responsibility is equated with adequate fathering in a way that would never be acceptable for mothers. The development of this model for non-marital families (triggered by establishment of paternity) extends this model of the economic father. The disinclination to accord fewer rights, including visitation and custody, to nonmarital fathers actually enhances the economic model of fatherhood for these fathers.

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20. See Wattenberg, *supra* note 17, at 10.

21. Victoria Schwartz Williams & Robert G. Williams, *Identifying Daddy: The Role of the Courts in Establishing Paternity*, 28 *JUDGES' J.* 2, 5 (1989).

22. See Czapanskiy, *supra* note 10, at 1415-16, 1449.

23. DOWD, *supra* note 1, at 62.



The strongest countercurrent to the biological and economic definition of fatherhood is the implicit model of nurturing suggested by the elimination of gender bias and the adoption of gender neutrality in family law. Fathers' rights activists nevertheless claim that the courts largely ignore this approach and fail to see fathers as nurturers. The issue of whether the courts act in a gender neutral manner is disputed. What cannot be disputed, however, is that the image or vision of neutrality, and its presumed link to gender equality and how that equality practically operates, has remained unclear and undeveloped. There is remarkably little discussion of our understanding of the current context of fatherhood, what the goal of fatherhood is, and what the means are of achieving that goal. The vacuum tends to be filled with the economic model, and the pattern of post-divorce fathering as limited or non-existent nurturing is accepted as "natural."

Part of the agenda for a reconstructed fatherhood must be a careful examination of these and other legal structures and concepts that reflect our legal vision of fatherhood. It is essential to understand this context in order to rethink our legal vision of fatherhood. My claim here is not that a reconstituted definition of fatherhood would be a magical solution to the patterns that we see. Rather, I would argue that law is one of the factors to be considered. For married fathers, the law arguably neither imposes nor supports a particular fatherhood role. Respect for family privacy is highly valued, and therefore the allocation of responsibilities or the definition of roles is left largely to individual choice. But the law controls fatherhood for unmarried or divorced fathers to a significant degree, imposing obligations and limitations on fatherhood through child support and custody/visitation. The model defined outside of marriage inevitably defines the implicit view of what the model should be within marriage. Law may not cause the patterns, but it certainly does little to encourage or support a different vision. But first we have to identify what that vision will be.

### III. MODELS FOR RECONSTRUCTED FATHERHOOD

A new model of fatherhood arguably is not hard to envision because we have pieces of it already—in the roles fathers play when they become the primary caretaker or a coequal, separate caretaker, and in the model of motherhood. These models of nurturing are essentially the same. Looking to fathers who nurture can provide gender specific information that is critical to understanding both why so few fathers nurture in this fashion and in what ways this model of fatherhood can be supported. Looking to the model of motherhood gives us a fuller, richer context to draw from in constructing a nurturing model, since mothers have lived the practice of nurturing parenthood, and have been

so much more closely studied than fathers. The motherhood model compared with fathers who nurture also can expose the issues and problems that must be addressed by a reconstructed fatherhood model. Most obviously those issues include the devaluation of motherhood and the norm of a single primary care giver as part of the existing nurturing model.

There is not a unique style of parenting for fathers. Fathers who parent alone parent like mothers—they nurture. Good parenting is not sex-specific nor sex-related. The attributes of good parenting are more strongly associated with mothering, but the connection is cultural, not biological. When men are primary parents, by choice or by circumstances, they parent as well as and similarly to women. Men are not essential to healthy child development based on their uniqueness; rather, they contribute to healthy child development because of the benefit of even indirect support of the primary caretaker. Father presence correlates with more income or child support, and sufficient economic resources correlate with greater childhood success.

The claim that fathers are essential (and unique) nevertheless remains powerful. For example, David Blankenhorn not only argues that men have something unique to offer as fathers, but also argues that fatherhood is essential to men as a civilizing influence to men's aggression.<sup>24</sup> Men's belief in their own uniqueness is essential, in his view, to giving them a reason to connect with their children, and that connection is essential to becoming a good man. Fatherhood, according to Blankenhorn, "is society's most important role for men. First, fatherhood, more than any other male activity, helps men to become good men. . . . second, fatherhood privileges children."<sup>25</sup> Blankenhorn further states, "As a social role, the deepest purpose of fatherhood is to socialize men by obligating them to their children. . . . More than any other cultural invention, fatherhood guides men away from violence by fastening their behavior to a fundamental social purpose."<sup>26</sup>

Essential to Blankenhorn's position is acceptance of the view that men are violent, self-centered, individualistic, and materialistic. Further, one must see fatherhood as necessarily highly gendered to convince men that they possess unique abilities as fathers which children need for successful development and to combat men's negative predispositions. Blankenhorn rejects an androgenous model of parenting, arguing that gender specific roles are essential to meet children's needs. He sees as

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24. See generally DAVID BLANKENHORN, *FATHERLESS AMERICA: CONFRONTING OUR MOST URGENT SOCIAL PROBLEM* 25 (1995).

25. *Id.* at 25.

26. *Id.* at 65.

essential preconditions for fatherhood co-residency with children and a parental alliance with the mother. In short, fatherhood works only within a heterosexual, marital norm through defined, gender specific roles regarded as complementary.

However, what we know about fatherhood tells us that it is a cultural role, not a biological role. If our goal is to promote a nurturing model for fathering, that model is an androgenous one based on the experience of fathers who have parented as sole or primary parents. It is also apparent that the cultural role of motherhood is a well developed nurturing model that can be emulated by fathers. If we label nurturing as mothering, will we deter men from fathering? My suspicion is that there are those who would argue that we would, and the argument would go something like this: To use motherhood as a model puts men off and makes them feel excluded and presumptively inadequate. Therefore, if we are serious about reorienting our definition of fatherhood, let us not begin with terminology that will defeat that goal. On the other hand, an argument can certainly be made that motherhood is precisely the express model that we should use. It honors and validates the model of parenting that women have been taught and have performed. At the same time, it rejects the gender essentialism that has limited parenting to mothers and women to motherhood, to the exclusion of other choices and roles.

At least several other questions must be addressed. Do we envision variations in this nurturing model of fatherhood? We have inherited a pattern of significant uninvolved or limited involvement in nurturing. Do we envision fatherhood as a role that requires a high level of nurturing, so that any other role relegates a father to some other status, or without status at all? Mothers tend to be held up to a single implicit standard. Is that a good thing? If that standard is not good for fathers, we should, of course, also question it for mothers.

Another question generated by the motherhood model is how we envision the relationship between nurturing and wage work. Fatherhood has always been strongly linked to the breadwinner/economic model. Motherhood (and indeed even potential motherhood), on the other hand, has been an automatic disadvantage in wage work. Certainly, adoption of the motherhood model does not require adoption of this negative consequence. Nevertheless, the relationship between fatherhood and work must be revisited. We have never fully envisioned what this change would look like or what it would require in terms of structural change.

Finally, both the nurturing of the small band of fathers who are primary or sole caretakers and the nurturing of most mothers functions on a single parent model. Whether inside a two parent marriage or

relationship, or where parents are divided between separate households, the dominant pattern of nurturing parenting is one where one parent does all or substantially all of the nurturing. If we accept that as a given, then a reenvisioned fatherhood is one where presumably the aim is to give fathers an equal opportunity to be the primary or sole parent. On the other hand, if we mean to reenvision fatherhood as displacing that model and moving toward a two parent (or more) model of parenting, rather than simply a redistribution of responsibility or a restructuring of opportunity, then we must think through exactly what that means. Furthermore, we have to consider how a dual or multiple parent model works when not all the parents share the same household. Finally, any movement away from the implicit single parent model should not stigmatize those who do function as single parents.

#### IV. CULTURAL BARRIERS: CONCEPTS OF MASCULINITY, MALE VIOLENCE, AND HOMOPHOBIA

The challenges to creating a new vision of fatherhood are not, I think, in envisioning what fatherhood might be. Notwithstanding the challenges to our thinking and the deep structural change this requires in the relationship between work and family, those are hurdles that can be overcome. What I see as the more difficult challenges are concepts of masculinity, male violence, and homophobia. First, how we as a society see male gender roles and how we respond to the evident lack of value attached to nurturing in concepts of masculinity is critical. Second, the problem of male violence toward partners and children, and its relationship to the promotion and acceptance of violence and force as male characteristics, confounds any effort to further empower men as fathers. Third, breaking the hold of homophobia as a constraint against reconstructing fatherhood is essential. All of these challenges are tied to issues of dominance and hierarchy, the price that men pay for patriarchy, whether or not desired.

Men's socialization continues to emphasize qualities in conflict with good parenting, and parenting challenges men to adopt characteristics traditionally viewed as unmanly. The combination of socialization and structural constraints on fathers makes it seem "natural" that mothering and fathering are substantively different, gender specialized and differentiated, even while the ideology of equal parenting hides the inequality of parenting responsibility and care.

The issues here are ones fundamental to the concept of gender roles. Sex typing is the means by which females and males develop feminine and masculine behaviors, expectations and life goals. As part of their development, individuals learn the expectations for their gender group. The implications of sex typing for self-identity and self-esteem, within

a context of highly unequal valuing of each sex, is an area that psychologists are continuing to explore. Some have suggested that a combination of masculine and feminine characteristics is most psychologically healthy, an androgyny model. Sex stereotyping research, however, indicates that adopting characteristics of the opposite sex may not be acceptable; violations of sex role standards are judged harshly. Other psychologists suggest a transcendent model is healthier, that is, a model where men and women learn limited gender roles, but transcend them. A gender-free approach would concentrate on conscious rejection of gender stereotypes, rather than permit the adoption of limited, stereotypical behavior as a normal "phase" to be overcome. Finally, under an empowerment model, if an environment of patriarchy and sexism were assumed, the focus would be on developing personal power within that context. Reconstructing fatherhood requires thinking about the models that are passed on to boys as well as supporting men in a different way of being fathers.

In addition to thinking about general concepts of masculinity, how fatherhood fits into notions of maleness, and how nurturing fits into notions of maleness, a more specific concern is the glorification and acceptance of violence as part of male culture. Just as significant is the prevalence of violent conduct among men in their relationships with partners and children (as well as with each other). Domestic violence is the leading cause of injuries to women ages 15 to 44; as many as four million women are victims each year.<sup>27</sup> Over one-quarter of all girls have experienced sexual abuse by the age of 14, and one-third by the age of 18; a substantial proportion of this abuse is from family members. Uncles are the largest group who commit incest; fathers are the second. Girls are four times more likely to be abused than boys.<sup>28</sup> There were 2.9 million cases of suspected child maltreatment in 1992; there has been a fifty percent increase in child abuse deaths since 1985.<sup>29</sup> Not all of this abuse is perpetrated by men; indeed some data indicates that nearly an equivalent amount is perpetrated by women. But considering this pattern against the diminished child care role of men suggests this occurs with alarming frequency when men are acting as caretakers, and that there is a strong connection between partner abuse

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27. Senate Comm. on the Judiciary, Violence Against Women Act of 1993, S. Rep. No. 138, 103d Cong., 1st Sess. 38 (1993).

28. DIANE E.H. RUSSELL, SEXUAL EXPLOITATION: RAPE, CHILD SEXUAL ABUSE, AND WORKPLACE HARASSMENT 74, 230 (1984).

29. Marcia Sells, *Child That's Got Her Own*, in THE PUBLIC NATURE OF PRIVATE VIOLENCE: THE DISCOVERY OF DOMESTIC ABUSE 130, 135-36 (Martha Albertson Fineman & Roxanne Mykitiuk eds., 1994).

and child abuse.<sup>30</sup> One of the real dangers of a reconstituted definition of fatherhood, coupled with a greater entitlement of fathers to preserve their relationships with their children, is that the redefining will be done at the expense of women and children. Any strategy that gives men more rights or power increases the risk of giving power where there is already significant and widespread abuse. The problem of gender violence, more commonly male on female, must be confronted.

Finally, a reconstituted sense of fatherhood is also threatened by the ongoing limitations of homophobia.<sup>31</sup> Homophobia not only pushes men away from nurturing wage work by labeling it “women’s work,”—like nursing, social work, and other helping professions—it also pushes men away from nurturing children as being somehow unmanly or of lesser priority than being an economic breadwinner. Furthermore, it affects the kind of nurturing men do. I will never forget a conversation years ago with a retired military man. When asked how often he hugged his sons, the very question nearly made him physically recoil. He quite gruffly replied that he could not imagine hugging his sons. A good strong handshake was his only physical contact with his grown sons.

It might be intriguing to compare the characteristics of mothering with stereotypes of male homosexuality. Ironically, of course, homosexuality is often viewed as a disqualifier for parenting, despite all evidence that sexual orientation is irrelevant to good parenting. Indeed, a homosexual father parenting within a long-term relationship might well provide an alternative role model of parenting with a partner, freed of the homophobic constraints of the heterosexual model, both in relation to the father’s partner and in the father’s mode of parenting. Whether within the gay community there is a model of undominated, shared parenting is an interesting thesis to explore. Certainly within the examination of and challenge to masculinity posed by gay culture may well be analytical and or practical concepts of a different masculinity and a different fatherhood.

How these challenges translate into legal policies and structures that might support a reconstructed vision of fatherhood suggests a complex

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30. Marie Ashe & Naomi Cahn, *Child Abuse: A Problem for Feminist Theory*, in THE PUBLIC NATURE OF PRIVATE VIOLENCE, *supra* note 29, at 174-75.

31. See generally Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of “Sex,” “Gender,” and “Sexual Orientation” in Euro-American Law and Society*, 83 CAL. L. REV. 3 (1995); I. Bennett Capers, Note, *Sex(ual Orientation) and Title VII*, 91 COLUM. L. REV. 1158 (1991); Alan Elbert, *Dads on Their Own: Don’t Believe the Hype: Many Black Men Are Running To—Not Away From—Their Children!*, ESSENCE, June 1995, at 76; James Sturz, *Single, With Children*, MEN’S HEALTH, Nov. 1996, at 130; Dan Davenport, *Why We Need Fathers*, BETTER HOMES & GARDENS, June 1996, at 46.

agenda for further research and thought. To the extent any policy expressly condemns or promotes a particular gender role raises at the very least First Amendment concerns, and perhaps the intersection and interaction of First Amendment and equal protection issues. We certainly see a role for the state in promoting and supporting strong families, even to the detriment of what we have identified as weak or lesser family forms. That justification could be used to support what we identify as "good" fatherhood. Whether we would be willing to condemn and root out destructive influences (especially the promotion of violence and negative gender roles that undermines men's ability to be egalitarian toward women and nurturing toward their children) might depend on whether we characterize any such effort as legitimate state support for egalitarian gender roles rather than censorship and a denial of free expression. Since the state has rarely acted with that goal in mind, many might find this not only suspect but also dangerous. Efforts to combat violence might benefit from ongoing reforms to combat domestic violence. On the other hand, the orientation of much of those reforms is to reach violence already in a crisis situation, rather than begin to address prevention of battering in the first place. Finally, movement on some gay and lesbian rights and the emergence of a vibrant jurisprudence concerning issues of sexual orientation are other legal developments that would help in the reconstruction of fatherhood. What is most confounding, however, is how to get a patriarchal system to give up privilege, even when it is self-destructive privilege. Perhaps the only way is that it be sacrificed from within, by men themselves.

## V. CONCLUSION

I have a son and a daughter, and I have always considered the job of raising my son, at least with respect to issues of gender and sexism, to be far more difficult and challenging than raising my daughter. For my daughter, I want to prevent any door from closing simply because she is a girl; for my son, I want to close the door of privilege which is open simply because he is a boy. For my daughter, I see my task as supporting her sense that she can do anything, that no one can deny her an opportunity or an experience because she is a girl. General notions of equality support my efforts; the more subtle, hidden structural and cultural messages which contradict widespread notions of gender equality are frustrating. For my son, on the other hand, while I similarly see my task as supporting his consciousness that everything is open to him, there is also the task of helping him resist the notion of privilege which comes to him because he is male, as well as to refuse to accept the limitations that are the quid pro quo for privilege. Dominant notions of equality do not seem to support me in that regard; rather, they seem

to have grafted a commitment to gender equality onto a male role model without much challenge to the underlying concept of maleness, or without generating a different, alternative model. Nowhere is this more apparent than in the concept of fatherhood.

My dilemma is two-fold. First, four-year-olds are remarkably perceptive and honest. If I were to ask my son what fathers do, and how they are different from mothers, I suspect his answer would reflect his perceptions of the fathers that he knows, as well as how he sees fathers functioning in the world around him, and in the pictures, movies, and commercials that he sees. Undoubtedly, his perceptions would reflect the realities of fathering: most fathers do not significantly nurture their children.

Second, there are not enough role models for me to point him to. Neither real nor imagined fathers engage in nurturing in a visible, common, ordinary way in the world in which he lives. He knows plenty of great fathers. But he knows that they are not the norm. Fathers who are actively engaged in nurturing tend to be treated as unusual, different, extraordinary, and he no doubt notices that.

As I was writing this essay, my son crawled up on the sofa beside me and announced, "When I grow up, I want to be a Superhero."

"Does that mean you're going to be a daddy?" I asked.

"No," he responded with great certainty.

"Why not?" I asked.

"Because Superheros have to fly around and save people," he said.

I hope when he grows up that being a dad is as important to him, and to our society, as being a Superhero.



